

**STATE OF TEXAS
PURCHASE ORDER**

1. Agency Name & No. TEXAS STATE LIBRARY & ARCHIVES COMMISSION 306 Tax Exempt agency of the Texas State Government		4. Purchase Order No. 306-17-8021	12. HUB: N/A	13. Order Type: Service
2. Agency Billing Address **ACCOUNTING DEPARTMENT** Texas State Library & Archives Commission PO Box 12516 Austin, TX 78711-2516 Email invoices to: AP@tsl.texas.gov Phone: (512) 463-5473; Fax: (512) 475-0185		5. PCC	14. Vendor Identification No: 19806695920-001	
3. Destination of goods or service <i>FOB Destination</i> Receiving Hours: 7:30 AM - 4:00 PM Receiving Dock, Room G-007 Texas State Library & Archives Commission 1201 Brazos Street Austin, TX 78701		6. Current Document No. DT-9	15. Vendor Address: Adam Matthews Digital Ltd c/o HSBC Bank PO Box 347383 Pittsburgh, PA 152514383	
*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."		7. Document (order) amt \$7,876.00	16. Vendor Contact Info: Ben Cartwright Phone: (312) 445-6290 Fax: Email: ben@amedu.com	
		8. REF DOC		
		9. Service Period or Expected Delivery Date: 11/1/2016 - 10/31/2017		
		10. Agency Contact: Pam Rodriguez Email: purchasing@tsl.texas.gov	Phone: (512) 463-3037 Fax: (512) 475-3393	
		11. TSLAC Project Contact: Russlene Waukechon Email: rwaukechon@tsl.texas.gov	Phone: (512) 463-7402	

17. Description

Annual Access Fees to the following electronic subscription resources for the TexShare Program during the period of 11/1/2016 - 10/31/2017.

- American West: Sources from the Graff Collection of Western Americana at the Newberry Library
- American Indian Histories and Cultures Collection (AIHC) at the Newberry Library

Amendment 3 # 306-17-8021 to Contract # 306-14-8199. This is the 3rd of four (4) one year renewal options. Please refer to Contact # 306-17-8021 for countersignature. Amendment was fully executed on September 2, 2016.

18. SFX	INDEX	AY	COBJ	AOBJ	AMOUNT	INVOICE NO.
001	17942	17	7276	7104	\$6,563.00	

19. Line No	20. Goods & Service	21. NIGP Code	22. Qty	23. Units	24. Unit Price	25. Extended Amt
1.	Adam Matthew Digital Access Fees	956-35	1	Lot(s)	\$6,563.00	\$6,563.00

Grant Number: LS-00-16-0044-16 – FFY 2016 | CFDA: 45.310 – Grants to States | Institute of Museum and Library Services

18. SFX	INDEX	AY	COBJ	AOBJ	AMOUNT	INVOICE NO.
002	17947	17	7276	7104	\$1,313.00	

19. Line No	20. Goods & Service	21. NIGP Code	22. Qty	23. Units	24. Unit Price	25. Extended Amt
2.	Adam Matthew Digital Access Fees	956-35	1	Lot(s)	\$1,313.00	\$1,313.00

INTERNAL PO ONLY

Grand Total \$7,876.00

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 17-034

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

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

28. Approval Signature 	Date 9/6/16	29. Vendor Signature	Date
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Texas State Library & Archives Commission
Purchase Requisition & Blanket/Non-PR Form

RECEIVED

MAY 17 2016

Fiscal Year 2017

Purchase Requisition (PR) Blanket/Non-PR* AMENDMENT

PURCHASING

*CFO Signature not required for blanket orders

Vendor Name: Adam Matthew Digital LTD

PO #: 17- 8021

Address: Pelham House, Pelham Court, London Road

Division Tracking #: LDN 17-034

City, State, Zip: Marlborough, Wiltshire SN8@AF, UK

Previous PO #: 16-8003

Phone: 312-445-6290 Fax: _____

Requested Delivery Date: _____

Contact Name: Ben Cartwright

If PR is a RUSH, must include requested delivery date

Email: ben@amedu.com

Vendor ID#: _____

DUNS: 516430332

SAM Expiration Date: 08/11/2016

Federal Funds Note: Grant Number: LS-00-16-0044-16 – FFY 2017 • CFDA: 45.310 – Grants to States • Institute of Museum and Library Services.

Item Description	Commodity Code	Qty	Unit	Unit Price	Total Amount	Index	Agency Object	Comp Object
+ Access for Adam Matthew Digital Content for period 11/01/2016 - 08/31/2017.	956-34	1	Lot	\$6,563.00	\$6,563.00	17942	7104	7276
+ Access for Adam Matthew Digital Content for period 09/01/2017 - 10/31/2017.	956-34	1	Lot	\$1,313.00	\$1,313.00	17947	7104	7276
Grand Total					\$7,876.00	<i>Don't forget to include S&H!</i>		

Special Instructions: Total Renewal totals \$7,876.00
For training or outreach events: Please include or attach justification statement, login info, and/or registration form.

Division Proprietary Statement (to be filled out if service or commodity will not be competitively bid)

Russlene Waukechon 5/16/16

1. Requestor or Contract Manager Signature (always required)

Russlene Waukechon 463-7402

Type name & phone number of Requestor or Contract Manager

Rose Wilbreck 5/16/16

2. Purchasing Liaison Signature (always required) Date

Ashe Little 5/16/16

3. Division Director Signature (always required) Date

4. If IT related, send PR to Accessibility Team.
For Accessibility Team:
ADA Compliant: (Circle One) YES NO

Donna Osborne 5/16/16

6. Executive Signature (if required) Date

Donna Osborne 5/16/16

7. Chief Fiscal Officer (always required)* Date

P. Rodriguez, CTPM 9/6/16

Ordered by Date

11/1/16 - 10/31/17

Estimated Delivery Date

5. Director or IRT (for IT & CCTS requests) Date

Received by (Signature) Date

Texas State Library & Archives Commission
Purchase Requisition & Blanket/Non-PR Form

CONFLICT OF INTEREST: Per Section 2155.003 of the Texas Government Code, by signing this PR, I certify that I have no interest in, or in any manner am personally connected with, the contract or bid to be awarded under this Purchase Requisition (PR) for the purchase of furnishing, supplies, materials, services, and/or equipment by TSLAC. I further certify that neither I nor any member of my family (spouse or dependent child), have nor will accept or receive from any person, firm or corporation to whom a contract or bid may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatsoever, nor shall I/we receive any promise, obligation, or contract for future reward or compensation from any party. I acknowledge that I may be dismissed if it is discovered that I/we have violated the aforementioned statute.

If no vendor is designated by requestor on this PR, the Purchasing staff will notify all signatories for ratification of the above certification to ensure compliance with the statute.

Rev. 03/17/2016

Vendor Change Approvals:

Please initial and date accordingly

		1. _____	3. _____	5. _____	7. _____
Purchasing Signature	Date	2. _____	4. _____	6. _____	

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CONTRACT FOR SERVICES
Amendment 3 to Contract # 306-14-8199**

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

This Amendment 3 replaces Amendment 2. Except as amended below, all terms of the Original Contract between TSLAC and Adam Matthews Digital Ltd, dated September 27, 2013, 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: Adam Matthews Digital Ltd, a company located at 321 N. Clark Street, 5th Floor, Chicago, IL 60654. Ben Cartwright 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 are the annual access fees to the TexShare Program for the following databases already owned by TSLAC:

- American West: Sources from the Graff Collection of Western Americana (American West) at the Newberry Library, Chicago
- American Indian Histories and Cultures Collection (AIHC) at the Newberry Library, Chicago

III. TERM OF CONTRACT

The term of service under this Amendment 3 will begin November 1, 2016 and will conclude no later than October 31, 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 October 31, 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:	83%
Dollar Amount of Federal funds for this project:	\$6,563.00

Percentage of total costs of the program which will be financed with non-Federal sources:	17%
Dollar amount of non-Federal sources for the project:	\$1,313.00

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 Adam Matthews Digital Ltd based upon receipt of itemized invoices submitted by Adam Matthews Digital Ltd 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 Adam Matthews Digital Ltd

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 Adam Matthews Digital Ltd’ payable to TSLAC within thirty (30) days of receipt of invoices.

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CONTRACT FOR SERVICES
Amendment 3 to Contract # 306-14-8199**

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

Contract Number for Term of November 1, 2016 – October 31, 2017: 306-17-8021

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

VII. CONTRACT AMOUNT

Per Appendix A of this Contract, the renewal amount for the services specified in Section II for the period of November 1, 2016 – October 31, 2017 is **seven thousand eight hundred seventy-six and 00/100 dollars (\$7,876.00)**.

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. Adam Matthews Digital Ltd 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 # 306-14-8199

THE UNDERSIGNED RECEIVING AGENCY Hereby certifies that:

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

RECEIVING AGENCY

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

 8/26/16
Date
Mark Smith
Director & Librarian

PERFORMING VENDOR

Adam Matthews Digital Ltd
Pelham House, Pelhams Court, London Road
Marlborough, Wiltshire SN8 2AG, UK

 9/2/16
Date
Khal Rudin

Approved by:

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

Director
Title

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

 8/26/16
Date
Russlene Waukechon
TexShare Coordinator

 8/30/16
Date
Pam Rodriguez, CTPM
Senior Purchaser

**APPENDIX A
VENDOR'S LETTER**



321 N. Clark Street, 5th Floor
Chicago
IL 60654
U.S.A.

www.amdigital.co.uk

May 10th 2016

FAO: Russlene Waukechon
TexShare Database Coordinator
Texas State Library and Archives Commission
Lorenzo de Zavala State Archives and Library Building
1201 Brazos St.
Austin, TX 78701

RE: Adam Matthew Annual Hosting Fees

Dear Russlene,

This is to confirm the forthcoming annual hosting fee for the two Adam Matthew databases, which were purchased by TexShare in 2013:

- American Indian Histories and Cultures
- The American West

The annual hosting fee for both titles, covering continued institutional access to Texas institutions through 2017 is \$7,876.

This fee would normally come up annually in November, but we will be able to schedule the invoice for a time that most suits your needs in the coming year. Please advise your preferred invoice schedule and do not hesitate to contact me with any additional questions you may have about this.

Yours sincerely,

Ben Cartwright
Head of US Sales, Adam Matthew Digital

Directors: Khal Rudin, Martha Fogg, Jennifer Kemp, Ziyad Marar, Katharine Jackson, Stephen Barr, Karen Phillips, Blaise Simqu
Registered in England and Wales No. 05960030
Registered Office: 1 Oliver's Yard, 55 City Road, London, EC1Y 1SP, ENGLAND

APPENDIX B
Texas State Library and Archives Commission
Terms & Conditions

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

- 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

- 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.

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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 or 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/.
- 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 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.

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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 1st of each year, Vendor shall submit a list to TSLAC which identifies all individuals who have current access to TSLAC network or systems as well as the most recent training completion date for each individual. TSLAC, in its sole discretion, may deny network or system access to any individual that does not complete TSLAC-required training within thirty (30) calendar days following the date of TSLAC's grant of access under this Contract.
- d) TSLAC reserves the right to audit the security measures in effect on Vendor's connected systems without prior warning. Vendor must secure its own connected systems in a manner consistent with an auditable information security framework. TSLAC's audit can consist of a review of third party audit results of Vendor's security measures (e.g., SSAE-16 Type II, ISO 27002 assessment). TSLAC also reserves the right to immediately terminate network and system connections not meeting such requirements.
- e) TSLAC data shall not be accessed from, stored at or transported to locations outside of the United States.
- f) Where applicable, encryption shall conform to or exceed Federal Information Processing Standard (FIPS) 140-2:

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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

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.

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Terms & Conditions

- I. The Vendor agrees to develop or revise, as necessary, any specific written documentation of its current procedures for
- (1) collecting and reporting performance measures;
 - (2) conducting a fixed asset inventory; and or,
 - (3) any other issues identified in Vendor's internal audit report or grant activities.

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

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

II. ENFORCEMENT

- A. Remedies for noncompliance. If Vendor materially fails to comply with any term of the contract, whether stated in a state or federal statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, TSLAC may take one or more of the following actions, or impose other sanctions, as appropriate in the circumstances:
1. Temporarily withhold cash payments pending correction of the deficiency by the Vendor, or more severe enforcement action by TSLAC;
 2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the current contract for the Vendor's program;
 4. Withhold further awards for the program; or
 5. Take other remedies that may be legally available.
- B. Hearings, appeals. In taking an enforcement action, TSLAC will provide the Vendor an opportunity for such hearing, appeal, or other administrative proceeding to which the Vendor is entitled under any statute or regulation applicable to the action involved.
- C. Effects of suspension and termination. Costs of Vendor resulting from obligations incurred by the Vendor during a suspension or after termination of an award are not allowable unless TSLAC expressly authorized in the notice of suspension or termination, or subsequently. Other Vendor costs during suspension or after termination that are necessary, and not reasonably avoidable, are allowable if:
1. The costs resulting from obligations that were properly incurred by the Vendor before the effective date of suspension or termination are not in anticipation of it and, in the case of a termination, are non-cancelable; and,
 2. The costs would be allowable if the award were not suspended, or expired normally at the end of the funding period in which the termination takes effect
- D. Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude Vendor from being subject to "Debarment and Suspension" under Executive Order 12549 (see UGMS Part III, Subpart C, Sec 35) and state law.

**INVOICING INSTRUCTIONS
NON-COMPLIANCE WITH INSTRUCTION MAY DELAY PAYMENT**

Please use the following procedure when submitting your invoice:

1. Invoices must be in U.S. dollars
2. Invoices **must** be submitted to the agency at the invoice address shown in Payment Section of this Contract. If you prefer to submit your invoice electronically, **use the following email address:** 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. 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**

1. Agency Name & No. TEXAS STATE LIBRARY & ARCHIVES COMMISSION 306 Tax Exempt agency of the Texas State Government	4. Purchase Order No. 306-16-8003	12. HUB: N/A	13. Order Type: Catalog
	5. PCC	14. Vendor Identification No: ██████████	
2. Agency Billing Address **ACCOUNTING DEPARTMENT** Texas State Library & Archives Commission PO Box 12516 Austin, TX 78711-2516 Email invoices to: AP@tsl.texas.gov Phone: (512) 463-5473; Fax: (512) 475-0185	6. Current Document No. DT-9	15. Vendor Address: Adam Matthews Digital Ltd 321 N. Clark Street, 5th Floor Chicago, IL 60654	
	7. Document (order) amt \$7,876.00	16. Vendor Contact Info: Ben Cartwright Phone: (312) 445-6290 Fax: Email: ben@amedu.com	
3. Destination of goods or service FOB Destination Receiving Dock, Room G-007 Texas State Library & Archives Commission 1201 Brazos Street Austin, TX 78701	8. REF DOC	9. Service Period or Expected Delivery Date: 11/1/2015 - 10/31/2016	
	*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."	10. Agency Contact: Jill Sutherland Phone: (512) 936-6627 Email: jsutherland@tsl.texas.gov Fax: (512) 475-3393	
	11. TSLAC Project Contact: Russlene Waukechon Phone: (512) 463-7402 Email: rwaukechon@tsl.texas.gov		

17. Description

Renewal of access fees for Adam Matthews digital content.

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

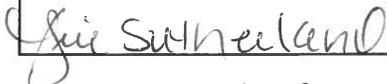
18. SFX	INDEX	AY	COBJ	AOBJ	AMOUNT	INVOICE NO.
001	17942	16	7276		\$7,865.00	
19. Line No	20. Goods & Service	21. NIGP Code	22. Qty	23. Units	24. Unit Price	25. Extended Amt
1.	Access for Adam Matthews digital content	956-35	1	Year(s)	\$7,865.00	\$7,865.00
002	17947	16	7276		\$11.00	
19. Line No	20. Goods & Service	21. NIGP Code	22. Qty	23. Units	24. Unit Price	25. Extended Amt
2.	Access for Adam Matthews digital content	956-35	1	Year(s)	\$11.00	\$11.00
Grand Total						\$7,876.00

26. Legal Cites: Purchase for a library resource sharing program as defined by the Texas Government Code, Title 10, Section 2155.139

27. Division Tracking Number: LDN 16-020

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

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

28. Approval Signature  CPM, CRM	Date 10/15/15	29. Vendor Signature	Date
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**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CONTRACT FOR SERVICES
AMENDMENT 2 TO CONTRACT NUMBER: 306-14-8199**

I. Contracting Parties

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

The Performing Vendor: Adam Matthew Digital Ltd (Adam Matthew)

This Amendment 2 replaces Amendment 1. Except as amended below, all terms of the original purchase contract between TSLAC and Adam Matthew, dated September 27, 2013, will remain in effect.

II. Term of Contract

The term of service for the annual access fees for the following databases already owned by TSLAC: American West: Sources from the Graff Collection of Western Americana (American West) at the Newberry Library, Chicago, and the American Indian Histories and Cultures Collection (AIHC) at the Newberry Library, Chicago. Access to the databases will begin November 1, 2015 and will conclude no later than October 31, 2016, unless otherwise terminated earlier by either party.

III. 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: 0.1 % and \$ 11
- Percentage and dollar amount of total costs of the contract, with all Attachments and Amendments, which will be financed with Federal money: 99.9% and \$ 7,865.00
- Percentage and dollar amount of total costs of the contract that will be financed with non-government sources: 0% & \$0.00
- LSTA#: LS-00-15-0044-15 – CFDA#: 45.310

IV. Payment for Services

Vendor must place the following tracking number on each invoice issued under this Amendment 2. Tracking numbers for future renewals will be assigned in the documentation for the renewal.

Current Term: November 1, 2015 – October 31, 2016 – Tracking Number: 306-16-8003

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

V. Contract Amount

Per Appendix A of this Amendment 2, the renewal amount for American West: Sources from the Graff Collection of Western Americana (American West) at the Newberry Library, Chicago, and the American Indian Histories and Cultures Collection (AIHC) at the Newberry Library, Chicago for the period of November 1, 2015 thru October 31, 2016, is \$7,876.00.

IV. Terms and Conditions

The TSLAC Terms and Conditions (Appendix B) have been amended to add the following:

TSLAC Terms and Conditions Additions (Appendix B)

- | | |
|--|--|
| 1. Notices | 54. Termination |
| 2. Debarred Vendors List | 55. Termination for Convenience |
| 3. Duty to Disclose | 56. Termination Remedies |
| 7. No Other Benefits | 57. Survival Terms |
| 8. Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying | 58. Supporting Documents; Right to Audit; Independent Audits |
| 10. Confidentiality and Open Records | 61. Insurance & Other Security |
| 12. No Conflicts | 62. Workers' Compensation Insurance Coverage |
| 13. Specifications | 63. Workers Compensation & Employers Liability |
| 15. Permits, Licenses | 64. Vendor Responsibility for Damage to Government Property |
| 17. Control; Ownership; Legal Proceedings | 74. Texas Bidder |
| 18. Time Limits | 76. Recovered Materials |
| 26. Liability for Taxes | 77. TSLAC Anti-Fraud Policy |
| 27. Indemnification | 79. Provision for Direct Deposit |
| 28. Debt | 80. Disclosure of Security Breach |
| 31. Infringements | 81. Information Security Requirements |
| 48. Accessibility | 82. Transition |
| | 83. E-Verify |

LSTA Terms and Conditions (Appendix C) have been amended as attached.

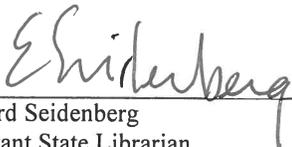
THE UNDERSIGNED RECEIVING AGENCY Hereby certifies that (1) services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government; (2) the services, supplies or materials contracted for are not required 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

Adam Matthew Digital Ltd
Pelham House, Pelhams Court, London Road
Marlborough, Wiltshire
SN8 2AG, UK



Edward Seidenberg
Assistant State Librarian



Khal Rudin
Director

06-10-2015
Date

13th May 2015
Date

Approved:



Donna Osborne
Chief Fiscal Officer

Date



Deborah Littrell
Director of Library Development and Networking

Date



Russlene Waukechon
Contract Manager

Date



Jill Sutherland, CTPM, CTCM
Purchasing Manager

Date

Appendix A



321 N. Clark Street, 5th Floor
Chicago
IL 60654
U.S.A

www.amdigital.co.uk

(312) 445-6290

ben@amedu.com

April 15th 2015

FAO: Russlene Waukechon, TexShare Database Coordinator

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

RE: Adam Matthew Annual Hosting Fees

Dear Russlene,

This is to confirm the forthcoming annual hosting fee for the two Adam Matthew databases, which were purchased by TexShare in 2013:

- American Indian Histories and Cultures
- The American West

The annual hosting fee for both titles, covering continued institutional access to Texas institutions through 2016 in \$7,876.

This fee would normally come up annually in November, but we will be able to schedule the invoice for a time that most suits your needs in the coming year. Please advise your preferred invoice schedule and do not hesitate to contact me with any additional questions you may have about this.

Yours sincerely,

A handwritten signature in black ink that reads 'Ben Cartwright'. The signature is written in a cursive, flowing style.

Ben Cartwright
Head of US Sales, Adam Matthew Digital

Appendix B
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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.
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 Genera. Within three (3) days of receipt, Vendor shall refer to TSLAC any third party requests received directly by Vendor for information to

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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.
- 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

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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. 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 WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 28. 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.

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- 29. 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.
- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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).
- 34. 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.

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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.

35. **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.
36. **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.
37. **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.
38. **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.
39. **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.
40. **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.
41. **Property Rights.** Materials and meta-data that constitute the digital resource remain the copyright of contributing libraries and archives. Adam Matthew has no right to assign.
42. **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.
43. **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.
44. **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.
45. **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

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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.

- 46. 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.
- 47. 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.
- 48. 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.
- 49. 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.
- 50. 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.
- 51. 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.
- 52. 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.
- 53. 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.
- 54. 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

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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.

- 55. Termination for Convenience.** TSLAC reserves the right, in its sole discretion, to terminate the Contract on thirty (30) days written notice to the Vendor. TSLAS also reserves the right, in its sole discretion, to terminate the Contract immediately, with written notice to the Vendor, if it is in the best interests of TSLAC or the State.
- 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.

- 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.

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- 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.

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.

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- 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.
- 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.**

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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

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

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

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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.

- 69. 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 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 other further obligations under the Contract.
- 70. No Liability Upon Termination.** If this Contract is terminated for any reason, TSLAC and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Vendor may be entitled to the remedies provided in 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.
- 71. Convenience of the State of Texas.** 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 Vendor before the termination date.
- 72. 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.
- 73. 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.
- 74. 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.
- 75. 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.*).
- 76. 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.
- 77. 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.
- 78. 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

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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/>.

- 79. 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.
- 80. Disclosure of Security Breach.** Vendor shall provide notice to the Purchasing Department, Purchasing Manager at (512) 936-2774 or purchasing@tsl.texas.gov within twenty-four (24) hours of Vendor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TSLAC information ("Security Incident"). Within twenty-four (24) hours of the notification of a Security Incident, Vendor shall provide a written report to TSLAC's Purchasing 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.

81. 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

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clearing, purging or destroying in accordance with NIST Special Publication 800-88 Guidelines for Media Sanitization. Vendor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

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

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

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

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

- c) Access to Internal TSLAC Network and Systems. As a condition of gaining remote access to any internal TSLAC network and systems, Vendor must comply with TSLAC's policies and procedures. TSLAC's remote access request procedures will require Vendor to submit a Remote Access Request form for TSLAC's review and approval. Remote access technologies provided by Vendor must be approved by TSLAC's Information Security Officer. Individuals shall not access internal TSLAC network and systems from outside the United States. Individuals who are provided with access to TSLAC network or systems will be required to participate in TSLAC's Security Awareness Training on an annual basis. The State and TSLAC's Fiscal Year begins on September 1 and ends on August 31. Vendor shall maintain records of all individuals who have completed TSLAC-required training for the duration of the individual's employment with Vendor, plus five years. Upon TSLAC's written request, Vendor shall provide copies of the certificates of completion for TSLAC's Security Awareness Training. On November 1st of each year, Vendor shall submit a list to TSLAC which identifies all individuals who have current access to TSLAC network or systems as well as the most recent training completion date for each individual. TSLAC, in its sole discretion, may deny network or system access to any individual that does not complete TSLAC-required training within thirty (30) calendar days following the date of TSLAC's grant of access under this Contract.
- d) TSLAC reserves the right to audit the security measures in effect on Vendor's connected systems without prior warning. Vendor must secure its own connected systems in a manner consistent with an auditable information security framework. TSLAC's audit can consist of a review of third party audit results of Vendor's security measures (e.g., SSAE-16 Type II, ISO 27002 assessment). TSLAC also reserves the right to immediately terminate network and system connections not meeting such requirements.
- e) TSLAC data shall not be accessed from, stored at or transported to locations outside of the United States.
- f) Where applicable, encryption shall conform to or exceed Federal Information Processing Standard (FIPS) 140-2:
 - 1) Backup media containing TSLAC data shall be encrypted at all times.
 - 2) Transmission of TSLAC data across public networks shall be protected by encryption methods such as Virtual Private Network ("VPN"), Secure Shell File Transfer Protocol ("SFTPS"), or File Transfer Protocol over SSL/TLS ("FTPS").
- g) If Vendor is a software manufacturer, then Vendor represents and warrants that it has implemented processes for the protection, detection, remediation, mitigation and timely customer notification of software vulnerabilities associated with its software provided under this agreement.

82. 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.

83. 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

Appendix B
Texas State Library and Archives Commission
Terms and Conditions

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 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 TEXAS STATE LIBRARY AND ARCHIVES COMMISSION Tax exempt agency of the Texas State Government				2. Purchase order number 306-15-8075		3. Current document number DT - 9	
4. PCC	5. Agency number 306	6. Recycled Code N/A		7. Document (order) amount \$7,876.00		8. REF DOC	
9. Vendor address		HUB: YES		NO		X	
Adam Matthew Digital LTD Pelham House, Pelhams Court, London Rd Marlborough, Wiltshire SN8 @AG, UK				10. Vendor Identification No. [REDACTED]			
12. Agency invoice address **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				11. Person contacted, phone, fax, or other contact info Ben Cartwright Email: ben@amedu.com Phone: 312-445-6290 Fax:			
13. Destination of goods or service Receiving, Room G-007 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
001			17942	15		7276	\$7,219.00
002			17947	15		7276	\$657.00
17. Service Dates or Expected Delivery Date: 11/1/14-10/31/15				ARO FOB Designation			
18. Line Number	19. Description of Goods or Services			20. NIGP Code	21. Unit	22. Qty	23. Unit Price
1.	Texas History Resource per RFO 306-13-8638 INTERNAL PO ONLY DIRECT PUBLICATION NOT AVAILABLE FOR ANY OTHER SOURCE LSTA#: LS-00-14-0044-14			956-35	Lot	1	\$7,876.00
	Shipping or Freight Charges			962-86			\$0.00
	TOTALS						\$7,876.00
**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 15-054							
27. Approval Signature			Date		28. Vendor Approval		Date
<i>Jill Sutherland</i>			9/24/14				

CPM, COW

**STATE OF TEXAS
PURCHASE ORDER**

9/30/13- PO Amended to correct LSTA#

Page 1 of 1

1. Agency Name TEXAS STATE LIBRARY AND ARCHIVES COMMISSION Tax exempt agency of the Texas State Government				2. Purchase order number 306-14-8199		3. Current document number DT -			
4. PCC K	5. Agency number 306	6. Recycled Code N/A		7. Document (order) amount \$1,260,000.00		8. REF DOC			
9. Vendor address Adam Matthew Digital LTD Pelham House, Pelhams Court, London Rd Marlborough, Wiltshire SN8 @AG, UK		HUB: YES	NO	X		10. Vendor Identification No.			
12. Agency invoice address **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				11. Person contacted, phone, fax, or other contact info Ben Cartwright Email: ben@amedu.com Phone: 312-445-6290 Fax:				13. Destination of goods or service Receiving, Room G-007 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 001	M	TC	INDEX 17942	AY 14	AOBJ 7276	COBJ	AMOUNT \$1,260,000.00		
						INVOICE NO.			
17. Service Dates or Expected Delivery Date: 11/1/13-10/31/14				ARO FOB Designation					
18. Line Number	19. Description of Goods or Services			20. NIGP Code	21. Unit	22. Qty	23. Unit Price		
1.	Texas History Resource per RFO 306-13-8638 INTERNAL PO ONLY DIRECT PUBLICATION NOT AVAILABLE FOR ANY OTHER SOURCE LSTA#: LS-00-12-0044-12			956-35	Lot	1	\$1,260,000.00		
			Shipping or Freight Charges	962-86			\$0.00		
			TOTALS				\$1,260,000.00		
**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 PR 081613									
27. Approval Signature			Date	28. Vendor Approval			Date		
<i>Jill Sutherland</i>			9/30/13						

GPM, GPM

**STATE OF TEXAS
PURCHASE ORDER**

1. Agency Name TEXAS STATE LIBRARY AND ARCHIVES COMMISSION Tax exempt agency of the Texas State Government				2. Purchase order number 306-14-8199		3. Current document number DT -			
4. PCC K	5. Agency number 306		6. Recycled Code N/A		7. Document (order) amount \$1,260,000.00		8. REF DOC		
9. Vendor address Adam Matthew Digital LTD Pelham House, Pelhams Court, London Rd Marlborough, Wiltshire SN8 @AG, UK			HUB: YES <input type="checkbox"/> NO <input type="checkbox"/> X <input checked="" type="checkbox"/>		10. Vendor Identification No.				
12. Agency invoice address **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					11. Person contacted, phone, fax, or other contact info Ben Cartwright Email: ben@amedu.com Phone: 312-445-6290 Fax:				
14. Agency contact: Jill Sutherland Phone: 512-936-2774; Fax: 512-475-3393; E-mail: jsutherland@tsl.state.tx.us					13. Destination of goods or service Receiving, Room G-007 Texas State Library and Archives Commission 1201 Brazos Street Austin, TX 78701				
15. Order Type: Spot: Service: X Catalog: Emergency: Direct Pub:									
16. SFX 001	M	TC	INDEX 17942	AY 14	AOBJ	COBJ 7276	AMOUNT \$1,260,000.00		INVOICE NO.
17. Service Dates or Expected Delivery Date: 11/1/13-10/31/14 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.	Texas History Resource per RFO 306-13-8638 INTERNAL PO ONLY DIRECT PUBLICATION NOT AVAILABLE FOR ANY OTHER SOURCE LSTA#: LS-00-13-0044-13				956-35	Lot	1	\$1,260,000.00	\$1,260,000.00
Shipping or Freight Charges					962-86				\$0.00
TOTALS									\$1,260,000.00
**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 PR 081613									
27. Approval Signature <i>Jill Sutherland</i>				Date 9/27/13		28. Vendor Approval			Date

CPM, CPM

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CONTRACT FOR SERVICES**

This Contract is entered into by and between the Texas State Library and Archives Commission (TSLAC) and Adam Matthew 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: Adam Matthew Digital Ltd (Adam Matthew)

II. STATEMENT OF SERVICES TO BE PERFORMED

Services performed will be per the specifications outlined in RFO: 306-13-8638 (Attachment A), Adam Matthew’s proposal (Attachment B), Adam Matthew’s license agreement (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#: 306-13-8638 (Attachment E).

III. TERM OF CONTRACT

The Contract is for the purchase of the American West: Sources from the Graff Collection of Western Americana (American West) at the Newberry Library, Chicago, and the American Indian Histories and Cultures Collection (AIHC) at the Newberry Library, Chicago. Resources will be available to the TexShare Participating Libraries and K-12 public schools no later than November 1, 2013. TSLAC will have the option to purchase the annual hosting fee each year upon the expiration of the first year of the Contract.

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 and K-12 public schools. 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, K-12 public schools and by all of their Authorized Users.

V. CONTRACT AMOUNT

Upon remediation of the issues identified in the ADA Remediation Timeline under Section VIII.d. of this Contract, TSLAC shall pay **\$1,260,000.00** for the purchase of the perpetual right to access the online collections: American West: Sources from the Graff Collection of Western Americana at the Newberry Library, Chicago and the American Indian Histories and Cultures Collection at the Newberry Library, Chicago.

In addition, TSLAC agrees to pay fees each year to access the online collections:

Annual Access Fees shall not exceed the amounts listed below.

Collection Name	11/1/14-10/31/15	11/1/16-10/31/17	11/1/17-10/31/18	11/1/18-10/31/19
American West	\$3,938.00	\$3,938.00	\$3,938.00	\$3,938.00
AIHC	\$3,938.00	\$3,938.00	\$3,938.00	\$3,938.00
Package	\$7,876.00	\$7,876.00	\$7,876.00	\$7,876.00

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.

VI. SOURCE OF FUNDS

A breakdown of 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: \$1,260,000.00
- Percentage and dollar amount of total costs of the project that will be financed with non-governmental sources: \$0 and 0%

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

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. However, fees will not be paid until ADA Issues identified in Section VIII.d. of this Contract have been remediated. 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.

Invoices for services must contain the Receiving Agency's tracking number 306-14-8199 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. 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, Adam Matthew must provide electronic and information resources and associated Product documentation and technical support that comply with these Accessibility Standards.

a. Evaluation, Testing and Monitoring

- i. TSLAC may review, test, evaluate and monitor Adam Matthew'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 Adam Matthew's assertion of compliance with the Accessibility standards.
- iii. Adam Matthew 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. Adam Matthew 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 Adam Matthew should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, Adam Matthew 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. Adam Matthew acknowledges and agrees that these representations and warranties are essential inducements on which TSLAC relies in awarding this contract.
 - iv. Adam Matthew'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 Adam Matthew 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 Adam Matthew's representations and warranties, Adam Matthew 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 Remediation**

American West	
Issue*	Timeline
1. *Add necessary alt text attributes for images used. Resize and include alt text for the rotation and magnification graphics included on the large map images. Screen shots should have alt text attached to them. Top menu tab graphics should have alt text or redundant links assigned to them.	Week of October 21, 2013
2. Add labels or WAI-ARIS roles or other means of form field identification to all form fields.	June 2014

AIHC	
Issue*	Timeline
1. *Add necessary alt text attributes for images used. Resize and include alt text for the rotation and magnification graphics included on the large map images. Screen shots should have alt text attached to them. Top menu tab graphics should have alt text or redundant links assigned to them.	Week of October 21, 2013
2. *Keyboard focus needs to be added to the top menu navigation links and links to documents in the site.	Week of October 21, 2013
3. Add form labels or other method of identifying form fields to all forms, including the More Content form fields.	June 2014
4. Table headers should be added to Documents section and any other area where layout tables are present.	June 2014

***Issue must be resolved in order for collections to go-live and for the Vendor to be eligible receive payment.**

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), are 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

9/27/13

Date

PERFORMING VENDOR

*Adam Matthew Digital Ltd
Pelham House, Pelhams Court, London
Road
Marlborough, Wiltshire
SN8 2AG, UK*



Khal Rudin
Director

Date 26th September 2013

Approved:



Rebecca Cannon
Manager, Grants and Accounting

09-26-13

Date



Deborah Eittrell
Director, Library Development and Networking



Russlene Waukechon
Contract Manager

Date



Jill Sutherland, CTPM, CTCM
Senior Purchaser

Date

Texas State Library and Archives Commission
 TexShare Program
 Request for Offer: 306-13-3638

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**Texas State Library and Archives Commission
TexShare Program
Request for Offer: 306-13-8638**

**Section I
General**

1.1 Purpose of Request for Offer

The Texas State Library and Archives Commission (TSLAC) is requesting offers from qualified online content providers for the sale of electronic content with digital collections relating to the history of Texas. Collections may place the history of Texas within the broader context of the history of the expansion of the United States, Southwest US and/or the US Southern States.

Content should include one or more of the following: books, journals, ephemera, maps, photographs, original documents, essays and other content available for a one-time purchase. Offers for products available only by subscription are ineligible and will NOT be considered.

The purpose of the purchase will be to provide perpetual shared access to all eligible libraries as listed below and authorized users of those libraries.

- a. Eligible Program Participants: The following table provides a summary of estimated Program participants. Please see Appendix A for the complete list.

Type of Library	Number
Four-year Institutions	95
Community Colleges	59
Libraries of Clinical Medicine	4
State Governmental Agencies	Unknown
K-12 Public School Districts	1,237
Public Libraries	536

For additional information on the TexShare Program, go to: www.tsl.state.tx.us/texshare

- b. While we do not anticipate Program eligibility changes in the upcoming years, at any time additional qualified institutions and libraries may join the Program.

Interested vendors must agree to provide access to all current and future Program Participants.

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**Section II
System Requirements**

2.1 Mandatory Content Requirements

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

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

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

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

Mandatory Access & Content Criteria Categories	Description	Criterion
<i>Web-based Products</i>	Content 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>Language</i>	Primary interface of offered Content must be in the English language	Is this an English-language interface?
<i>Full Production Content</i>	Offered online content 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 trials will not be considered.	Will the product be in full commercial release by the date trials are scheduled to begin?
<i>Copyright & Royalty Fees Included in Price</i>	Offered content must be priced so that all copyright and royalty fees are included. Content that does not include copyright and royalty fees will not be considered.	Are all copyright and royalty fees for patrons' personal uses included in the offered content price?
<i>Authentication & Remote Access in participating library</i>	Offered content 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 content available via IP addresses, alternate means, or all simultaneously?
<i>Authentication & Remote Access by eligible users not in the library</i>	TexShare also defines "remote access" as access from workstations <u>off-site</u> from buildings on the same telecommunications network as the	Does the offered content include remote access to the content at no additional charge?

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	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 authorized users.	
Results Output Options	Results from searches performed in the purchased content. Results may include but are not limited to full text documents, citations, images, maps, or other options made available from the purchased content.	Are end users able to print, download, and email results of searches of the offered content for their personal use, at no additional charge?

2.2 Content Criterion

TSLAC intends to select one or more vendors that meet **ALL** of the following criteria. Vendors offering content that does not meet all of the criteria listed below will be eliminated from consideration.

Mandatory Content Criteria	Content Description
Online collections with content relating to the history of Texas.	Collections must have Texas specific content and may also have content that places the history of Texas within the broader context of the history of the expansion of the United States, Southwest US and/or the US Southern States. Larger collections may also include content not related to Texas.
Search Interface	Content must be in a supported interface environment that uses finding aids and is fully searchable online.
Online Access	Vendor(s) awarded a contract must allow access by all Texas K-12 public school libraries, academic libraries, accredited public libraries, state governmental agencies, libraries of clinical medicine
Acquisition Method	One-time purchase only. No subscription content will be considered.

2.3 Request for Offer Response Form

All Offers must include the Request for Offer Response Forms included on the Electronic State Business Daily (ESBD) – Package 3.

2.4 Subcontractors

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Offeror. No subcontract under the Contract shall relieve the Offeror of responsibility for ensuring the requested services are provided. Offerors 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, Offeror shall provide documentation that the subcontractor meets the same minimum qualifications.

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2.5 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 & Instructions**

3.1 Schedule of Events

RFO Released	August 9, 2013
Offeror Questions Submitted no later than	August 19 , 2013
Questions and Answers to be posted on the Electronic State Business Daily (ESBD) no later than	August 21, 2013
RFO OPENED (LAST DAY TO SUBMIT OFFERS)	August 27, 2013 – 11:00 a.m. CT
Online Trials Ready for use	August 27, 2013 – September 30, 2013
Final content Vendors selected and contract negotiation begins	Week of September 16, 2013
Contract executed no later than	September 30, 2013

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

3.2 Submission

- a. All submitted Offers become the property of TSLAC after the Offer submittal deadline/opening date.
- b. 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.

3.3 RFO Opening

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

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

NOTE: This Opening will be open to the public, however only the names of the Offerors will be read out loud. Vendors planning to attend should allow sufficient time to secure parking and register at the Welcome Desk.

3.4 Offer Requirements

- a. Offer must include a sample of the Offeror's proposed contract and/or terms and conditions.
- b. **Offers must address all criteria listed in the RFO Submittal Requirements Checklist (Appendix C). Please complete the checklist and place in the front of the original Offer.**
- c. Offerors are responsible for all costs associated with preparing a response to this RFO.
- d. Documentation provided with the Offer should be complete and comprehensive. 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. TSLAC will not be responsible for any expenses relating to Offer or offer development that may result from this procurement action.
- f. All Offers must be received and time stamped at TSLAC Purchasing Department (Room 309) by the time and date specified in Section 3.1. TSLAC will reject all submittals received after 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 (306-13-8638), and Offer opening date and time as listed Section 3.1. It is the Offeror's responsibility to appropriately mark and deliver the Offer to TSLAC by the specified date and time.
- h. TSLAC is not responsible for lost or late offers.
- i. **Telephone, facsimile, and emailed Offers will not be accepted.**
- j. TSLAC will bear no responsibility for costs associated with preparing this information.
- k. Offerors 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 TSLAC based on acceptable written request.
- m. 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 future Offers by 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.**

3.5 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 this procurement prior to submitting an offer. The Offeror's failure to periodically check the ESBD will in no way release a 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.

3.6 Questions

- a. All questions must be submitted in writing to Jill Sutherland at facsimile 512-475-3393 or by email to 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 # 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 Offeror's responsibility to review these questions and answers; TSLAC will **NOT** send a notification email when they are posted. If an Offeror does not have Internet access, a copy of all written Offers may be obtained through the point of contact listed on the Offer Coversheet.
- c. Except as otherwise provided in this Section, prior to the offer due date and prior to a final award, other employees and representatives of TSLAC will not answer questions or otherwise discuss contents of this RFO with any potential Offeror 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 Offeror takes any exceptions to any provisions listed in this RFO, these exceptions must be specifically and clearly identified by Section in Offeror's response to this Offer, and the Offeror must propose an alternative with their Offer.

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3.7 Texas Public Information Act

Any Offer that bears a copyright will be rejected as non-responsive. Offers will be subject to the Texas Public Information Act, Texas Government Code, Chapter 552, and may be disclosed to the public upon request after a contract is awarded. Subject to the Act, Offerors may only protect trade and confidential information from public release. **Offerors 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). TSLAC must provide the OAG sufficient information to render an opinion, and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. TSLAC shall comply with all opinions of the OAG.

TSLAC assumes no responsibility for asserting legal arguments on behalf of anyone. Offerors 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 Offeror's offer contains any information which Offeror claims is confidential and not subject to release under the PIA, Offeror must prepare and deliver with RFO submission four CDs containing the following information:

- a. Two CDs containing complete copies of all Offeror's submissions pursuant to this RFO. These shall be marked "Complete RFO Documents, [Offeror's Name], TSLAC RFO#: _____, CONTAINS CONFIDENTIAL INFORMATION."
- b. Two CDs, each containing copies of all Offeror'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 [Offeror's Name], TSLAC RFO#: _____."

3.8 Delivery of Offers

Offers shall be submitted to 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 8:00 a.m. to 4:15 p.m. CT.

3.9 Offer Opening

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

- a. Offers submitted shall constitute an offer for a period of ninety (90) days or until an award is made by TSLAC, whichever occurs later. This period may be extended at TSLAC's request and with the Offeror's written agreement.
- b. 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.
- c. 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.

3.10 Offer Evaluation

It is the intent of TSLAC to award one or more contracts for one or more products, to one or more vendors, based on a consideration of how well offered products provide the overall best value for TSLAC, the TexShare consortium members, all K-12 school libraries and the State of Texas. The offers determined 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 Electronic Information Working Group (EIWG) and TSLAC employees.

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Each offer will be evaluated and scored based on the following criteria:

Evaluation Criteria	Percentage of Score
II. Content	45%
III. Search Engine (Interface) and Ease of Use	30%
Additional features: <ul style="list-style-type: none"> • VI. Linking & MARC Records • VIII. Support for Contract • VIII. Proposed System Performance • IX. Statistics Reports • X. Training & Branding • XI. Licensing 	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 TSLAC, provided mutually agreeable access and subscription fee prices, terms and conditions are negotiated prior to the expiration of any executed contract.

3.12 Performance Tracking

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

Annually TSLAC will submit a Vendor Performance Report to the Texas Comptroller (CPA). An Awarded Vendor 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/

Performance evaluation 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

3.14 TSLAC Terms and Conditions

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

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

3.15 LSTA Terms and Conditions

LSTA Terms and Conditions are listed within Appendix F. These will become part of any contract awarded. TSLAC reserves the right to add, delete, and amend terms and conditions. The Awarded Offeror 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.

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.

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

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

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.

Request for Offer (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.

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.

TAC - Texas Administrative Code

TexSelect – a program of the Texas State Library and Archives Commission

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

Type	City	Institution	Total FTE's (Fall 2012)
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

Appendix B
Current TexShare Participants
Four-Year Institutions

Attachment A

Type	City	Institution	Total FTE's (Fall 2012)
PC	Pasadena	Texas Chiropractic College	372
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	-
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	4,250
IC	Garland	Amberton University	985
IC	Sherman	Austin College	1,358
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	14,210
IC	Ft. Worth	College of St. Thomas More	34
IC	Austin	Concordia University	1,379
IC	Dallas	Criswell College	255
IC	Dallas	Dallas Baptist University	3,709
IC	Dallas	Dallas Theological Seminary	1,097
IC	Marshall	East Texas Baptist University	1,116
IC	Dallas	Graduate Institute of Applied Linguistics	104
IC	Abilene	Hardin-Simmons University	2,072
IC	Houston	Houston Baptist University	2,338
IC	Brownwood	Howard Payne University	1,044
IC	Austin	Huston-Tillotson College	834
IC	Hawkins	Jarvis Christian College	619
IC	Longview	LeTourneau University	3,257
IC	Lubbock	Lubbock Christian University	1,554
IC	Abilene	McMurry University	1,319
IC	San Antonio	Oblate School of Theology	130
IC	San Antonio	Our Lady of the Lake University of San Antonio	1,863
IC	Dallas	Paul Quinn College	154
IC	Kerrville	Schreiner University	1,016
IC	Austin	Seminary of the Southwest	88
IC	Houston	South Texas College of Law	-
IC	Dallas	Southern Methodist University	9,091
IC	Keene	Southwestern Adventist University	723
IC	Waxahachie	Southwestern Assemblies of God University	1,674
IC	Fort Worth	Southwestern Baptist Theological Seminary	200

Appendix B
Current TexShare Participants
Four-Year Institutions

Attachment A

Type	City	Institution	Total FTE's (Fall 2012)
IC	Terrell	Southwestern Christian College	193
IC	Georgetown	Southwestern University	1,288
IC	Austin	St. Edward's University	4,200
IC	San Antonio	St. Mary's University of San Antonio	3,489
IC	Fort Worth	Texas Christian University	8,187
IC	Tyler	Texas College	945
IC	Seguin	Texas Lutheran University	1,334
IC	Fort Worth	Texas Wesleyan University	2,589
IC	San Antonio	Trinity University	2,609
IC	Irving	University of Dallas	2,130
IC	Belton	University of Mary Hardin-Baylor	2,488
IC	Houston	University of Saint Thomas	2,118
IC	San Antonio	University of the Incarnate Word	4,973
IC	Plainview	Wayland Baptist University	2,702
IC	Marshall	Wiley College	1,194
IC	Houston	Rice University	5,495

Appendix B
Current TexShare Participants
Community Colleges

Type	City	Institution	Total FTE's (Fall 2012)
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
CC	Uvalde	Southwest Texas Junior College	3,368

Appendix B
Current TexShare Participants
Community Colleges

Type	City	Institution	Total FTE's (Fall 2012)
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
Libraries of Clinical Medicine

Type	City	Institution	Total FTE's (Fall 2012)
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

Appendix B
Current TexShare Participants
Public Libraries

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

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Current TexShare Participants
Public Libraries

Population	Library	City
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

Attachment A

Population	Library	City
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

Attachment A

Population	Library	City
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

SCHOOL DISTRICTS IN TEXAS	
CHARTER	212
COMMON	6
INDEPENDENT	1,016
TSD/TSBVI	2
TYC	1
Grand	1,237

Complete K-12 enrollment can be found here:

<http://mansfield.tea.state.tx.us/tea.askted.web/Forms/Home.aspx>

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.

Respondent Name:				
Criteria:	Meets Minimum			
	Yes	No	For TSLAC	Notes:

Search Engine (Section III)

Is search engine standards compliant? (Z39.50/OAI-PMH)				
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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				
Authorized remote users of libraries of clinical medicine				
Authorized remote users of TX state agencies				
Authorized remote users of public K-12 school libraries				
Access to resources would be available to public libraries, academic libraries, TX state agencies, libraries of clinical medicine, public/school library combinations and public K-12 school libraries.				

Linking and Marc Records (Section VI)

Is search engine Open URL Compliant?				
--------------------------------------	--	--	--	--

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 seven 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		
ALL RFO Response Forms (ESBD- Package 3)	3		
Subcontractor Information (ESBD – Package 2, Section 2.4)	4		
HUB Subcontracting Form (ESBD – Package 2, Section 2.5)	5		
Terms and Conditions Issues Form (Package 2, Appendix F)	6		
Respondent’s Terms and Conditions/Contract	7		
If applicable, Addenda	8		

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

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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, 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.

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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.** 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.

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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 the period defined in the LSTA terms and conditions.

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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/

- 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

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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 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.

Section	Section Title	Exception	Proposed Language

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.
- 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.
- 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.

Appendix H

VPAT™

Voluntary Product Accessibility Template®

Version 1.3

The purpose of the **Voluntary Product Accessibility Template**, or **VPAT™**, is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial “Electronic and Information Technology” products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the Section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, e.g., “equivalent facilitation.” The third column contains any additional remarks and explanations regarding the product. In the subsequent tables, the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

Date:

Name of Product:

Contact for more Information (name/phone/email):

<p>Summary Table</p> <p>VPAT™</p> <p>Voluntary Product Accessibility Template®</p>		
<i>Criteria</i>	Supporting Features	Remarks and explanations
Section 1194.21 Software Applications and Operating Systems		

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Section 1194.22 Web-based Internet Information and Applications		
Section 1194.23 Telecommunications Products		
Section 1194.24 Video and Multi-media Products		
Section 1194.25 Self-Contained, Closed Products		
Section 1194.26 Desktop and Portable Computers		
Section 1194.31 Functional Performance Criteria		
Section 1194.41 Information, Documentation and Support		

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Section 1194.21 Software Applications and Operating Systems – Detail

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<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those		

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<p>features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.</p>		
<p>(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.</p>		
<p>(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.</p>		
<p>(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.</p>		
<p>(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.</p>		
<p>(g) Applications shall not override user selected contrast and color</p>		

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selections and other individual display attributes.		
(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.		
(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.		
(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.		
(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.		
(l) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		

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***Section 1194.22 Web-based Internet
information and applications – Detail***

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Criteria	Supporting Features	Remarks and explanations
(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		
(d) Documents shall be organized so they are readable without requiring an associated style sheet.		
(e) Redundant text links shall be provided for each active region of a server-side image map.		
(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.		
(g) Row and column headers shall be identified for data tables.		
(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.		
(i) Frames shall be titled with text that facilitates frame identification and navigation		
(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.		
(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply		

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with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.		
(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.		
(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (l).		
(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		
(o) A method shall be provided that permits users to skip repetitive navigation links.		
(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		

Note to 1194.22: The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

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Section 1194.23 Telecommunications Products

– Detail

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Criteria	Supporting Features	Remarks and explanations
(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.		
(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.		
(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.		
(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall		

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provide sufficient time for the user to indicate more time is required.		
(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.		
(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.		
(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.		
(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.		
(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.		
(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format.		

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Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.		
(k)(1) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be tactilely discernible without activating the controls or keys.		
(k)(2) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2N) maximum.		
(k)(3) Products which have mechanically operated controls or keys shall comply with the following: If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.		
(k)(4) Products which have mechanically operated controls or keys shall comply with the following: The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.		

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Section 1194.24 Video and Multi-media

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Products – Detail**VPAT™****Voluntary Product Accessibility Template®**

<i>Criteria</i>	Supporting Features	Remarks and explanations
<p>a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays measuring at least 13 inches vertically, and stand-alone DTV tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable,</p>		

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videotape, and DVD signals.		
(b) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.		
(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.		
(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.		
(e) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.		

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Section 1194.25 Self-Contained, Closed

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<i>Products – Detail</i>		
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Voluntary Product Accessibility Template®		
<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach Assistive Technology to the product. Personal headsets for private listening are not Assistive Technology.		
(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		
(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(e) When products		

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<p>provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.</p>		
<p>(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.</p>		
<p>(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.</p>		
<p>(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.</p>		
<p>(i) Products shall be</p>		

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<p>designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.</p>		
<p>(j) (1) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length on products which are freestanding, non-portable, and intended to be used in one location and which have operable controls.</p>		
<p>(j)(2) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.</p>		
<p>(j)(3) Products which are freestanding, non-portable, and intended to be used in one location and which have operable</p>		

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controls shall comply with the following: Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.		
(j)(4) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Operable controls shall not be more than 24 inches behind the reference plane.		

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**Section 1194.26 Desktop and Portable
Computers – Detail**

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Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).		
(b) If a product utilizes touchscreens or touch-		

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operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards		

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Section 1194.31 Functional Performance

Criteria – Detail

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<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology		

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used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided		
(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.		
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.		

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<p>(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.</p>		
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Section 1194.41 Information, Documentation and Support – Detail

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Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
<p>(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge</p>		
<p>(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.</p>		
<p>(c) Support services for products shall accommodate the communication needs of</p>		

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end-users with disabilities.		
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TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

OFFER – RFO #306-13-8638

ADAM MATTHEW DIGITAL, A SAGE COMPANY

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**Appendix C
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).	YES			
	Primary interface of offered databases must be in the English language.	YES			
	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.	YES			
	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.	YES			
	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	YES			
	TexShare defines "remote access" as access from workstations off-site 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.	YES			
	End users must be able to print, download, and e-mail results of the database searches for their personal use, at no additional charge.	YES			

Appendix D
RFO Submittal Requirements Checklist

- Please present one original and seven 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		
ALL RFO Response Forms (ESBD- Package 3)	3		
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Respondent's Terms and Conditions/Contract	7		
If applicable, Addenda	8		

Print Form

Texas State Library and Archives Commission
Offer Coversheet
RFO #: 306-13-8638

Agency to Invoice:	Delivery Address:	Submittal Information
Accounting Department Texas State Library and Archives Commission P.O. Box 12516 Austin, Texas 78711 512-463-5471	Texas State Library and Archives Commission 1201 Brazos Street, Room 309 Austin, Texas 78701	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: ADAM MATTHEW DIGITAL, A SAGE COMPANY	Phone Number: +44 1672 511921
Address: PELHAM HOUSE, PELHAMS COURT, LONDON ROAD	Fax Number: +44 1672 511663
City, State, Zip: MARLBOROUGH, WILTSHIRE, SN8 2AG, UK	If applicable, DIR Contract#: _____
E-mail: INFO@AMDIGITAL.CO.UK	If applicable, HUB Information: _____
Vendor ID #: _____	Federal ID (EID)#: 98-0669592

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/>

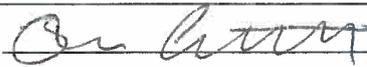
Preferences

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: BEN CARTWRIGHT

Signature & Date:  8-23-13

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

Delivery in _____ days, Cash discount _____ % _____ days

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

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

Agency Contact	Physical Address	Delivery Notice
Jill Sutherland CTPM, CTCM Phone: 512-936-2774 Email: 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.

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

I. INSTRUCTIONS

<i>General Instructions</i>	<i>Table of Contents</i>	
	Section	Page Number
1. Responses must be submitted per instructions in Appendix C.	II. Content	2
2. If desired, you may create your own response form. However, it must be outlined as you will see in the pages to follow.	III. Search Engine (Interface)	3
3. Include page numbers.	IV. Delivery	5
4. Please place your Company Name, Contact Name, and Date as a footer in this document.	V. Cost Estimate	6
5. Fill out only the applicable sections. If not applicable, put "NA" next to question.	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. Trial of Product	14

ALL QUESTIONS MUST BE ANSWERED!

Primary Evaluation Elements Include:	Secondary Evaluation Elements
<ul style="list-style-type: none"> • Content: online collections with content relating to the history of Texas. • Search Engine (Interface) • Online Access • One-Time Purchase Price • Annual access fee • ADA 	<ul style="list-style-type: none"> • Linking & MARC Records • Support for Contract • Proposed System Performance • Statistics Reports • Training & Branding Licensing • Trial of Product

Company Name: ADAM MATTHEW DIGITAL
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II. CONTENT

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

<p>Please attach a complete list of items included in each collection.</p> <ol style="list-style-type: none"> 1. Online Collection Title 2. For each item in the collection please provide the following information: <ol style="list-style-type: none"> a. title of item b. type (such as book, map, photograph) c. Dated. Is it Texas specific content? <ul style="list-style-type: none"> • Enhanced access points available² • Citation Formats available³ • Are electronic reserves and electronic course pack rights included for all content? Answer Yes or No. • If no, what % of content is not included?
--

CONTENTS LISTS FOR BOTH TITLES CAN BE FOUND AT:
<http://www.amdigital.co.uk/TSLAC>

Both 'The American West' and 'American Indian Histories and Cultures' are accessible on mobile devices and 'tablet' computers. Adam Matthew Digital's bespoke search widget - 'Archive Explorer' - enables users to search content from any library web page.

Both titles include access to 'RefWorks' which offers hundreds of output styles including MLA and PLA.

YES: Electronic reserves and electronic course packs rights are included for all content.

¹ list may be in print or online

²RSS feeds, Mobile Devices, Social Media, Widgets & other evolving user tools

³Indicate citation formats available such as MLA or APA for use when citing articles from database

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III. SEARCH ENGINE (INTERFACE)

Options available to user:	NA	YES	NO
Limit searches by document type: visual (ex: photos)		X	
Limit searches by document type: map		X	
Limit searches by document type: document (ex: printed material)		X	
Limit searches by date ranges		X	
Use Boolean logic		X	
Use wild card symbols and truncation		X	
Use levels of searching (novice/expert)			X
Set number of results listed			X
Sort results list by relevancy		X	
Sort results by date		X	
Search across resources		X	
Provide search history		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 image			X
Search using browse		X	
Controlled subject vocabulary			X
Search using phrases		X	
Proximity searching		X	
Search using natural Language		X	
Spell Checking			X
Alternate spellings suggested for misspelled search terms			X
Ability to link directly to the individual database using Open URL		X	

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III. SEARCH ENGINE (INTERFACE)

Options available to user:	NA	YES	NO
Context-sensitive help messages			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 X No _____
 - WorldCat Local Yes X No _____
 - Serial Solutions Summon Yes X No _____
 - Primo Central (ExLibris) Yes X No _____
 - Encore Discover (Innovative Interfaces) Yes _____ No X
 - Other (fill in): _____

- In which indexing, imaging and access standards is the resource compliant:
 - Z39.50 Yes X No _____
 - OAI-PMH Yes _____ No X
 - Other (fill in): _____

Authentication

Are you able to authenticate using these four (4) methods?

- IP-authentication Yes X No _____
- Username/password authentication Yes X No _____
- URL with embedded username/password * Yes _____ No X
- Success URL * Yes _____ No X

*These further authentication methods can easily be investigated, if required.

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Request for Offer Response Form
Texas State Library and Archives Commission - TexShare Program

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IV. DELIVERY

Offeror must be able to provide access to all of the institutions and authorized users listed below. Please check YES next to each institution and sign below.

A. Academic institutions	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
B. Public Libraries	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
C. Public/school library combinations	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
D. State governmental agency libraries	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
E. Libraries of Clinical Medicine	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
F. Public K-12 school libraries	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
G. Authorized remote users of academic institutions	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
H. Authorized remote users of public libraries	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
I. Authorized remote users of public/school library combinations	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
J. Authorized remote users of state governmental agency libraries	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
K. Authorized remote users of Libraries of Clinical Medicine	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
L. Authorized remote users of public K-12 school libraries	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

- Offeror ensures a complete set up (including IP-based access, password-based access, success URL, and referring-URL access, as appropriate) of all participating libraries would be complete by November 1, 2013.

Yes No



Signature

AUGUST 23, 2013

Date

BEN CARTWRIGHT

Printed Name

Company Name: ADAM MATTHEW DIGITAL

Contact Name: BEN CARTWRIGHT

Date: AUGUST 23, 2013

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

V. COST ESTIMATE FOR ONE TIME PURCHASE FORTEXSHARE

Pricing should include for each Collection being offered:
<ol style="list-style-type: none"> 1. The one-time purchase price 2. The annual access fee 3. If offering multiple collections, show individual pricing as well as "package" pricing for purchase if offered. 4. Must specify any restrictions on simultaneous use
<ul style="list-style-type: none"> • Does license accommodate pro rata refunds for current subscribers? Yes or No NO

Individual Collection Pricing Option

Collection Name	Price
AIHC	\$787,500
American West	\$787,500

(American Indian Histories and Cultures)

Package Pricing Option

Collection Name	Price
AIHC + American West	\$1,260,000

Annual Access Fee

Collection Name	FY15	FY16	FY17	FY18
AIHC	\$3,938	\$3,938	\$3,938	\$3,938
American West	\$3,938	\$3,938	\$3,938	\$3,938
Package	\$7,876	\$7,876	\$7,876	\$7,876

Whilst a pro-rata refund will not be offered for previous purchasers of these two titles, we will offer full complementary access to an alternative Adam Matthew Digital resource of comparable value.

This price quote covers an acquisition for the entire TexShare membership; academic, public, and K-12 libraries within the state of Texas including unlimited simultaneous users at each library.

Company Name: ADAM MATTHEW DIGITAL
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Package 3
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 Texas State Library and Archives Commission - TexShare Program
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VI. LINKING AND MARC RECORDS

Please answer the following questions on each subject.

A. To Digital Content and Library Holdings	B. MARC Records
<ul style="list-style-type: none"> • Is search engine Open URL Compliant? Yes or No • If yes, describe the steps required to implement linking mechanism. 	<ul style="list-style-type: none"> • Can libraries download MARC records for titles into their library online catalog? Yes or No

A: YES. The member institution will provide the publisher (Adam Matthew Digital) with their institutions OpenURL link resolver. This link resolver is added to the publisher's administration tool and associated with the member. Following confirmation of set up, OpenURL links from digital resources resolve.

B: YES. MARC21 catalogue records are available free of charge to download from publisher's website.

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VII. SUPPORT FOR CONTRACT

<p>A. Please provide the following information on the primary contacts for service problems.</p> <ol style="list-style-type: none"> 1. Name 2. Title 3. Telephone Number 4. Email address 5. % of time devoted to Texas usage <ul style="list-style-type: none"> • Confirm if technical support staff would be available to support TSLAC Staff, Staff at individual libraries, and remote users. • What are the hours that live technical support would be available? 	<p>B. Provide information on three (3) statewide electronic resource contracts held by Offeror in states other than Texas.</p> <ol style="list-style-type: none"> 1. Consortium name 2. State 3. Reference contact at consortium 4. Reference contact's telephone number 5. Reference contact's email address
--	---

A: DAPHNAY SAGAILLE
 Sales and Marketing Support
 1 (312) - 445-6290
 daphnay@amedu.com

Up to 100% of time devoted to Texas usage. Plus numerous additional support colleagues are also available for Texas users. Technical support staff are available to support TSLAC staff, staff at individual libraries, and remote users. Hours of live technical support would be: 9:00 to 17:00 (CDT).

We also have major support and training resources on-hand from the team at Sage Publications, including lead contact Christopher Dappen and James Wisner, a training and implementation expert.

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B: 1: Centre for Research Knowledge Network (CRKN)
 CANADA (National Licence)
 Craig Olsvik, +1-613-907-7033
 colsvik@crkn.ca

2: California Digital Library (CDL)
 CALIFORNIA
 Wendy Parfrey, +1-510-287-3310
 wendy.parfrey@ucop.edu

3: National Library of New Zealand
 NEW ZEALAND (National Licence)
 Meg Bailey, +64-4 474 3069
 meg.bailey@dia.govt.nz



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VIII. PROPOSED SYSTEM PERFORMANCE

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

Our primary web server based in Florida has a 'mirror' or 'back-up' server located in Toronto, ON. In the unlikely instance of the web server failing, the mirror server takes up processing until the web server is back online.

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

For rare, short-term, outage: Web-server failure alerts our hosts (Peer1) who switch to the mirror server until the web-server is back online. For catastrophic outage (e.g. Adam Matthew Digital going out of business): Such a 'Trigger Event' enables our contract with digital archiving service Portico (www.portico.org) to release access to TSLAC institutions, regardless of their Portico membership status.

C. Offeror 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 (document name or title words) would be completed in five seconds. System response time is defined as the time from which the Offeror's computer receives a signal to the time a complete response is generated by the Offeror's computer. Yes X No

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IX. STATISTICS REPORTS

If library's access method allows, statistics on the proposed service would be:	YES	NO
Accessible to the state (consortia) administrator	X	
Accessible to library staff by site	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	
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, K-12)	X	
Delineated by site	X	
Can Z39.50 or other federated searches be tracked separately from native interface search statistics?	X	

Usage Statistics Data Elements: <i>(as appropriate to the collection or terms of license)</i>	YES	NO	N/A
Indicate whether the below data elements are available in your product's statistical reports.			
<u>Non-Periodical Resources:</u>			
Number of Sessions	X		
Number of Searches (Queries)	X		
Number of Full Text Downloads		X	
Once annually, at a time specified by TexShare consortial administrators, provide:			
Number of resources 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 _____

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

C. Is content COUNTER Release 4 compliant? Yes _____ No X (END 2013)

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X. TRAINING AND BRANDING

Please answer the following questions on Training & Branding.

Training

- Would Offeror include onsite- or online training sessions as part of the proposed price quote? Yes or No. YES
- Describe the proposed training, including number of onsite or online training sessions that would be available to participating libraries as included in the price quote. Online webinar sessions and frequent consultation will be offered to participating libraries and are available multiple times per year, depending on requirement. Periodic on-site visits from product specialists will also be an option.

Branding

- Does Offeror support branding? No _____ One brand _____ Two brands _____ More than two brands X

We also have major support and training resources on-hand from the team at Sage Publications, including lead contact Christopher Dappen and James Wiser, a training and implementation expert.

Company Name: ADAM MATTHEW DIGITAL
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Request for Offer Response Form

Texas State Library and Archives Commission - TexShare Program

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XI. LICENSING

Attach a copy of the standard licensing agreement. The Texas State Library and Archives Commission may negotiate contract terms once preferred products are determined.

A. If participating libraries are already subscribing to an Offeror's proposed product that is selected for the TexShare program, would Offeror provide those libraries compensation for the remaining balance of their contracts?

Yes X No _____

Publisher will offer full complementary access to an alternative Adam Matthew Digital resource of their choice and comparable value.

B. Does Offeror's licensing agreement support the "fair use" rights of a participating library provided by statute in 17 U.S.C.

Yes X No _____

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

1. 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 substantively the same format. Additional information regarding the VPAT may be obtained at the following website. <http://www.section508.gov>

A template of the VPAT may be found in Appendix H.

2. If content does not comply with any of the standards listed in the VPAT, please indicate a timeline for how and when you will be compliant.

It is our intention to meet all reasonably applicable standards that relate to the provision of facsimile primary source content. Upon launch, the 'American Indian Histories and Cultures' site will include the latest Adam Matthew platform and functionality. The American West site will be updated and rolled out with this functionality in 2014, and all pertinent VPAT criteria will be met.

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XIII. RESOURCE TRIAL

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

- A. Offeror will set up a trial to begin during the date and time listed in Package 2, Section 3.1.
- B. Provide URL with embedded credentials (login and passwords) for where trials will be available to TSLAC staff and other committee members.

www.americanwest.amdigital.co.uk

U: T3XH4RE

P: AM3WEVT

www.aihc.amdigital.co.uk

U: T3XH4RE

P: AM3WEVT

Company Name: ADAM MATTHEW DIGITAL
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HUB SUBCONTRACTING PLAN (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- ❖ If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – Yes, I will be subcontracting portions of the contract
 - Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
 - Section 2 c. – Yes
 - Section 4 – Affirmation
 - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – Yes, I will be subcontracting portions of the contract
 - Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. – No
 - Section 2 d. – Yes
 - Section 4 – Affirmation
 - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – Yes, I will be subcontracting portions of the contract
 - Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. – No
 - Section 2 d. – No
 - Section 4 – Affirmation
 - GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

- ❖ If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:
 - Section 1 – Respondent and Requisition Information
 - Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
 - Section 3 – Self Performing Justification
 - Section 4 – Affirmation

***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.



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: ADAM MATTHEW DIGITAL State of Texas VID #: _____
 Point of Contact: BEN CARTWRIGHT Phone #: +44 1672 51192
 E-mail Address: BEN@AMDIGITAL.CO.UK Fax #: +44 1672 51663
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: 306-13-8638 Bid Open Date: 08/09/2013
(mm/dd/yyyy)

Enter your company's name here: ADAM MATTHEW DIGITAL Requisition #: 306-13-8638

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: ADAM MATTHEW DIGITAL Requisition #: 306-13-8638

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.)

This contract will be performed with the supply of two electronic products that have already been created (i.e. published) by Adam Matthew Digital.

Adam Matthew Digital employees will be fully responsible for the provision of IP-authenticated access to each of the Texas libraries, as well as all ongoing technical support and product training.

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

BEN CARTWRIGHT

Printed Name

MR

Title

08/23/2013

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.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: _____ Description: _____

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
 - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____ Requisition #: _____

SECTION B-4 SUBCONTRACTOR SELECTION

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item #: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. 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 it (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.

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HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

Section A	PRIME CONTRACTOR'S INFORMATION	
Company Name:		State of Texas VID #:
Point-of-Contact:		Phone #:
E-mail Address:		Fax #:

Section B	CONTRACTING STATE AGENCY AND REQUISITION INFORMATION	
Agency Name:		
Point-of-Contact:		Phone #:
Requisition #:		Bid Open Date: <small>(mm/dd/yyyy)</small>

Section C	SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION	
1. Potential Subcontractor's Bid Response Due Date:	If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than Select ▼ Central Time on: <div style="text-align: right; margin-top: 5px;">Date <small>(mm/dd/yyyy)</small></div>	
<i>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</i>		
<i>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i>		
2. Subcontracting Opportunity Scope of Work:		
3. Required Qualifications: <input type="checkbox"/> - Not Applicable		
4. Bonding/Insurance Requirements: <input type="checkbox"/> - Not Applicable		
5. Location to review plans/specifications: <input type="checkbox"/> - Not Applicable		

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.

Section	Section Title	Exception	Proposed Language
29	PROPERTY RIGHTS	Materials and meta-data that constitute the digital resources remain the copyright of contributing libraries and archives. Adam Matthew Digital has no right to assign.	
		(clarification required on clause 29 please)	

ONLINE USER LICENCE AGREEMENT

This Licence Agreement (this "Agreement") is made effective as of _____ (the "Effective Date") between Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England ("Licensor") and **Texas State Library and Archives Commission, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos St., Austin, TX 78701** (the "Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Grant of Licence for Licensed Materials

The material that is the subject of this Agreement is electronic information published or otherwise made available by the Licensor and is described as **AMERICAN INDIAN HISTORIES AND CULTURES: SOURCES FROM THE EDWARD E. AYER COLLECTION AT THE NEWBERRY LIBRARY, CHICAGO** (hereinafter referred to as the "Licensed Materials").

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(3) Walk-ins: Patrons not affiliated with the Licensee who are physically present on the Licensee's premises.

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III. Specific Restrictions on Use of Licensed Materials

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Modification of Licensed Materials: The Licensee shall not modify, change or develop the Licensed Materials in any way or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice: The Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes: The Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

IV. Licensor Performance Obligations

Availability of Licensed Materials: Upon the Effective Date of this Agreement and providing the Licensee has returned a signed copy of this Agreement and given all necessary information to the Licensor to enable the Licensor to make the Licensed Materials available to the Licensee, the Licensor shall make the Licensed Materials available to the Licensee at the price specified by the Licensor in the relevant invoice.

Annual Hosting: On payment of the hosting fee (calculated at 0.5% (half of one percent) of the net purchase price specified on the Licensor's first invoice) (the "Hosting Fee") the Licensor agrees, subject to any modifications required by the source archives, source libraries or copyright holders and subject to all other provisions of this Agreement, to host in accordance with the availability provisions set out below the Licensed Materials for one year from the Effective Date. If the Licensee so requires, subsequent annual hosting of the Licensed Materials will be provided under the terms of this Agreement, subject to Section VII.

Documentation: The Licensor will provide and maintain help files and other appropriate user documentation.

Usage Statistics: The Licensor will offer the Licensee access to an automated system which provides statistics on usage of the Licensed Materials by the Authorised Users.

Support: The Licensor will use reasonable endeavours to assist the Licensee with the implementation of any of the Licensor's software and use of the Licensed Materials. The Licensor will use reasonable endeavours to make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. The Licensor shall not provide any on site installation in respect of the Licensed Materials or relevant software. The Licensed Materials will make use of standard internet protocols, interfaces and functions, including Help Files.

Privacy: The Licensor recognises the importance of protecting the information it collects in the operation of Licensed Materials and will take all reasonable steps to maintain the security, and privacy of this information. The Licensor will ensure that any information it

collects will be relevant and not excessive for purposes of operating the Licensed Materials and will be deleted when no longer needed. The Licensor will only disclose to third parties navigational and transactional information in the form of anonymous, aggregate usage statistics and demographics in forms that do not reveal an Authorised User's or the Licensee's identity or confidential information. Further information regarding privacy can be found in the Licensor's Privacy Policy, posted on the Licensor's website <http://www.amdigital.co.uk/About-Us/Privacy-Policy.aspx>.

Availability: The Licensor shall use reasonable efforts to make the Licensed Materials available on a continuous seven (7) days a week basis with an average of at least 98% up-time per month. The allowable down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of the Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. The down-time also allows for periodic server migrations, updating resources and relevant technologies, as necessary to improve the service consistent with overall standards in the on-line information provision industry. The majority of updates will not involve any server down-time. The allowable down-time does not include any unavailability which occurs due to a Force Majeure event (see section XV).

Appropriate advance notice shall be supplied in the event of scheduled maintenance which involves any significant amount of server down-time. Scheduled down-time will be performed at a time to minimise inconvenience to the Licensee and its Authorised Users. Appropriate notification in the event of unscheduled downtime will also be provided wherever possible.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, the Licensee shall immediately notify the Licensor, and the Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible.

The Licensee understands that from time to time the Licensed Materials may be modified; including additions, revisions, amendments and deletions, by the Licensor and/or that portions of the Licensed Materials may migrate to other formats. This is part of the process of the Licensor ensuring that the Licensed Materials are current and up to date and accordingly such modifications, additions or deletions shall not be grounds for the Licensee to terminate this Agreement for breach.

Withdrawal or Major Modification of Licensed Materials: In the unlikely event of the need to withdraw the Licensed Materials or make a Major Modification (defined as a withdrawal of over 30% of the content of the Licensed Materials), the Licensor reserves the right in such instances to modify or withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes Intellectual Property Rights, or which is inaccurate, defamatory, offensive or otherwise likely to be unlawful or promote illegal or unlawful activity. In relation to the withdrawal of a material part of the Licensed Materials, such that this is a Major Modification, the Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item.

V. The Licensee Performance Obligations

Provision of Notice of Terms of Use to Authorised Users: The Licensee shall require all its Authorised Users to agree to terms and conditions of use of the Licensed Materials that:

- (1) require them to comply with all applicable laws in using the Licensed Materials;
- (2) state that the Licensed Materials being supplied are only for the Authorised User's personal use;
- (3) prohibit reproduction or distribution of Licensed Materials that violates applicable law; and
- (4) contain a reservation for the Licensor of all Intellectual Property Rights and other rights in the Licensed Materials; and
- (5) Set out the limitations on access or use of the Licensed Materials as set forth in this Agreement,

(collectively, the "Terms of Use"). The Licensee shall provide a copy of such Terms of Use to the Licensor should this be requested by the Licensor.

Protection from unauthorised use: The Licensee shall use all reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorised use of the Licensed Materials by an Authorised User or the Licensee, the Licensor may suspend or terminate the Licensee's access to the Licensed Materials until the circumstances of unauthorised use are resolved to the Licensor's satisfaction, and/or terminate this Agreement according to Section VIII of this Agreement.

The Licensor may require the Licensee to cease all use of any of the Licensed Materials if it reasonably believes that the Licensee's use of the Licensed Materials (or part thereof) infringes the Intellectual Property Rights of any third party, or breaches any applicable law or regulation. In this instance, the Licensor may, at its option either:

- (1) provide the Licensee with alternative Licensed Materials so as to avoid the infringement; or
- (2) terminate or modify this Agreement immediately on written notice in respect of the affected Licensed Materials.

The Licensee shall comply with all applicable laws in performing its obligations and exercising its rights under this Agreement.

The Licensee shall not, and shall procure that any Authorised Users shall not, infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 or if such acts take place outside the UK, in accordance with any equivalent legislation applicable in that territory) that subsist in respect of the Licensed Materials.

The Licensee shall use the best available practices and systems applicable with regard to the use of the Licensed Materials to:

- (1) enforce the territorial and use restrictions of this Agreement; and
- (2) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Licensed Materials.

If the Licensee becomes aware of any potential or actual infringement or misuse of any Licensed Materials, or any security breach in connection with this Agreement that could compromise the security or integrity of the Licensed Materials or otherwise adversely affect the Licensor, the Licensee shall, at the Licensee's expense, promptly notify the Licensor and fully co-operate with the Licensor to remedy the issue as soon as reasonably practicable.

The Licensor may suspend the Licensee's rights under this Agreement until the infringement, misuse or security breach is remedied.

The Licensee shall ensure that Authorised Users do not remove, bypass, circumvent, neutralise, or modify any of the technological protection measures used for the Licensed Materials.

VI. Mutual Performance Obligations

Confidentiality: For the purposes of this section, "**Confidential Information**" shall mean the existence and terms of this Agreement; any data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users; any statistics relating to usage of the Licensed Materials which is provided by the Licensor (or its suppliers) to the Licensee, and any information (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) which is not publicly available including, but not limited to, know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise.

Each party undertakes that it shall not at any time during this Agreement, nor for a period of five (5) years after termination of this Agreement, disclose to any person any Confidential Information except as permitted by this section.

Each party may disclose the other party's Confidential Information:

- (1) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause; and
- (2) as may be required by law, court order or any governmental or regulatory authority;
- (3) in respect of data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users, such data may be provided to third parties in aggregate form.

Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

VII. Hosting Renewal and Payment

This Agreement shall be automatically renewed at the end of the initial term of one year for a successive term of one year, and thereafter, unless in either case either party gives written notice of its intention not to renew at least 60 days before expiration of the relevant current term. Each renewal shall be subject to the payment by the Licensee of 0.5% (half of one percent) of the net purchase price specified on the Licensor's first invoice (the "**Hosting Renewal Fee**") on or before the renewal date, where such fee is to cover the Licensor's cost of providing ongoing access to the Licensed Materials. In the event that the Licensee does not pay the Hosting Renewal Fee when it is due, the Licensor's provision of online access will be terminated on the expiration date unless the Licensee has given two months' notice of its election to use a locally hosted copy of the Licensed Materials in accordance with Section II: "Archival Copy".

All fees set out in this Agreement are exclusive of Value Added Tax or other Sales Tax and shall be subject to the addition of Value Added Tax or other Sales Tax at the appropriate rate, which the Licensee agrees to pay.

By payment of the agreed fees and subject to the Licensee complying with the terms of this Agreement, the Licensee shall have the right to continue to use the hosting facilities offered by the Licensor for the relevant Licensed Materials according to the provisions set out in this Agreement.

VIII. Early Termination

Either party (the Terminating Party) may by written notice to the other party (the Other Party) terminate this Agreement immediately if:

- (1) the Other Party commits any material breach of its obligations under this Agreement which is incapable of remedy, or if capable of remedy, is not remedied within 21 days of the Terminating Party giving written notice requiring the breach to be remedied; or
- (2) the Other Party ceases, or threatens to cease, to carry on business; or
- (3) any of the following events occur (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales) in relation to the Other Party:
 - (i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986, or a proposal is made for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (ii) a shareholders' meeting is convened to consider a resolution that it be wound up, or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - (iii) a petition is presented for its winding-up, or an application is made for the appointment of a provisional liquidator (in each case, which is not dismissed within 14 days of its service), or a creditors' meeting is convened under section 98 of the Insolvency Act 1986; or
 - (iv) a receiver, administrative receiver or similar officer is appointed over the whole, or any part, of its business or assets; or
 - (v) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - (vi) it is, or becomes, insolvent within the meaning of section 123 of the Insolvency Act 1986.

On any expiration or termination of this Agreement all rights and authorisations granted by the Licensor to the Licensee under this Agreement shall automatically terminate and immediately revert to the Licensor; and on-line access to the Licensed Materials by the Licensee and Authorised Users shall be terminated.

IX. Permanent Archival Access/Dark Archiving

Dark Archiving is provided by Portico (www.portico.org/digital-preservation), part of ITHAKA, a not-for-profit organisation helping the academic community use digital technologies, for all of the Licensed Materials for the benefit of all Licensees and their Authorised Users in accordance with Section II (Dark Archiving). This insurance backup will only be activated in the event of any of the following trigger events:

- (1) **Licensor No Longer in Business.** Licensor is no longer in business or is no longer in the business of publishing or providing access to previously published Licensed Materials.
- (2) **Title No Longer Offered.** Licensor has stopped publishing and is no longer providing access to the Licensed Materials for a period longer than ninety (90) days.
- (3) **Back List Titles No Longer Available.** Licensor has stopped offering or providing access to some or all of the back list titles of the Licensed Materials for a period longer than ninety (90) days.
- (4) **Catastrophic Failure.** Licensor has stopped publishing or providing access to the Licensed Materials for a period longer than ninety (90) days due to technical difficulties or any business interruption, bankruptcy, insolvency, receivership or business failure.

X. Warranties

- (1) Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement;
- (2) The Licensor warrants that it has the right to licence the rights granted under this Agreement to use the Licensed Materials, that it has obtained any and all necessary permissions from third parties to licence the Licensed Materials, and that so far as it is aware, use of the Licensed Materials by the Licensee in accordance with the terms of this Agreement shall not infringe the copyright of any third party; and
- (3) The Licensee warrants that it will not knowingly use the Licensed Materials:
 - so as to infringe any third party's copyright;
 - in a manner which is defamatory, libellous, obscene, or otherwise unlawful; or
 - in a manner which will violate any applicable law, statute or subordinate legislation;

XI. Intellectual Property Infringement

The Licensee shall indemnify the Licensor against all claims, liabilities and expenses arising out of any infringement of any rights of the Licensor or the Licensor's licensors by the use of the Licensed Materials by the Licensee.

Each party shall promptly notify the other of any actual or suspected infringement of the Licensed Materials that comes to its attention ("**Infringement**").

The Licensee shall co-operate fully with the Licensor by taking all steps required by the Licensor (in its sole discretion) in connection with any Infringement, including, without limitation, legal proceedings in the name of the Licensor or in the joint names of the parties. The Licensor shall be responsible for the cost of any legal proceedings it requires, and is entitled to any damages, account of profits and/or awards of costs recovered. The Licensee shall use its best endeavours to assist the Licensor in any legal proceedings relating to any Infringement. The Licensee shall not take any steps relating to any Infringement unless the Licensor has requested that the Licensee does so.

XII Limitations

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT:

- (1) NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.
- (2) WHERE EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, COVENANTS, REPRESENTATIONS AND UNDERTAKINGS WHICH MAY BE IMPLIED, WHETHER STATUTORY OR OTHERWISE, IN RESPECT OF THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- (3) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER ARISING, OR FOR ANY LOSS (WHETHER DIRECT OR INDIRECT OR CONSEQUENTIAL) OF PROFITS, USE, ANTICIPATED SAVINGS, GOODWILL OR CONTRACTS OR FOR ANY LOSS ARISING FROM DAMAGED, CORRUPTED OR LOST DATA.
- (4) THE AGGREGATE LIABILITY OF EACH PARTY IN RELATION TO THIS AGREEMENT SHALL NOT IN TOTAL EXCEED AN AMOUNT EQUAL TO THE CHARGES PAID UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, MISREPRESENTATION, BREACH OF DUTY OR OTHERWISE.

XIII. Legal Disputes

If any dispute arises in connection with this Agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the mediation procedure established by the American Arbitration Association (AAA). Unless otherwise agreed between the parties, the mediator will be nominated by the AAA. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting a mediation. A copy of the request should be sent to the AAA. The mediation will start not later than thirty (30) days after the date of the ADR notice.

No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

Save as set out above, the parties irrevocably agree that the courts of the State of Texas shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

XIV. Governing Law

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of Texas.

XV. Force Majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to other party.

XVI. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XVII. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by Authorized representatives of the Licensor and the Licensee.

XVIII. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

XIX. Waiver

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XX. Notices

Any notice required to be given under this Agreement, or in connection with the matters contemplated by it, shall (except where specifically provided otherwise) be in writing and shall be delivered personally, or sent by pre-paid first-class (or airmail) post or recorded delivery or by commercial courier or fax, to the party required to receive the notice at the address provided by it for this purpose from time to time (such address to include a named representative responsible for receiving it).

Any notice shall be deemed to have been received:

- (1) if delivered personally, when left at the address and for the contact identified by the party;

- (2) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting;
- (3) if sent by airmail, at 9.00 am on the fifth business day after posting;
- (4) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- (5) if sent by fax, at the time of transmission.

Either party may from time to time change its notice address by written notice to the other party.

If to the Licensor:

Adam Matthew Digital Ltd
 Pelham House,
 London Road,
 Marlborough
 Wiltshire,
 SN8 2AG,
 United Kingdom

If to the Licensee: **[PLEASE COMPLETE THIS SECTION]**

Address of Licensee
 City of Licensee
 State of Licensee
 Country of Licensee
 Postal Code of Licensee

XXI Third Party Rights

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

XXII Partnership

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor, except as expressly set out in this Agreement, constitute either party the agent of the other party for any purpose.

XXIII Assignment

The Licensor may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

XXIV United States Government End Users:

This software and documentation are developed exclusively with private funds and constitute "commercial items," as defined in the Federal Acquisition Regulations ("FAR") at 48 C.F.R. 2.01, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R.12.212 and 48 C.F.R. 227.7202-1. Consistent with 48 C.F.R. 12.212, and the comparable Defense Federal Acquisition Regulation ("DFAR") at 48 C.F.R. 252.227.7202-1 through 252.227.7202-4, this software and documentation is licensed to you only as commercial computer software and

commercial computer software documentation and only with the rights and obligations granted to public users generally as set forth in this license agreement. Notwithstanding any other FAR, DFAR or other contractual provision into which this license agreement may be incorporated, any government end user only acquires the rights to use this software and documentation as set forth in this license agreement. This software is acquired under the specific terms and conditions set forth herein. If any portion of the software is deemed "non-commercial," or the following FARs or DFARs are deemed to apply, the software is licensed under the terms hereof and under the RESTRICTED RIGHTS set forth in 48 C.F.R. 52.227-14 and 48 C.F.R. 252.227-7014 (and the government's use, duplication and disclosure rights are restricted as set forth therein). Contractor/manufacturer is Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

Attachment C
Online User License Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorised representatives as of the date first above written.

FOR THE LICENSOR:



BY: _____ DATE: 26th September 2013
Signature of Authorised Signatory of Publisher

Name: Khal Rudin
Title: Director
Address: Adam Matthew Digital Ltd., Pelham House,
London Road, Marlborough, Wiltshire, SN8 2AG, UK
Telephone No.: +44 (0) 1672 511921
Facsimile: +44 (0) 1672 511663
E-mail: khal@amdigital.co.uk

FOR THE LICENSEE:

BY:  DATE: 09/27/2013

Name: Donna Osborne
Title: Chief Fiscal Officer
Address: Texas State Library and Archives Commission
1201 Brazos Street
Austin, Texas 78701

Telephone No.: 512-463-5440
Facsimile: 512-475-3393
E-mail: dosborne@tsl.state.tx.us

Very important information – PLEASE COMPLETE ALL SECTIONS

In order for us to provide access to the Licensed Material by IP Address recognition, please ensure the following details are completed

Main Library Contact Name:

Telephone No:

Facsimile:

E-mail:

IT Administrator Name

Telephone No.:

Facsimile:

E-mail:

Licensee IP Address range:

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ONLINE USER LICENCE AGREEMENT

This Licence Agreement (this "Agreement") is made effective as of _____ (the "Effective Date") between Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England ("Licensor") and **Texas State Library and Archives Commission, Lorenzo de Zavla State Archives and Library Building, 1201 Brazos St., Austin, TX 78701** (the "Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Grant of Licence for Licensed Materials

The material that is the subject of this Agreement is electronic information published or otherwise made available by the Licensor and is described as **THE AMERICAN WEST: SOURCES FROM THE GRAFF COLLECTION OF WESTERN AMERICANA AT THE NEWBERRY LIBRARY, CHICAGO** (hereinafter referred to as the "Licensed Materials").

The Licensee and its Authorised Users (as defined below) acknowledge that the copyright and title to the Licensed Materials and any trade marks, design rights, database rights, domain names or any other intellectual property rights subsisting therein or relating thereto remain with the Licensor and/or its suppliers. Neither the Licensee nor its Authorised Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

In consideration of the payment by the Licensee to the Licensor of the licence fee set out on the Licensor's invoice (the "Licence Fee") and, if applicable, payment of the Hosting Fee or Hosting Renewal Fee according to the terms of Section IV and Section VII of this Agreement, the Licensor hereby grants to the Licensee a non-transferable non-exclusive licence to use the Licensed Materials (including the right for the Authorised Users to use the Licensed Materials) for the purposes set out in and in accordance with this Agreement.

The Licensee shall not grant sub-licences, in whole or in part, of any of the rights granted under this Agreement, or sub-contract any aspects of exploitation of the rights licensed to it, without the Licensor's prior written consent. However, the Licensee may permit Authorised Users to use the Licensed Materials on the terms set out in this Agreement and on condition that such Authorised Users do not grant any further sub-licence.

II. Authorised Use of Licensed Materials

"Authorised Users" are:

(1) The entire TexShare membership: Academic, Public, and K-12 libraries within the State of Texas.

(2) Persons Affiliated with the Licensee: Full and part time students (including students enrolled in distance education programs offered or sponsored by the Licensee) and employees (including faculty, staff, alumni, affiliated researchers and independent contractors) of the Licensee who in all cases need access to the Licensed Materials for the purposes of their research, education or other non-commercial use. Any off-campus access shall be provided only for individuals authenticated as affiliated as members of the Licensee's University, Institution or Organisation as defined as the Licensee herein; and

(3) Walk-ins: Patrons not affiliated with the Licensee who are physically present on the Licensee's premises.

The Licensee and Authorised Users may use the Licensed Materials for the purposes of research, education or other non-commercial use as set out below:

Downloads: The Licensee and Authorised Users may download, retain, store and use unlimited portions of the Licensed Materials.

Print Copy: The Licensee and Authorised Users may print a reasonable portion of the Licensed Materials.

Archival Copy. Upon request of the Licensee and not less than 60 days before the expiration date of the current term of this Agreement, the Licensee may request and receive from Licensor and/or create one (1) copy of the entire set of metadata from the Licensed Materials (including but not limited to PDF images, text files, XML, XML schema) to be maintained as an "Archival Copy" or as required to exercise the Licensee's rights under Section IX, "Permanent Archival Access/Dark Archiving", of this Agreement. The Licensee may use the metadata to develop its own locally-hosted version of the Licensed Materials on the condition that the use of that local copy continues to comply with this Agreement.

Dark Archiving: The Licensor uses the services of Portico (www.portico.org/digital-preservation) to enable Dark Archiving to be provided in respect of all of the Licensed Materials for the benefit of all Licensees and their Authorised Users. See Section IX.

Course Packs: The Licensee may permit Authorised Users who are members of the Licensee's faculty or staff to download and print and use for teaching purposes copies of a reasonable portion of the Licensed Materials for the purpose of making a multi-source collection of information for classroom use (course-pack) to be distributed to students at the Licensee's institution free of charge.

Electronic Reserve: The Licensee and Authorised Users may store in electronic format in secure electronic data files a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by the Licensee and/or its parent institution.

Scholarly Sharing: Authorised Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts (defined as no more than 5% [five percent] of the total collection) of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale.

Re-publication: Authorised Users do not have the right to re-publish any items from the Licensed Materials, unless the Authorised User has first obtained copyright permission from the appropriate copyright holder or archive. Permission from the original source archive/copyright holder in the case of re-publication, figures, tables and brief excerpts from the Licensed Materials in the Authorised User's own scientific, scholarly and educational works is always necessary and Authorised Users should also obtain correct wording for all citations and credits from the original source archive/copyholder.

Nothing in this Agreement is intended to limit in any way whatsoever the Licensee's or any Authorised User's rights under the fair dealing provisions set out in the Copyright Designs and Patents Act 1988 (as may be re-enacted or modified) or if such acts take place outside

the UK, in accordance with any equivalent legislation applicable in that territory (for example under the US Copyright Act of 1976, 17 U.S.C. § 107).

III. Specific Restrictions on Use of Licensed Materials

Unauthorised Use: The Licensee shall not knowingly permit anyone other than Authorised Users to use the Licensed Materials.

Modification of Licensed Materials: The Licensee shall not modify, change or develop the Licensed Materials in any way or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice: The Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes: The Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

IV. Licensor Performance Obligations

Availability of Licensed Materials: Upon the Effective Date of this Agreement and providing the Licensee has returned a signed copy of this Agreement and given all necessary information to the Licensor to enable the Licensor to make the Licensed Materials available to the Licensee, the Licensor shall make the Licensed Materials available to the Licensee at the price specified by the Licensor in the relevant invoice.

Annual Hosting: On payment of the hosting fee (calculated at 0.5% (half of one percent) of the net purchase price specified on the Licensor's first invoice) (the "**Hosting Fee**") the Licensor agrees, subject to any modifications required by the source archives, source libraries or copyright holders and subject to all other provisions of this Agreement, to host in accordance with the availability provisions set out below the Licensed Materials for one year from the Effective Date. If the Licensee so requires, subsequent annual hosting of the Licensed Materials will be provided under the terms of this Agreement, subject to Section VII.

Documentation: The Licensor will provide and maintain help files and other appropriate user documentation.

Usage Statistics: The Licensor will offer the Licensee access to an automated system which provides statistics on usage of the Licensed Materials by the Authorised Users.

Support: The Licensor will use reasonable endeavours to assist the Licensee with the implementation of any of the Licensor's software and use of the Licensed Materials. The Licensor will use reasonable endeavours to make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. The Licensor shall not provide any on site installation in respect of the Licensed Materials or relevant software. The Licensed Materials will make use of standard internet protocols, interfaces and functions, including Help Files.

Privacy: The Licensor recognises the importance of protecting the information it collects in the operation of Licensed Materials and will take all reasonable steps to maintain the security, and privacy of this information. The Licensor will ensure that any information it

collects will be relevant and not excessive for purposes of operating the Licensed Materials and will be deleted when no longer needed. The Licensor will only disclose to third parties navigational and transactional information in the form of anonymous, aggregate usage statistics and demographics in forms that do not reveal an Authorised User's or the Licensee's identity or confidential information. Further information regarding privacy can be found in the Licensor's Privacy Policy, posted on the Licensor's website <http://www.amdigital.co.uk/About-Us/Privacy-Policy.aspx>.

Availability: The Licensor shall use reasonable efforts to make the Licensed Materials available on a continuous seven (7) days a week basis with an average of at least 98% up-time per month. The allowable down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of the Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. The down-time also allows for periodic server migrations, updating resources and relevant technologies, as necessary to improve the service consistent with overall standards in the on-line information provision industry. The majority of updates will not involve any server down-time. The allowable down-time does not include any unavailability which occurs due to a Force Majeure event (see section XV).

Appropriate advance notice shall be supplied in the event of scheduled maintenance which involves any significant amount of server down-time. Scheduled down-time will be performed at a time to minimise inconvenience to the Licensee and its Authorised Users. Appropriate notification in the event of unscheduled downtime will also be provided wherever possible.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, the Licensee shall immediately notify the Licensor, and the Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible.

The Licensee understands that from time to time the Licensed Materials may be modified; including additions, revisions, amendments and deletions, by the Licensor and/or that portions of the Licensed Materials may migrate to other formats. This is part of the process of the Licensor ensuring that the Licensed Materials are current and up to date and accordingly such modifications, additions or deletions shall not be grounds for the Licensee to terminate this Agreement for breach.

Withdrawal or Major Modification of Licensed Materials: In the unlikely event of the need to withdraw the Licensed Materials or make a Major Modification (defined as a withdrawal of over 30% of the content of the Licensed Materials), the Licensor reserves the right in such instances to modify or withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes Intellectual Property Rights, or which is inaccurate, defamatory, offensive or otherwise likely to be unlawful or promote illegal or unlawful activity. In relation to the withdrawal of a material part of the Licensed Materials, such that this is a Major Modification, the Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item.

V. The Licensee Performance Obligations

Provision of Notice of Terms of Use to Authorised Users: The Licensee shall require all its Authorised Users to agree to terms and conditions of use of the Licensed Materials that:

- (1) require them to comply with all applicable laws in using the Licensed Materials;
- (2) state that the Licensed Materials being supplied are only for the Authorised User's personal use;
- (3) prohibit reproduction or distribution of Licensed Materials that violates applicable law; and
- (4) contain a reservation for the Licensor of all Intellectual Property Rights and other rights in the Licensed Materials; and
- (5) Set out the limitations on access or use of the Licensed Materials as set forth in this Agreement,

(collectively, the "Terms of Use"). The Licensee shall provide a copy of such Terms of Use to the Licensor should this be requested by the Licensor.

Protection from unauthorised use: The Licensee shall use all reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorised use of the Licensed Materials by an Authorised User or the Licensee, the Licensor may suspend or terminate the Licensee's access to the Licensed Materials until the circumstances of unauthorised use are resolved to the Licensor's satisfaction, and/or terminate this Agreement according to Section VIII of this Agreement.

The Licensor may require the Licensee to cease all use of any of the Licensed Materials if it reasonably believes that the Licensee's use of the Licensed Materials (or part thereof) infringes the Intellectual Property Rights of any third party, or breaches any applicable law or regulation. In this instance, the Licensor may, at its option either:

- (1) provide the Licensee with alternative Licensed Materials so as to avoid the infringement; or
- (2) terminate or modify this Agreement immediately on written notice in respect of the affected Licensed Materials.

The Licensee shall comply with all applicable laws in performing its obligations and exercising its rights under this Agreement.

The Licensee shall not, and shall procure that any Authorised Users shall not, infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 or if such acts take place outside the UK, in accordance with any equivalent legislation applicable in that territory) that subsist in respect of the Licensed Materials.

The Licensee shall use the best available practices and systems applicable with regard to the use of the Licensed Materials to:

- (1) enforce the territorial and use restrictions of this Agreement; and
- (2) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Licensed Materials.

If the Licensee becomes aware of any potential or actual infringement or misuse of any Licensed Materials, or any security breach in connection with this Agreement that could compromise the security or integrity of the Licensed Materials or otherwise adversely affect the Licensor, the Licensee shall, at the Licensee's expense, promptly notify the Licensor and fully co-operate with the Licensor to remedy the issue as soon as reasonably practicable.

The Licensor may suspend the Licensee's rights under this Agreement until the infringement, misuse or security breach is remedied.

The Licensee shall ensure that Authorised Users do not remove, bypass, circumvent, neutralise, or modify any of the technological protection measures used for the Licensed Materials.

VI. Mutual Performance Obligations

Confidentiality: For the purposes of this section, "**Confidential Information**" shall mean the existence and terms of this Agreement; any data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users; any statistics relating to usage of the Licensed Materials which is provided by the Licensor (or its suppliers) to the Licensee, and any information (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) which is not publicly available including, but not limited to, know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise.

Each party undertakes that it shall not at any time during this Agreement, nor for a period of five (5) years after termination of this Agreement, disclose to any person any Confidential Information except as permitted by this section.

Each party may disclose the other party's Confidential Information:

- (1) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause; and
- (2) as may be required by law, court order or any governmental or regulatory authority;
- (3) in respect of data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users, such data may be provided to third parties in aggregate form.

Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

VII. Hosting Renewal and Payment

This Agreement shall be automatically renewed at the end of the initial term of one year for a successive term of one year, and thereafter, unless in either case either party gives written notice of its intention not to renew at least 60 days before expiration of the relevant current term. Each renewal shall be subject to the payment by the Licensee of 0.5% (half of one percent) of the net purchase price specified on the Licensor's first invoice (the "**Hosting Renewal Fee**") on or before the renewal date, where such fee is to cover the Licensor's cost of providing ongoing access to the Licensed Materials. In the event that the Licensee does not pay the Hosting Renewal Fee when it is due, the Licensor's provision of online access will be terminated on the expiration date unless the Licensee has given two months' notice of its election to use a locally hosted copy of the Licensed Materials in accordance with Section II: "Archival Copy".

All fees set out in this Agreement are exclusive of Value Added Tax or other Sales Tax and shall be subject to the addition of Value Added Tax or other Sales Tax at the appropriate rate, which the Licensee agrees to pay.

By payment of the agreed fees and subject to the Licensee complying with the terms of this Agreement, the Licensee shall have the right to continue to use the hosting facilities offered by the Licensor for the relevant Licensed Materials according to the provisions set out in this Agreement.

VIII. Early Termination

Either party (the Terminating Party) may by written notice to the other party (the Other Party) terminate this Agreement immediately if:

- (1) the Other Party commits any material breach of its obligations under this Agreement which is incapable of remedy, or if capable of remedy, is not remedied within 21 days of the Terminating Party giving written notice requiring the breach to be remedied; or
- (2) the Other Party ceases, or threatens to cease, to carry on business; or
- (3) any of the following events occur (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales) in relation to the Other Party:
 - (i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986, or a proposal is made for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (ii) a shareholders' meeting is convened to consider a resolution that it be wound up, or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - (iii) a petition is presented for its winding-up, or an application is made for the appointment of a provisional liquidator (in each case, which is not dismissed within 14 days of its service), or a creditors' meeting is convened under section 98 of the Insolvency Act 1986; or
 - (iv) a receiver, administrative receiver or similar officer is appointed over the whole, or any part, of its business or assets; or
 - (v) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - (vi) it is, or becomes, insolvent within the meaning of section 123 of the Insolvency Act 1986.

On any expiration or termination of this Agreement all rights and authorisations granted by the Licensor to the Licensee under this Agreement shall automatically terminate and immediately revert to the Licensor; and on-line access to the Licensed Materials by the Licensee and Authorised Users shall be terminated.

IX. Permanent Archival Access/Dark Archiving

Dark Archiving is provided by Portico (www.portico.org/digital-preservation), part of ITHAKA, a not-for-profit organisation helping the academic community use digital technologies, for all of the Licensed Materials for the benefit of all Licensees and their Authorised Users in accordance with Section II (Dark Archiving). This insurance backup will only be activated in the event of any of the following trigger events:

- (1) **Licensor No Longer in Business.** Licensor is no longer in business or is no longer in the business of publishing or providing access to previously published Licensed Materials.
- (2) **Title No Longer Offered.** Licensor has stopped publishing and is no longer providing access to the Licensed Materials for a period longer than ninety (90) days.
- (3) **Back List Titles No Longer Available.** Licensor has stopped offering or providing access to some or all of the back list titles of the Licensed Materials for a period longer than ninety (90) days.
- (4) **Catastrophic Failure.** Licensor has stopped publishing or providing access to the Licensed Materials for a period longer than ninety (90) days due to technical difficulties or any business interruption, bankruptcy, insolvency, receivership or business failure.

X. Warranties

- (1) Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement;
- (2) The Licensor warrants that it has the right to licence the rights granted under this Agreement to use the Licensed Materials, that it has obtained any and all necessary permissions from third parties to licence the Licensed Materials, and that so far as it is aware, use of the Licensed Materials by the Licensee in accordance with the terms of this Agreement shall not infringe the copyright of any third party; and
- (3) The Licensee warrants that it will not knowingly use the Licensed Materials:
 - so as to infringe any third party's copyright;
 - in a manner which is defamatory, libellous, obscene, or otherwise unlawful; or
 - in a manner which will violate any applicable law, statute or subordinate legislation;

XI. Intellectual Property Infringement

The Licensee shall indemnify the Licensor against all claims, liabilities and expenses arising out of any infringement of any rights of the Licensor or the Licensor's licensors by the use of the Licensed Materials by the Licensee.

Each party shall promptly notify the other of any actual or suspected infringement of the Licensed Materials that comes to its attention ("**Infringement**").

The Licensee shall co-operate fully with the Licensor by taking all steps required by the Licensor (in its sole discretion) in connection with any Infringement, including, without limitation, legal proceedings in the name of the Licensor or in the joint names of the parties. The Licensor shall be responsible for the cost of any legal proceedings it requires, and is entitled to any damages, account of profits and/or awards of costs recovered. The Licensee shall use its best endeavours to assist the Licensor in any legal proceedings relating to any Infringement. The Licensee shall not take any steps relating to any Infringement unless the Licensor has requested that the Licensee does so.

XII Limitations

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT:

- (1) NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.
- (2) WHERE EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, COVENANTS, REPRESENTATIONS AND UNDERTAKINGS WHICH MAY BE IMPLIED, WHETHER STATUTORY OR OTHERWISE, IN RESPECT OF THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- (3) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER ARISING, OR FOR ANY LOSS (WHETHER DIRECT OR INDIRECT OR CONSEQUENTIAL) OF PROFITS, USE, ANTICIPATED SAVINGS, GOODWILL OR CONTRACTS OR FOR ANY LOSS ARISING FROM DAMAGED, CORRUPTED OR LOST DATA.
- (4) THE AGGREGATE LIABILITY OF EACH PARTY IN RELATION TO THIS AGREEMENT SHALL NOT IN TOTAL EXCEED AN AMOUNT EQUAL TO THE CHARGES PAID UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, MISREPRESENTATION, BREACH OF DUTY OR OTHERWISE.

XIII. Legal Disputes

If any dispute arises in connection with this Agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the mediation procedure established by the American Arbitration Association (AAA). Unless otherwise agreed between the parties, the mediator will be nominated by the AAA. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting a mediation. A copy of the request should be sent to the AAA. The mediation will start not later than thirty (30) days after the date of the ADR notice.

No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

Save as set out above, the parties irrevocably agree that the courts of the State of Texas shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

XIV. Governing Law

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of Texas.

XV. Force Majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to other party.

XVI. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XVII. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by Authorized representatives of the Licensor and the Licensee.

XVIII. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

XIX. Waiver

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XX. Notices

Any notice required to be given under this Agreement, or in connection with the matters contemplated by it, shall (except where specifically provided otherwise) be in writing and shall be delivered personally, or sent by pre-paid first-class (or airmail) post or recorded delivery or by commercial courier or fax, to the party required to receive the notice at the address provided by it for this purpose from time to time (such address to include a named representative responsible for receiving it).

Any notice shall be deemed to have been received:

- (1) if delivered personally, when left at the address and for the contact identified by the party;

- (2) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting;
- (3) if sent by airmail, at 9.00 am on the fifth business day after posting;
- (4) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- (5) if sent by fax, at the time of transmission.

Either party may from time to time change its notice address by written notice to the other party.

If to the Licensor:

Adam Matthew Digital Ltd
Pelham House,
London Road,
Marlborough
Wiltshire,
SN8 2AG,
United Kingdom

If to the Licensee: **[PLEASE COMPLETE THIS SECTION]**

Address of Licensee
City of Licensee
State of Licensee
Country of Licensee
Postal Code of Licensee

XXI Third Party Rights

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

XXII Partnership

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor, except as expressly set out in this Agreement, constitute either party the agent of the other party for any purpose.

XXIII Assignment

The Licensor may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

XXIV United States Government End Users:

This software and documentation are developed exclusively with private funds and constitute "commercial items," as defined in the Federal Acquisition Regulations ("FAR") at 48 C.F.R. 2.01, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R.12.212 and 48 C.F.R. 227.7202-1. Consistent with 48 C.F.R. 12.212, and the comparable Defense Federal Acquisition Regulation ("DFAR") at 48 C.F.R. 252.227.7202-1 through 252.227.7202-4, this software and documentation is licensed to you only as commercial computer software and

commercial computer software documentation and only with the rights and obligations granted to public users generally as set forth in this license agreement. Notwithstanding any other FAR, DFAR or other contractual provision into which this license agreement may be incorporated, any government end user only acquires the rights to use this software and documentation as set forth in this license agreement. This software is acquired under the specific terms and conditions set forth herein. If any portion of the software is deemed "non-commercial," or the following FARs or DFARs are deemed to apply, the software is licensed under the terms hereof and under the RESTRICTED RIGHTS set forth in 48 C.F.R. 52.227-14 and 48 C.F.R. 252.227-7014 (and the government's use, duplication and disclosure rights are restricted as set forth therein). Contractor/manufacturer is Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorised representatives as of the date first above written.

FOR THE LICENSOR:

BY: _____ DATE: _____
Signature of Authorised Signatory of Publisher

Name:
Title:
Address: Adam Matthew Digital Ltd., Pelham House,
London Road, Marlborough, Wiltshire, SN8 2AG, UK
Telephone No.: +44 (0) 1672 511921
Facsimile: +44 (0) 1672 511663
E-mail:

FOR THE LICENSEE:

BY: _____ DATE: _____

Name:
Title:
Address:

Telephone No.:
Facsimile:
E-mail:

Very important information – PLEASE COMPLETE ALL SECTIONS

In order for us to provide access to the Licensed Material by IP Address recognition, please ensure the following details are completed

Main Library Contact Name:

Telephone No:

Facsimile:

E-mail:

IT Administrator Name

Telephone No.:

Facsimile:

E-mail:

Licensee IP Address range:

THE REMINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

Attachment C
Online User License Agreement

ONLINE USER LICENCE AGREEMENT

This Licence Agreement (this "Agreement") is made effective as of the date of full contract execution (the "Effective Date") between Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England ("Licensor") and Texas State Library and Archives Commission, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos St., Austin, TX 78701 ("Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Grant of Licence for Licensed Materials

The material that is the subject of this Agreement is electronic information published or otherwise made available by the Licensor and is described as **THE AMERICAN WEST: SOURCES FROM THE GRAFF COLLECTION AT THE NEWBERRY LIBRARY, CHICAGO** and **AMERICAN INDIAN HISTORIES AND CULTURES, SOURCES FROM THE EDWARD E. AYER COLLECTION AT THE NEWBERRY LIBRARY, CHICAGO** (hereinafter referred to as the "**Licensed Materials**").

The Licensee and its Authorised Users (as defined below) acknowledge that the copyright and title to the Licensed Materials and any trade marks, design rights, database rights, domain names or any other intellectual property rights subsisting therein or relating thereto remain with the Licensor and/or its suppliers. Neither the Licensee nor its Authorised Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

In consideration of the payment by the Licensee to the Licensor of the purchase price set out on the Licensor's invoice (the "**Licence Fee**") and, if applicable, payment of the Hosting Fee or Hosting Renewal Fee according to the terms of Section IV and Section VII of this Agreement, the Licensor hereby grants to the Licensee a non-transferable non-exclusive licence to use the Licensed Materials (including the right for the Authorised Users to use the Licensed Materials) for the purposes set out in and in accordance with this Agreement.

The Licensee shall not grant sub-licences, in whole or in part, of any of the rights granted under this Agreement, or sub-contract any aspects of exploitation of the rights licensed to it, without the Licensor's prior written consent. However, the Licensee may permit Authorised Users to use the Licensed Materials on the terms set out in this Agreement and on condition that such Authorised Users do not grant any further sub-licence.

II. Authorised Use of Licensed Materials

"**Authorised Users**" are:

(1) The entire TexShare membership: Academic, Public, Libraries of Clinical Medicine, Texas State Government Agencies including Registrants in the State Library, Talking Book Program; and Public K-12 school libraries within the State of Texas.

(2) Persons Affiliated with the Licensee and Authorised Users: Full and part time students (including students enrolled in distance education programs offered or sponsored by the Licensee or Authorised Users) and employees (including faculty, staff, alumni, affiliated

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researchers and independent contractors) of the Licensee and Authorised Users who in all cases need access to the Licensed Materials for the purposes of their research, education or other non-commercial use. Any off-campus access shall be provided only for individuals authenticated as affiliated as members of the Licensee's or Authorised User University, Institution or Organisation as defined as the Licensee herein; all Authorised patrons of Public Libraries, Libraries of Clinical Medicine, Public K-12 School Libraries, Texas State Government Agencies;

(3) Walk-ins: Patrons not affiliated with the Licensee who are physically present on the Licensee's and Authorised Users' premises.

(4) Remote Access: Authorised Users who remotely access the Licensed Content may do so from home or another location, provided, that proper security procedures are undertaken by the Licensee that will prevent remote access by unauthorised users. Licensee shall take all reasonable precautions to limit the usage of the Licensed Content to those specifically Authorised by this Agreement and shall use reasonable efforts to inform its Authorised Users of the provisions of this Agreement.

The Licensee and Authorised Users may use the Licensed Materials for the purposes of research, education or other non-commercial use as set out below:

Downloads: The Licensee and Authorised Users may download, retain, store and use unlimited portions of the Licensed Materials.

Print Copy: The Licensee and Authorised Users may print a reasonable portion of the Licensed Materials.

Archival Copy. Upon request of the Licensee and not less than 60 days before the expiration date of the current term of this Agreement, the Licensee may request and receive from Licensor and/or create one (1) copy of the entire set of metadata from the Licensed Materials (including but not limited to PDF images, text files, XML, XML schema) to be maintained as an "Archival Copy" or as required to exercise the Licensee's rights under Section IX, "Permanent Archival Access/Dark Archiving", of this Agreement. The Licensee may use the metadata to develop its own locally-hosted version of the Licensed Materials on the condition that the use of that local copy continues to comply with this Agreement.

Dark Archiving: The Licensor uses the services of Portico (www.portico.org/digital-preservation) to enable Dark Archiving to be provided in respect of all of the Licensed Materials for the benefit of all Licensees and their Authorised Users. See Section IX.

Course Packs: The Licensee may permit members of the Authorised Users' faculty or staff to download and print and use for teaching purposes copies of a reasonable portion of the Licensed Materials for the purpose of making a multi-source collection of information for classroom use (course-pack) to be distributed to students at the Authorised Users' institution free of charge.

Electronic Reserve: The Licensee and Authorised Users may store in electronic format in secure electronic data files a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by the Licensee and/or its Authorised Users.

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Scholarly Sharing: Authorised Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts (defined as no more than 5% [five percent] of the total collection) of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale.

Re-publication: Authorised Users do not have the right to re-publish any items from the Licensed Materials, unless the Authorised User has first obtained copyright permission from the appropriate copyright holder or archive. Permission from the original source archive/copyright holder in the case of re-publication, figures, tables and brief excerpts from the Licensed Materials in the Authorised User's own scientific, scholarly and educational works is always necessary and Authorised Users should also obtain correct wording for all citations and credits from the original source archive/copyholder.

Nothing in this Agreement is intended to limit in any way whatsoever the Licensee's or any Authorised User's rights under the fair dealing provisions set out in the Copyright Designs and Patents Act 1988 (as may be re-enacted or modified) or if such acts take place outside the UK, in accordance with any equivalent legislation applicable in that territory (for example under the US Copyright Act of 1976, 17 U.S.C. § 107).

III. Specific Restrictions on Use of Licensed Materials

Unauthorised Use: The Licensee and Authorised Users shall not knowingly permit anyone other than Authorised Users to use the Licensed Materials.

Modification of Licensed Materials: The Licensee and Authorised Users shall not modify, change or develop the Licensed Materials in any way or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice: The Licensee and Authorised Users may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes: The Licensee and Authorised Users may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

IV. Licensor Performance Obligations

Availability of Licensed Materials: Upon the Effective Date of this Agreement and providing the Licensee has returned a signed copy of this Agreement and given all necessary information to the Licensor to enable the Licensor to make the Licensed Materials available to the Licensee and Authorised Users, the Licensor shall make the Licensed Materials available to the Licensee and Authorised Users at the price specified by the Licensor in the relevant invoice.

Annual Hosting: On payment of the annual hosting fee of \$3,938.00 for each resource for Texas Fiscal Years starting 2015-2018 (the "**Hosting Fee**") the Licensor agrees, subject to any modifications required by the source archives, source libraries or copyright holders and subject to all other provisions of this Agreement, to host in accordance with the availability provisions set out below the Licensed Materials for one year from the Effective Date. If the Licensee so requires, subsequent annual hosting of the Licensed Materials will be provided under the terms of this Agreement, subject to Section VII.

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Documentation: The Licensor will provide and maintain help files and other appropriate user documentation.

Usage Statistics: The Licensor will offer the Licensee and Authorised Users access to an automated system which provides statistics on usage of the Licensed Materials by the Authorised Users.

Support: The Licensor will use reasonable endeavours to assist the Licensee with the implementation of any of the Licensor's software and use of the Licensed Materials. The Licensor will use reasonable endeavours to make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. The Licensor's core hours for telephone support are 9.00 am-5.00 pm CDT. The Licensor shall not provide any on site installation in respect of the Licensed Materials or relevant software. The Licensed Materials will make use of standard internet protocols, interfaces and functions, including Help Files.

Privacy: The Licensor recognises the importance of protecting the information it collects in the operation of Licensed Materials and will take all reasonable steps to maintain the security, and privacy of this information. The Licensor will ensure that any information it collects will be relevant and not excessive for purposes of operating the Licensed Materials and will be deleted when no longer needed. The Licensor will only disclose to third parties navigational and transactional information in the form of anonymous, aggregate usage statistics and demographics in forms that do not reveal an Authorised User's or the Licensee's identity or confidential information.

Availability: Where possible, the Licensor will give pre-notice of any server maintenance. The Licensor shall use reasonable efforts to make the Licensed Materials available on a continuous seven (7) days a week basis with an average of at least 98% up-time per month. The allowable down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of the Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. The down-time also allows for periodic server migrations, updating resources and relevant technologies, as necessary to improve the service consistent with overall standards in the on-line information provision industry. The majority of updates will not involve any server down-time. The allowable down-time does not include any unavailability which occurs due to a Force Majeure event as defined in TSLAC's Terms and Conditions.

Appropriate advance notice shall be supplied in the event of scheduled maintenance which involves any significant amount of server down-time. Scheduled down-time will be performed at a time to minimise inconvenience to the Licensee and its Authorised Users. Appropriate notification in the event of unscheduled downtime will also be provided wherever possible.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, the Licensee shall immediately notify the Licensor, and the Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible.

The Licensee understands that from time to time the Licensed Materials may be modified; including additions, revisions, amendments and deletions, by the Licensor and/or that portions of the Licensed Materials may migrate to other formats. This is part of the process of the Licensor ensuring that the Licensed Materials are current and up to date and

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accordingly such modifications, additions or deletions shall not be grounds for the Licensee to terminate this Agreement for breach.

Withdrawal or Major Modification of Licensed Materials: In the unlikely event of the need to withdraw the Licensed Materials or make a Major Modification (defined as a withdrawal of over 30% of the content of the Licensed Materials), the Licensor reserves the right in such instances to modify or withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes Intellectual Property Rights, or which is inaccurate, defamatory, offensive or otherwise likely to be unlawful or promote illegal or unlawful activity. In relation to the withdrawal of a material part of the Licensed Materials, such that this is a Major Modification, the Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item.

V. The Licensee Performance Obligations

Provision of Notice of Terms of Use to Authorised Users: The Licensee will put terms and conditions on the TexShare database website for the reference of Authorised users.

Protection from unauthorised use: The Licensee and Authorised Users shall use all reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorised use of the Licensed Materials by an Authorised User or the Licensee, the Licensor will give Licensee 30 days' notice to cure. If unresolved within 30 days, Licensor may suspend or terminate the Authorised User's access to the Licensed Materials until the circumstances of unauthorised use are resolved to the Licensor's satisfaction, and/or terminate this Agreement according to Section VIII of this Agreement.

The Licensee shall comply with all applicable laws in performing its obligations and exercising its rights under this Agreement.

The Licensee and Authorised Users shall not infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 or if such acts take place outside the UK, in accordance with any equivalent legislation applicable in that territory) that subsist in respect of the Licensed Materials.

The Licensee and Authorised Users shall use the best available practices and systems applicable with regard to the use of the Licensed Materials to:

- (1) enforce the territorial and use restrictions of this Agreement; and
- (2) prevent, and take prompt and proper remedial action after being notified against unauthorised access, copying, modification, storage, reproduction, display or distribution of the Licensed Materials.

If the Licensee and Authorised Users become aware of any potential or actual infringement or misuse of any Licensed Materials, or any security breach in connection with this Agreement that could compromise the security or integrity of the Licensed Materials or otherwise adversely affect the Licensor, the Licensee shall, at the Licensee's expense, promptly notify the Licensor and fully co-operate with the Licensor to remedy the issue as soon as reasonably practicable. The Licensor may suspend the Licensee's rights under this Agreement until the infringement, misuse or security breach is remedied.

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The Licensee shall ensure to extent possible that Authorised Users do not remove, bypass, circumvent, neutralise, or modify any of the technological protection measures used for the Licensed Materials.

VI. Hosting Renewal and Payment

This Agreement may be renewed at the end of the initial term of one year for a successive term of one year via an annual renewal letter sent by the Licensor, and thereafter, unless in either case either party gives written notice of its intention not to renew at least 60 days before expiration of the relevant current term. Each renewal shall be subject to the payment by the Licensee of a \$3,938.00 fee for each resource, not to exceed \$7,876.00 for both resources or before the renewal date, where such fee is to cover the Licensor's cost of providing ongoing access to the Licensed Materials. In the event that the Licensee does not pay the Hosting Renewal Fee when it is due, the Licensor's provision of online access will be terminated on the expiration date unless the Licensee has given two months' notice of its election to use a locally hosted copy of the Licensed Materials in accordance with Section II: "Archival Copy".

By payment of the agreed fees and subject to the Licensee complying with the terms of this Agreement, the Licensee shall have the right to continue to use the hosting facilities offered by the Licensor for the relevant Licensed Materials according to the provisions set out in this Agreement .

VII. Early Termination

Either party (the Terminating Party) may by written notice to the other party (the Other Party) terminate this Agreement immediately if:

- (1) the Other Party commits any material breach of its obligations under this Agreement which is incapable of remedy, or if capable of remedy, is not remedied within 30 days of the Terminating Party giving written notice requiring the breach to be remedied; or
- (2) the Other Party ceases to carry on business; or
- (3) any of the following events occur (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales) in relation to the Other Party:
 - (i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986, or a proposal is made for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (ii) a shareholders' meeting is convened to consider a resolution that it be wound up, or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - (iii) a petition is presented for its winding-up, or an application is made for the appointment of a provisional liquidator (in each case, which is not dismissed within 14 days of its service), or a creditors' meeting is convened under section 98 of the Insolvency Act 1986; or
 - (iv) a receiver, administrative receiver or similar officer is appointed over the whole, or any part, of its business or assets; or
 - (v) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

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- (vi) it is, or becomes, insolvent within the meaning of section 123 of the Insolvency Act 1986.

On any expiration or termination of this Agreement all rights and authorisations granted by the Licensor to the Licensee under this Agreement shall automatically terminate and immediately revert to the Licensor; and on-line access to the Licensed Materials by the Licensee and Authorised Users shall be terminated.

VIII. Permanent Archival Access/Dark Archiving

Dark Archiving is provided by Portico (www.portico.org/digital-preservation), part of ITHAKA, a not-for-profit organisation helping the academic community use digital technologies, for all of the Licensed Materials for the benefit of all Licensees and their Authorised Users in accordance with Section II (Dark Archiving). This insurance backup will only be activated in the event of any of the following trigger events:

- (1) **Licensor No Longer in Business.** Licensor is no longer in business or is no longer in the business of publishing or providing access to previously published Licensed Materials.
- (2) **Title No Longer Offered.** Licensor has stopped publishing and is no longer providing access to the Licensed Materials for a period longer than ninety (90) days.
- (3) **Catastrophic Failure.** Licensor has stopped publishing or providing access to the Licensed Materials for a period longer than ninety (90) days due to technical difficulties or any business interruption, bankruptcy, insolvency, receivership or business failure.

IX. Warranties

- (1) Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement;
- (2) The Licensor warrants that it has the right to licence the rights granted under this Agreement to use the Licensed Materials, that it has obtained any and all necessary permissions from third parties to licence the Licensed Materials, and that so far as it is aware, use of the Licensed Materials by the Licensee in accordance with the terms of this Agreement shall not infringe the copyright of any third party; and
- (3) The Licensee and Authorised Users warrants that it will not knowingly use the licensed Materials:
 - so as to infringe any third party's copyright;
 - in a manner which is defamatory, libellous, obscene, or otherwise unlawful; or
 - in a manner which will violate any applicable law, statute or subordinate legislation;

X. Intellectual Property Infringement

Each party shall promptly notify the other of any actual or suspected infringement of the Licensed Materials that comes to its attention ("**Infringement**").

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The Licensee shall co-operate fully with the Licensor by taking all reasonable steps required by the Licensor (in its sole discretion) in connection with any Infringement, including, without limitation, legal proceedings in the name of the Licensor. Licensee has the option of including its own legal representation. The Licensor shall be responsible for the cost of any legal proceedings it requires, and is entitled to any damages, account of profits and/or awards of costs recovered. The Licensee shall use its best endeavours to assist the Licensor in any legal proceedings relating to any Infringement. The Licensee shall not take any steps relating to any Infringement unless the Licensor has requested that the Licensee does so.

XI. Limitations

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT:

- (1) NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.
- (2) WHERE EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, COVENANTS, REPRESENTATIONS AND UNDERTAKINGS WHICH MAY BE IMPLIED, WHETHER STATUTORY OR OTHERWISE, IN RESPECT OF THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- (3) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER ARISING, OR FOR ANY LOSS (WHETHER DIRECT OR INDIRECT OR CONSEQUENTIAL) OF PROFITS, USE, ANTICIPATED SAVINGS, GOODWILL OR CONTRACTS OR FOR ANY LOSS ARISING FROM DAMAGED, CORRUPTED OR LOST DATA.
- (4) THE AGGREGATE LIABILITY OF EACH PARTY IN RELATION TO THIS AGREEMENT SHALL NOT IN TOTAL EXCEED AN AMOUNT EQUAL TO THE CHARGES PAID UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, MISREPRESENTATION, BREACH OF DUTY OR OTHERWISE.

XII. Legal Disputes

If any dispute arises in connection with this Agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice.

No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

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Save as set out above, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

XIII. Governing Law

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of Texas.

XIV. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by Authorised representatives of the Licensor and the Licensee.

XV. Waiver

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XVI. Notices

Any notice required to be given under this Agreement, or in connection with the matters contemplated by it, shall (except where specifically provided otherwise) be in writing and shall be delivered personally, or sent by pre-paid first-class (or airmail) post or recorded delivery or by commercial courier or fax, to the party required to receive the notice at the address provided by it for this purpose from time to time (such address to include a named representative responsible for receiving it).

Any notice shall be deemed to have been received:

- (1) if delivered personally, when left at the address and for the contact identified by the party;
- (2) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the fifth business day after posting;
- (3) if sent by airmail, at 9.00 am on the fifth business day after posting;
- (4) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- (5) if sent by fax, at the time of transmission.

Either party may from time to time change its notice address by written notice to the other party.

If to the Licensor:

Adam Matthew Digital Ltd
Pelham House,
London Road,
Marlborough
Wiltshire,

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SN8 2AG,
United Kingdom

If to the Licensee:

Texas State Library and Archives Commission,
Lorenzo de Zavala State Archives and Library Building,
1201 Brazos St.,
Austin, TX, 78701
USA

XVII. Third Party Rights

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

XVIII. Partnership

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor, except as expressly set out in this Agreement, constitute either party the agent of the other party for any purpose.

XIX. Assignment

The Licensor may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement with the written agreement of TSLAC.

XX. United States Government End Users:

This software and documentation are developed exclusively with private funds and constitute "commercial items," as defined in the Federal Acquisition Regulations ("FAR") at 48 C.F.R. 2.01, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R.12.212 and 48 C.F.R. 227.7202-1. Consistent with 48 C.F.R. 12.212, and the comparable Defense Federal Acquisition Regulation ("DFAR") at 48 C.F.R. 252.227.7202-1 through 252.227.7202-4, this software and documentation is licensed to you only as commercial computer software and commercial computer software documentation and only with the rights and obligations granted to public users generally as set forth in this license agreement. Notwithstanding any other FAR, DFAR or other contractual provision into which this license agreement may be incorporated, any government end user only acquires the rights to use this software and documentation as set forth in this license agreement. This software is acquired under the specific terms and conditions set forth herein. If any portion of the software is deemed "non-commercial," or the following FARs or DFARs are deemed to apply, the software is licensed under the terms hereof and under the RESTRICTED RIGHTS set forth in 48 C.F.R. 52.227-14 and 48 C.F.R. 252.227-7014 (and the government's use, duplication and disclosure rights are restricted as set forth therein). Contractor/manufacturer is Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England.

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IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorised representatives as of the date first above written.

FOR THE LICENSOR:



BY: _____ DATE: 26th September 2013
Signature of Authorised Signatory of Publisher

Name: Khal Rudin
Title: Director
Address: Adam Matthew Digital Ltd., Pelham House,
London Road, Marlborough, Wiltshire, SN8 2AG, UK
Telephone No.: +44 (0) 1672 511921
Facsimile: +44 (0) 1672 511663
E-mail: khal@amdigital.co.uk

FOR THE LICENSEE:

BY: _____ DATE: _____

Name:
Title:
Address:

Telephone No.:
Facsimile:
E-mail:

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Very important information – PLEASE COMPLETE ALL SECTIONS

In order for us to provide access to the Licensed Material by IP Address recognition, please ensure the following details are completed

Main Library Contact Name:

Telephone No:

Facsimile:

E-mail:

IT Administrator Name

Telephone No.:

Facsimile:

E-mail:

Licensee IP Address range:

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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, 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.

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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.** Materials and meta-data that constitute the digital resource remain the copyright of contributing libraries and archives. Adam Matthew has no right to assign.
- 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.
- 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

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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 procurement 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 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.

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- 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.

- 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 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

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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.
- 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.
- 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.

Attachment E
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.