

Texas State Library and Archives Commission

Standard Terms and Conditions for TexShare and/or TexQuest Agreements

ARTICLE 1. GENERAL

- 1. Terms and Conditions.** The Texas State Library and Archives Commission Terms & Conditions are incorporated for all purposes and made part of Respondent's contract with the Texas State Library and Archives Commission (TSLAC) by reference. Under these terms and conditions, a Purchase Order is also considered a contract between TSLAC and the Respondent.
- 2. Selected Definitions.** When used in this document, Terms & Conditions, the following words shall include the following meanings, unless the context clearly indicates otherwise, and may be used interchangeably:

Agency – Texas State Library and Archives Commission or TSLAC

Respondent – includes bidder, proposer, applicant, contractor, or vendor

Response – includes a bid, proposal, offer, or application

Solicitation – includes Invitation for Bids, Request for Proposals, Request for Offers, Request for Applications, Pricing Request, or Request for Qualifications
- 3. Headings.** The headings, captions, and arrangements used in this Appendix are for reference and convenience only and do not alter the interpretation of this contract.
- 4. Governing Law and Venue.** This contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas.
- 5. Conflicting Provisions.** In the event of conflicts or inconsistencies between this contract and its exhibits, appendices, or attachments, or other Contractual Documents (defined below), such conflicts or inconsistencies shall be resolved by reference to the following order of priority and precedence: the signed contract, these TSLAC Standard Terms and Conditions for TexShare and/or TexQuest Agreements and any attachments thereto; any Purchase Order; the TSLAC solicitation identified in the contract ("Solicitation") and its exhibits and other attachments; Vendor's Response to the Solicitation; any Vendor-supplied license or subscription agreement agreed upon by the parties, any other contractual document between the parties and all other attachments and exhibits (collectively the "Contractual Documents").
- 6. Notices.** Unless specifically noted elsewhere in this contract, any written notices required under this contract shall be either delivered to Vendor's office address specified on the signature page or emailed to the Vendor's specified point of contact. Notices to TSLAC shall be delivered 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 shall be effective on receipt by the affected party. Either party may change the designated notice address by written notification to the other party.
- 7. Change in Law.** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- 8. 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.
- 9. 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.
- 10. 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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- 11. Signature Authority.** By submitting the Response, Vendor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of Vendor and to bind Vendor under any contract that may result from the submission of this Response.
- 12. Binding Effect.** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.
- 13. No Implied Waiver.** The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

ARTICLE 2. TERMINATION, REMEDIES, AND DISPUTES

- 14. Termination by Mutual Agreement.** The contract may be terminated by mutual agreement before the expiration date if both parties consent to the termination in writing.
- 15. Termination for Cause; Default.** If Vendor terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under any Federal or State statute, or becomes 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 calendar days' notice to Vendor. Upon such termination, Vendor will offer TSLAC a prorated refund or subscription fee.

If 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, TSLAC may, upon written notice, immediately terminate all or any part of this 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.

If 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.

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 Vendor 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.

- 16. Termination for Convenience.** 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 of such termination to Vendor, if TSLAC determines that such termination is in the best interests of the state. In the event of such a termination, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSLAC shall be liable for payments limited only to the portion of work TSLAC authorized in writing and which Vendor has completed, delivered to TSLAC, and which has been accepted by TSLAC. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TSLAC shall have no other liability, including no liability for any costs associated with termination.
- 17. 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, injunctive relief and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

- 18. No Liability Upon Termination.** If this contract is terminated for any reason, TSLAC and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Vendor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

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- 19. 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.
- 20. Dispute Resolution.** Unless an applicable state statute or applicable federal law requires another procedure for the resolution of disputes, the dispute resolution process provided for in Texas Government Code, Chapter 2260, must be used to attempt to resolve any dispute arising under the contract. If the Vendor's claim for breach of contract cannot be resolved informally with the agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Vendor shall submit written notice, as required by Chapter 2260, to the Chief Operations and Fiscal Officer or designee. The notice shall specifically state that the provisions of the Texas Government Code, Chapter 2260 are being invoked. Vendor shall provide a copy of the notice to all other representatives of Vendor and TSLAC individual(s) designated in the contract for receipt of notices. Compliance with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 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 as described above. Notwithstanding any other provision of the contract to the contrary, unless otherwise requested or approved in writing by the Agency, the Vendor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Vendor may suspend performance during the pendency of such claim or dispute if the Vendor has complied with all provisions of Texas Government Code, §2251.051, and such suspension of performance is expressly applicable and authorized under that law.
- 21. Dispute Resolution (Engineering, Architectural, or Construction Services).** Subject to Texas Government Code, §2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, §2260.002(3) and Texas Civil Practice and Remedies Code, §114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).
- a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Respondent's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Respondent may make a claim against TSLAC for breach of contract and the agency may assert a counterclaim against the Respondent as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Respondent must provide written notice to TSLAC of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Respondent seeks as damages; and (3) the legal theory of recovery.
 - b. The chief administrative officer, or if designated in the contract, another officer of the agency, shall examine the claim and any counterclaim and negotiate with the Respondent in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, §2260.052.
 - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this contract as to the parts of the claim that are not resolved.
 - d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the agency, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of contract by the agency if the parties are unable to resolve their disputes as described in this section.
 - e. Nothing in the contract shall be construed as a waiver of the state's or the agency's sovereign immunity. This contract 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 contract 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

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privileges, rights, defenses, or immunities available to the agency by entering into this contract or by its conduct, or by the conduct of any representative of TSLAC, prior to or subsequent to entering into this contract.

- f. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Respondent: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
- 22. Sovereign Immunity.** Nothing in this agreement shall be construed as a waiver of TSLAC's or 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.
- 23. No Other Benefits.** Vendor shall have no exclusive rights or benefits other than those set forth herein.
- 24. 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 the contract 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.
- 25. 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.
- 26. 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, including without limitation providing TSLAC all TSLAC Data, in a form requested by TSLAC, within 20 days of contract expiration or termination, without any additional cost to TSLAC. 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.

ARTICLE 3. INDEMNIFICATION

- 27. Indemnification (General).** VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THE AGENCY, AND/OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND AGAINST ALL LIABILITY, CLAIMS, ACTIONS, SUITS, DEMANDS, OR PROCEEDINGS, AND ALL RELATED COSTS, ATTORNEY'S FEES, AND EXPENSES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF VENDOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDER ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS 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 TEXAS ATTORNEY GENERAL. VENDOR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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.

- 28. Indemnification (Infringement).** VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TSLAC, THE STATE OF TEXAS, ALL TEXSHARE AND/OR TEXQUEST PARTICIPATING LIBRARIES AND INSTITUTIONS, ALL AUTHORIZED PERSONNEL, AUTHORIZED ACCOUNT HOLDERS, ALL CONCURRENT USERS AND AUTHORIZED USERS, AND/OR THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING

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INFRINGEMENT OF PATENTS, TRADEMARKS AND SERVICE MARKS, COPYRIGHTS, TRADE SECRETS AND/OR OTHER PROPRIETARY RIGHTS, AND ANY OTHER INTELLECTUAL PROPERTY OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS IN CONNECTION WITH THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT, ARISING FROM TSLAC'S OR VENDOR'S AUTHORIZED USE OF OR ACQUISITION OF ANY SERVICES, CONFIGURED SERVICE, DATABASE 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, AND/OR ASSOCIATED WITH OR ARISING FROM ANY CONTRACT PERFORMANCE, DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, VENDOR MATERIALS OR OTHER SERVICE, PRODUCTS OR ITEMS PROVIDED HEREUNDER. 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. 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.

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; (OR IN THE CASE OF AN INJUNCTION AGAINST TSLAC, SHALL) AT VENDOR'S SOLE OPTION AND EXPENSE; (1) IMMEDIATELY PROCURE FOR TSLAC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, (2) IMMEDIATELY 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-INFRINGEMENT; OR (3) IMMEDIATELY PROVIDE TO TSLAC A PRO-RATA REFUND OF THE FIXED PRICE PAID FOR THE AFFECTED PORTION OF THE PRODUCT OR SERVICE.

- 29. Waiver of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.

ARTICLE 4. CONTRACT PERFORMANCE

- 30. Observance of TSLAC Rules and Policies.** Vendor agrees that at all times its employees will observe and comply with all TSLAC rules and policies when accessing the TSLAC facilities, including, but not limited to, parking and security regulations.
- 31. 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.
 - All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC) or National Electrical Manufacturers Association (NEMA).
 - 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 Texas Government Code, §2155.067. If bidding on other than references, bid should provide 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 contractor 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 contractor, on request, at contractor's expense. Each sample should be marked with contractor's name and address, and requisition number. Do not enclose in or attach bid to a sample.
- 32. 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

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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.

33. 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.

34. 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.

35. Disaster Recovery Plan. In accordance with 13 Texas Administrative Code, §6.94(a)(9), TSLAC will provide to Agency the descriptions of its business continuity and disaster recovery plans.

36. 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.

37. 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.

38. Independent Contractor. Vendor acknowledges and agrees that it is furnishing products or services in the capacity of an independent contractor and that Vendor and its personnel are not employees of the TSLAC or the State of Texas. Vendor has the sole obligation to supervise, manage, and direct the performance of its obligations under the contract resulting from this Solicitation. Neither Vendor nor TSLAC is an agent of the other and neither may make any commitments on the other party's behalf.

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. Vendor shall have no claim against TSLAC for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits or employee benefits of any kind. Vendor and Vendor's employees, representatives, agents, subcontractors, suppliers, third-party service providers, and similar entities shall not be employees of TSLAC. The contract shall not create any joint venture, partnership, agency, or employment relationship between Vendor and TSLAC.

39. 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.

40. 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. Any attempted assignment in violation of this provision is void and without effect.

41. Accessibility. Vendor represents and warrants that any electronic and information resources products developed, procured, maintained, or used by TSLAC directly or used by the Vendor under any contract resulting from this Solicitation which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the

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furnishing of a product complies with the applicable State of Texas Accessibility requirements for Electronic and Information Resources specified in the Department of Information Resources' rules at Texas Administrative Code, Title 1, Part 10, Chapter 213. In addition, TSLAC is required to follow Texas Administrative Code, Title 1, Part 10, Chapter 206, related to accessibility of State Web Sites, and the accessibility standards in Section 508 of the Federal Rehabilitation Act of 1973.

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/>.

- 42. 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 agency in writing of any such damage within one calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.
- 43. Performance Monitoring.** The TSLAC will monitor the performance of the contract issued under this Solicitation. All services and goods under the contract shall be performed at acceptable service levels and in a manner consistent with acceptable industry standards, custom, and practice. Vendor. The TSLAC will provide a sample of the Vendor Performance Report upon request. More information can be found at <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.
- 44. Corrective Action Plan.** If TSLAC discovers issues of unsatisfactory performance, which includes but not limited to: Configured Services, access to resources, and reporting data, as defined in this contract, TSLAC will request a "Corrective Action Plan" from the Vendor. Upon request from the TSLAC, the Vendor must deliver a Corrective Action Plan within ten (10) business days that will then be reviewed for acceptance by the TSLAC Contract Manager. The Corrective Action Plan will address and correct all unsatisfactory performance within thirty (30) days of receipt. Failure to correct the unsatisfactory performance within the allotted times will be grounds for termination.
- 45. 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.
- 46. Prompt Payment.** Payment shall be made in compliance with Texas Prompt Payment Act, Texas Government Code, Chapter 2251. Chapter 2251 of the Texas Government Code shall govern the remittance and remedies for late payment and non-payment. 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.
- 47. 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.

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, Texas Tax Code, Chapter 151. Tax Exemption Certificates are available upon request. Vendor shall not include such taxes on any invoice submitted to TSLAC.

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- 48. 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 titled “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.
- 49. Refund.** Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by the agency which are not expressly authorized under the contract.
- 50. Most Favored Customer.** Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Vendor to TSLAC herein are at least as favorable as the benefits, pricing and hourly rates granted by Vendor to any previous client of Vendor for services and/or products similar to those provided hereunder. If Vendor enters into any subsequent agreement with any other client during the term of this contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this contract, Vendor shall notify TSLAC promptly of the existence of such more favorable benefits, pricing and/or hourly rates and TSLAC shall have the right to receive the more favorable contractual terms immediately. If requested in writing by TSLAC, Vendor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
- 51. Software Subscription Services.**
- a. Configuration and Installation. As part of the Fixed Price, software subscription services, underlying software, database resources and/or database interfaces shall be configured by Vendor for TSLAC’s use and Authorized Users’ use in accordance with the Specifications, as defined and detailed in the TSLAC Solicitation and/or Vendor’s Response (“Configured Service(s”).
 - b. “Authorized Users” shall mean any patron, employee, staff, representatives, agents and/or users of a TexShare and/or TexQuest Databases Program participating institution (as listed in the TSLAC Solicitation and specified within the contract; and users as supplemented at TSLAC’s discretion), all as follows in the descriptions and lists of users and uses throughout subsections (b)(i), (b)(ii), (b)(iii) and (b)(iv) below:
 - i. TexShare Program Users
 - (1) Public Libraries: library staff and patrons in addition to walk-in visitors to a library at any authorized site;
 - (2) Institutions of higher education and other academic institutions: students, faculty, visiting scholars, and staff in addition to walk-in visitors to a library at any authorized site;
 - (3) Libraries of clinical medicine as defined in Chapter 13 TAC 8.1: current employees of the institution which is served by the library, patrons of the library, and walk-in visitors to a library at any authorized site;
 - (4) Authorized users of TexShare member Texas public/K12 combination libraries: registered patrons, students, faculty, staff, and families of students in addition to walk-in users while on site;
 - ii. TexQuest Program Users
 - (1) Texas K-12 public school libraries and their users (students, faculty, staff);
 - (2) Texas K-12 public school districts and campus personnel in offices and classrooms;
 - (3) Public/School Library combination facilities and their users;
 - (4) Texas Education Service Centers and their personnel;
 - (5) Parents and families of Texas K-12 public school students;
 - (6) Remote users of Texas K-12 public school libraries and district/campus personnel (students, faculty, staff);
 - (7) Authorized remote users of public/school library combination facilities;

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- (8) Authorized remote users of Texas Education Service Centers;
- (9) Remote use by parents and families of Texas K-12 public school students;
- iii. Applicable to both TexShare and TexQuest programs:
 - (1) Texas State Library and Archives Commission: agency employees, independent contractors or other temporary workers while performing duties within the scope of their employment or assignment, walk-in visitors to a library at any authorized site, and patrons of library and the Texas Talking Book Program;
 - (2) Texas State Governmental Agencies: agency employees, staff, representatives, agents, independent contractors or other temporary workers and assignees while performing duties within the scope of their employment or assignment in addition to walk-in visitors to a library at any authorized site;
 - (3) With regard to other types of organizations: employees, independent contractors and other temporary workers while performing duties within the scope of their employment or assignment and any other persons affiliated with TSLAC or a participating institution, and/or otherwise permitted to use its/their facilities and authorized to access TexShare and/or TexQuest resources and/or Services.
- iv. Interlibrary Loan: Unless specifically prohibited by the publisher as shown in the copyright statement for any individual item, TSLAC and participating libraries may enable library users access to materials not available at their local library and fulfill those requests with materials available from other libraries, a practice commonly known as Interlibrary Loan. Those requests result in creating additional Authorized Users of the individual requesters. TSLAC and participating libraries agree to fulfill such requests in accordance with Sections 107 and 108 of the U.S. Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means and those requesting end users become part of the Authorized Users. This clause applies to both TexShare and TexQuest agreements.
- c. Inspection, Testing and Acceptance. All Configured Services provided by Vendor to TSLAC shall be subject to inspection and testing by TSLAC. If applicable, authorized TSLAC personnel shall have access to Vendor's servers for the purpose of testing and evaluating the Configured Service. If the Configured Services are to be provided in components as separate deliverables ("Deliverables") as stated in and pursuant to the Specifications, each Deliverable shall be provided in the form specified in the Specifications on the dates set forth in a schedule as set forth in the contract ("Schedule"). Vendor shall perform testing on each Deliverable and/or the Configured Services to verify conformance with the Specifications and shall provide to TSLAC written results of such testing. All costs shall be borne by the Vendor in the event Deliverables tested fail to meet or exceed all conditions and requirements of the Specifications.
- d. User Acceptance Testing. TSLAC personnel shall perform user acceptance testing ("UAT") after completion of Vendor testing on each Deliverable, or the Configured Services as applicable. Upon TSLAC's determination, in its discretion, that each Deliverable or Configured Services have passed all installation, configuration and testing requirements as set forth in the Specifications and/or Statement of Work, TSLAC shall provide to Vendor a notice of acceptance ("Acceptance") for that particular Deliverable, or for the Configured Service in total, as applicable.
- e. Security Testing. TSLAC may elect to conduct security tests on the Deliverables and/or Configured Services on dates set forth in the Schedule, and/or added at the discretion of TSLAC. All Deliverables shall be in conformance with all applicable laws and regulations including without limitation, Texas Administrative Code, Title 1, Part 10, Chapter 202 Subchapter B (information security standards), Chapter 206 (agency website) and Chapter 213 (accessibility standards). Vendor shall maintain appropriate technical measures during the term to backup all Deliverables and TSLAC Data and to protect such from unauthorized or unlawful access. In the event any Deliverable or the Configured Service fails any Security Test, Vendor shall hold TSLAC harmless from any cost or delay in generating a corrected Deliverable and/or a fully Configured Service that can successfully pass such Security Test.
- f. Delay in Installation. The Parties agree that if Vendor deviates from the Schedule for the delivery or testing of any of the Deliverables and/or Configured Services ("Vendor Delay"), and such Vendor Delays accumulate to a total of thirty (30) days ("Thirty"), then Vendor shall credit against the Fixed Price each thirty (30) day period that the libraries or Authorized Users within the program have been without access to the Configured Service. Such credit shall be refunded to TSLAC

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promptly upon request from TSLAC. Latent defects in the Configured Service may result in revocation of award and termination of this contract.

- 52. Warranties.** In addition to any warranty obligations in the Specifications and/or Vendor Response, Vendor hereby represents and warrants:
- a. that Vendor shall perform the project and provide any Configured Service and/or Deliverables with the professional skill and care ordinarily provided by comparable professionals in the same industry and all such Configured Services, Deliverables and contract performance shall be compliant with the General Data Protection Regulation of the European Union, to the extent applicable;
 - b. that each of the Vendor's employees and agents assigned to perform Vendor's obligations under this contract shall have the skill and training to perform the Project in accordance with the foregoing standard of care, and that the Configured Service and all Deliverables shall be produced in a professional and workmanlike manner;
 - c. that the Configured Service and all Deliverables provided hereunder shall comply with the Accessibility Standards set out in Texas Administrative Code, and shall conform to and shall be fit for their particular purpose as set forth in this contract, and in the Specifications;
 - d. that all contract performance, all usage and other reports, Configured Service, all of its content, and Deliverables provided under the contract are, and will be, free of all liens, claims and other restrictions, and that TSLAC's use and possession of such Deliverables will not violate the terms or conditions of any license, confidentiality agreement, non-competition agreement, employment agreement or any other agreement to which Vendor, its agents, officers, employees or subcontractors may be subject;
 - e. that Vendor has the right to provide and configure any Configured Service and/or other Deliverables to TSLAC as contemplated under this contract, free from infringement claims, free from violations of unfair competition law, and free from violations of any other contract or law; and
 - f. that information and content accessed through any Configured Service and any Deliverable has been sufficiently vetted by Vendor and all such information and content shall be accurate, complete and reliable.

These representations and warranties are essential and material to TSLAC's willingness to enter into this contract.

ARTICLE 5. CERTIFICATIONS, REPRESENTATIONS, AND AFFIRMATIONS

- 53. Lobbying Prohibition.** 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 are not prohibited by Texas Government Code, §§556.005 or 556.0055.
- 54. Antitrust Affirmation.** Vendor represents and warrants that, in accordance with Texas Government Code, §2155.005, neither the Vendor nor the firm, company, corporation, partnership, or institution represented by the Vendor, or anyone acting for such firm, company, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this response to any competitor or any other person engaged in the same line of business as Vendor. Respondent assigns to the TSLAC all of Respondent's rights, title, and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States of overcharges associated with this solicitation or any resulting contract.
- 55. No Conflicts of Interest.** Vendor represents and warrants that the provision of goods and services or other performance under this contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. If circumstances change during the course of the contract, Vendor will promptly notify TSLAC.
- 56. HUBs.** Vendor represents and warrants that it shall comply with the Historically Underutilized Business requirements of this contract.
- 57. Debt and Delinquencies Affirmation.** Vendor agrees that any payments due under this contract will be applied towards any debt or delinquency, including but not limited to delinquent taxes, delinquent student loan debt, and delinquent child support.
- 58. Executive Head of a State Agency Affirmation.** In accordance with Texas Government Code, §669.003, relating to contracting with the executive head of a state agency, Vendor certifies that it is not (1) the executive head of the agency, (2) a person who

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at any time during the four years before the date of the contract was the executive head of the agency, or (3) a person who employs a current or former executive head of the Agency.

59. **Suspension and Debarment.** Vendor certifies that it and its principals are not suspended from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.
60. **Excluded Parties.** Vendor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, published by the United States Department of the Treasury, Office of Foreign Assets Control.
61. **Foreign Terrorist Organizations.** Vendor represents and warrants that it is not engaged in business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code, §2252.152.
62. **Entities that Boycott Israel.** Vendor represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Texas Government Code, §2271.002 does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Vendor shall promptly notify the agency.
63. **Excess Obligations Prohibited.** Respondent understands that all obligations of TSLAC under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by TSLAC. In the event of a termination under this section, TSLAC will not be liable to Vendor for any damages that are caused by or associated with such termination and TSLAC will not be required to give prior notice.
64. **Financial Participation Prohibited Affirmation.** Pursuant to Texas Government Code, §2155.004(a), the Vendor certifies that neither Vendor nor any person or entity represented by Vendor has received compensation from TSLAC to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Texas Government Code, §2155.004(b), 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 the contract may be terminated, and payment withheld if this certification is inaccurate.
65. **Certification Regarding Non-Payment of Child Support.** Under Texas Family Code, §231.006(d), the Vendor certifies that the individual or business entity named in this Response is not ineligible to receive the specified grant or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any respondent 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 response. This information must be provided prior to award.
66. **Prior Disaster Relief Contract Violation.** Texas Government Code, §2155.006 and §2261.053 prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Katrina, Hurricane Rita, or any other disaster as defined by Texas Government Code, §418.004, occurring after September 24, 2005. Under Texas Government Code, §2155.006 and §2261.053, 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.
67. **E-Verify.** The Vendor certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
 - a. All persons employed by Respondent to perform duties within Texas; and
 - b. All persons (including subcontractors) assigned by the Vendor to perform work pursuant to the contract, within the United States of America.

If it has been determined that Vendor has violated the certification made in this section, then (1) Vendor will be in breach of contract, (2) TSLAC will have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TSLAC under the contract, Vendor shall be responsible for all costs incurred by TSLAC to obtain substitute services to replace the terminated contract.

68. **Human Trafficking Prohibition.** Under Texas Government Code, §2155.0061, 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.

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- 69. Use of State Property.** Vendor is prohibited from using State Property for any purpose other than performing services under the contract. "State Property" includes, but is not limited to, TSLAC's office space, identification badges, TSLAC information technology equipment and networks, and any other resources of TSLAC. Use of State Property for a purpose not authorized by contract shall constitute a breach of contract and may result in termination of the contract and the pursuit of other remedies available to TSLAC under contract, at law, or in equity.
- 70. Unfair Business Practices.** Vendor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit, and that Vendor has not been found to be liable for 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 allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable of such practices in such proceedings.
- 71. No Felony Criminal Convictions.** The Vendor represents and warrants that neither Vendor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representatives of such subcontractors, have 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 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.
- 72. Dealings with Public Servants Affirmation.** 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.
- 73. Equal Employment Opportunity.** Vendor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
- 74. Americans with Disabilities Act.** Vendor represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
- 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. False Statements.** Vendor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
- 78. Disclosure of Interested Parties.** Vendor represents and warrants that if selected for award of a contract as a result of the Solicitation, Vendor will submit to TSLAC a Certificate of Interested Parties prior to contract execution in accordance with Texas Government Code, §2252.908.
- 79. Restricted Employment for Certain State Personnel.** Pursuant to Texas Government Code, §572.069, Vendor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TSLAC involving Vendor within two years after the date that the contract is signed or the procurement is terminated or withdrawn.
- 80. 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.
- 81. COVID-19 Vaccine Passport Prohibition.** Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or

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to receive service from the Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.

- 82. Firearm Entities and Trade Associations Discrimination.** If Respondent is required to make a verification pursuant to §2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.
- 83. Cybersecurity Training.** If Respondent has access to any state computer system of database, Respondent shall complete cybersecurity training and verify completion of the training to TSLAC pursuant to and in accordance with Texas Government Code, §2054.5192.
- 84. Critical Infrastructure Affirmation.** Pursuant to Texas Government Code, § 2274.0102, Respondent certifies that neither it nor its parent company nor any affiliate of Respondent or its parent company, is:
- (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russian, or any other country designated by the Governor under Texas Government Code §2274.0103, or
 - (2) headquartered in any of those countries.
- 85. Disclosure of Prior State Employment.** In accordance with Texas Government Code, §2254.033, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by TSLAC or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with TSLAC or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- 86. Energy Company Boycotts.** If Respondent is required to make a verification pursuant to §2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.
- 87. Former Agency Employees.** In accordance with Texas Government Code, §2252.901, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of TSLAC during the 12-month period immediately prior to the date of execution of the contract.
- 88. No Quantity Guarantees.** TSLAC makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.
- 89. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Texas Government Code § 2155.003. The rule outlines the ethical standards required of public purchaser, employees, and contractors who interact with public purchasers in the conduct of state business. Specifically, a TSLAC employee may not have an interest in, or in any manner be connected with a contract or Purchase Order 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.
- 90. 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 <https://comptroller.texas.gov/about/policies/ethics.php> as such Policy currently reads and as it as amended throughout the term of this contract.

ARTICLE 6. PUBLIC INFORMATION AND RECORDS

- 91. 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, Chapter 552 (the "Public Information Act"). In accordance with Texas Government Code, §2252.907, Vendor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

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Notwithstanding any provisions of this contract to the contrary, Vendor understands that TSLAC will comply with the Public Information Act as interpreted by judicial opinions and opinions of the State's Attorney General. 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. Making a blanket claim that the entire Proposal is confidential is not acceptable. TSLAC will consider all Proposals and parts of Proposals that are not marked as confidential as public information after the contract is awarded. The successful Proposal may be considered public information even though parts are marked confidential. In the event TSLAC receives a request for portions of a Proposal marked as confidential, TSLAC will forward the request to the Attorney General for a ruling on whether TSLAC may withhold such information from disclosure under the Public Information Act. TSLAC will notify the Vendor whose Proposal is the subject of the request when the information is forwarded to the Attorney General. TSLAC assumes no obligation for asserting legal arguments on behalf of a Vendor.

Within three 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.

- 92. Confidentiality.** Vendor agrees to maintain the confidentiality of information and data received from TSLAC, participating libraries, participating institutions, Authorized Users and/or the State of Texas during the performance of this contract, including without limitation, information that discloses confidential personal information (collectively "TSLAC Data"), which shall be stored and processed on a server within the Continental United States at all times during the term of this contract. 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.
- 93. Records Retention.** Vendor shall maintain and retain all records relating to the performance of the contract, including supporting fiscal and any other documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements, including 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 years after the expiration or termination of the contract or until all audit, claim, and litigation matters are resolved, whichever is later.
- 94. Agency's Right to Audit.** Vendor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Vendor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas. Vendor shall maintain all such documents and other records related to this contract for a period of seven years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later.

ARTICLE 7. ADDITIONAL STATE AND FEDERAL LAWS, RULES, AND REGULATIONS

- 95. Drug Free Workplace.** Vendor must comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C §701 et seq.) and maintain a drug-free work environment.
- 96. Buy Texas.** In accordance with Texas Government Code, §2155.4441, Vendor agrees that during the performance of a contract for services it will purchase products and materials produced in Texas when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside this state.
- 97. Texas Bidder.** Vendor represents and warrants that if a Texas address is shown as the address of Vendor, then Vendor is claiming that it qualifies as a Resident Bidder as defined by Texas Government Code § 2155.444.
- 98. Taxes.** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. TSLAC will furnish Tax Exemption Certificates on request. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including any federal, State, or local income, sales, or excise taxes of Vendor or its employees. TSLAC shall not be liable for any taxes resulting from the contract.
- 99. Immigration.** Vendor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) and all subsequent immigration laws and amendments.
- 100. Fraud, Waste, or Abuse.** In accordance with Texas Government Code, Chapter 321, the State Auditor's Office is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, or use of state funds. If there is reasonable cause to believe that fraud, waste, or abuse has occurred at TSLAC, it can be reported to the State

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Auditor's Office. Vendor represents and warrants that it has read and understood and must comply with TSLAC's Fraud, Waste, and Abuse Policy.

- 101. State Auditor's Right to Audit.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the 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. Vendor further agrees to cooperate fully with the state auditor 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.
- 102. 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.
- a. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings, or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to TSLAC's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to TSLAC's consideration of the Response. In addition, Respondent represents and warrants that it shall notify TSLAC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TSLAC shall constitute breach of contract and may result in immediate termination of the contract.
- 103. Computer Equipment Recycling Program.** If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
- 104. Infringements.**
- a. Respondent 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 RESPONDENT PURSUANT TO THIS CONTRACT. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
 - b. Respondent 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 Respondent's written approval, (iii) any modifications made to the product by the Respondent 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 Respondent becomes aware of an actual or potential claim, or TSLAC provides the Respondent with notice of an actual or potential claim, Respondent may (or in the case of an injunction against TSLAC, shall) at Respondent's sole option and expense; (i) procure for the Respondent the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TSLAC's use in non-infringing.
- 105. 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

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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.

106. Property Rights. For purposes of this contract, the term "Work Product" is defined as reports provided to TSLAC by Vendor in fulfillment of requirements of this contract, including but not limited to reports on usage, such as monthly data files adhering to COUNTER reporting requirements and any charts or visualizations based upon such data files, and training reports, including both attendance and evaluation reports. TSLAC and Vendor expressly intend and agree that this contract is and shall be a contract for services, and each considers the Work Product to be a work made for hire. All Work Product performed, generated, created and/or provided to TSLAC pursuant to this contract is made the sole and exclusive property of TSLAC. All right, title and interest in and to said Work Product shall vest in TSLAC upon creation and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this contract. To the extent that title to any such Work Product may not, by operation of law, vest in TSLAC, or such Work Product may not be considered a work made for hire, Vendor hereby irrevocably sells, assigns and transfers to TSLAC, its successors and assigns, all rights, title and interest therein, including without limitation all intellectual property rights embedded therein or associated therewith, without any further consideration or action. Vendor and Vendor's employees shall have no rights of ownership of the Work Product or any other property of TSLAC. In addition to compliance with testing and acceptance provisions of the contract, Vendor must deliver to TSLAC, no later than forty-eight (48) hours after receipt of TSLAC's written request for same, all completed or partially completed Work Product, and all versions and portions thereof. Vendor's failure to timely deliver such Work Product shall 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 Product 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 Product within forty-eight (48) hours after receipt of written request for same, TSLAC may create a Corrective Action Plan as specified in Clause 4.15, TSLAC may withhold all authorization for payment of future renewals or invoices, and may, because of the difficulty of calculating actual damages, 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. These liquidated damages are not intended to be a penalty and are in addition to other remedies and rights that are applicable or available to TSLAC for such failure or delay under this contract. Other work papers, specifications, documentation, interface designs, and research developed, produced or generated in connection with, or as a result of, the services provided under this contract ("Other Materials") shall NOT be considered Work Product. Vendor hereby grants to TSLAC, and TSLAC accepts, a perpetual, non-exclusive, irrevocable, worldwide, unlimited, fully paid, royalty-free right and license to use, reproduce, copy, modify, create derivative works of, publicly display, and otherwise exploit such Other Materials, and to allow Authorized Users to do so, as needed for TSLAC contract management and externally for communication with all TexShare and/or TexQuest participating libraries and participating institutions.

107. License to Vendor Materials. "Vendor Materials" does not include "Work Product" as defined in Clause 7.11 and consists of all pre-existing or third-party materials, including pre-existing or third-party equipment, software, software platforms, software development tools, databases, database content, algorithms, data, designs, specifications, or information developed independently of the services hereunder or that was/were pre-existing before the execution of this contract, and any pre-existing Vendor or third-party know-how, methodologies, innovations, trade secrets or processes used by Vendor to provide services to TSLAC and any copyrights, trademarks, patents, or any other proprietary rights therein. Vendor hereby grants to TSLAC, TexShare and/or TexQuest participating libraries and institutions (and Authorized Personnel, Authorized Account Holders, Concurrent Users and all other Authorized Users) and TSLAC, and TexShare and/or TexQuest participating libraries and institutions and Authorized Users accept, a non-exclusive, non-transferable, irrevocable, worldwide, fully paid, royalty-free, right and license for the term of this contract, and any renewals thereof, to access, use, reproduce, download content from, store, link to, cache, copy, all Vendor Materials, and all other products and services provided by Vendor, and to allow TSLAC's third party contractors to exercise the foregoing rights for TSLAC's business purposes, and/or for other uses permitted under the U.S. Copyright Act, including without limitation Section 107 and Section 108 (collectively "License"). As part of this License, TSLAC has the right and license to create application interfaces to the Configured Service and load its content and data into the Configured Services

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provided by Vendor on the server of Vendor or its third-party subcontractors. Vendor represents, warrants, and agrees that it has the right to use, utilize, grant access to, or provide the Vendor Materials, Configured Service, Deliverables, databases and content in the provision of services to TSLAC under this contract. Vendor represents, warrants, and agrees that neither the Vendor Materials, nor the services, Configured Services, databases and/or content therein, infringes the intellectual property rights of any third-party and shall defend and hold TSLAC harmless against any such claims (including but not limited to the payment of all costs and expenses incurred by TSLAC in relation to any such third-party claims). In such case, such claim of infringement shall be considered a material breach of these TSLAC Standard Terms and Conditions for TexShare and/or TexQuest Agreements and entitle TSLAC to all available remedies. Alternatively, in the sole discretion of TSLAC, upon written receipt of written request, Vendor shall replace or change all or any part of the infringing items in order to avoid any such continued infringement, subject to the other clauses herein.

108. Media Releases. Respondent shall not use the agency's name, logo, or other likeness in any press release, marketing material, or other announcement without TSLAC's prior written approval. TSLAC does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response, or the services to which they relate without TSLAC's prior written consent, and then only in accordance with explicit written instruction from TSLAC.

109. TSLAC Trademark License Grant to Vendor. Vendor shall not use the name of the State of Texas or TSLAC, nor any TSLAC trademark or logo ("Marks"), in any advertisement, promotion, or otherwise for any without the express prior written consent of TSLAC. If TSLAC, in its sole discretion, determines that Vendor needs to use TSLAC's Marks, Vendor's use of TSLAC's Marks shall be for the term of this contract, pursuant to a limited, non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce the Marks on published materials and announcements that have been approved in advance in writing by TSLAC and that meet TSLAC's quality standards expressly conditional upon, and subject to, the following:

- a. Vendor's performance of its obligations in compliance with all provisions of the contract, and in accordance with the performance and quality standards herein;
- b. Vendor's license to use the Marks cannot be sublicensed, and Vendor shall make no attempt to sublicense any rights under this contract;
- c. Vendor's use of the Marks shall be exclusively in conformance with, and according to the manner and form of TSLAC's guidelines on trademark usage, as communicated by TSLAC to Vendor;
- d. Vendor shall comply with any marking requests TSLAC may make in relation to the Marks, including without limitation to use the phrase "Registered Trademark", the symbol "™", the registered trademark symbol "®" and/or any equivalent thereof; and
- e. Vendor is, at all times during the term hereof, compliant with all applicable Vendor responsibilities and State and Federal regulations and requirements, and provided that Vendor's certifications and warranties as set forth herein remain true.

Vendor hereby acknowledges and agrees that the Marks remain the exclusive property of TSLAC, that all right, title and interest in and to the Marks is exclusively held by TSLAC, and all goodwill associated with such Marks inures solely to TSLAC. Vendor shall take no action to damage the goodwill associated with the Marks or the goodwill associated with TSLAC. Vendor shall not contest, attack, dispute, challenge, attempt to cancel, oppose or seek to challenge in any manner or in any forum TSLAC's right, title, and interest in and to the Marks and/or the validity of the Marks or these licensing terms. Vendor shall not seek to register the Marks as a domain name or part of any domain name and shall not combine the Marks with other trademarks without TSLAC's advance written approval. Vendor acknowledges and agrees that it shall not acquire any rights to the Marks, other than as specifically set forth herein, and shall make no attempt to assert any ownership rights in any of the Marks. Upon expiration or termination of this contract for any reason, all rights granted to Vendor with respect to the Marks shall cease, and Vendor shall immediately discontinue all use of the Marks.

110. Trademark License Grant to TSLAC from Vendor. Vendor hereby grants to TSLAC and all participating libraries a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce and use Vendor's trademarks and logos on TSLAC's TexShare and/or TexQuest websites, on published materials and announcements related to the TexShare and TexQuest related services hereunder and in connection with the performance of this contract and TSLAC's use of the Configured Services and Vendor Materials, and in connection with projects and publications associated therewith, in each case without any restrictions and without accounting to Vendor; and (b) to sublicense any or all such rights to third parties.

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111. 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.

112. Insurance & Other Security. Vendor represents and warrants that it will, upon five 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.

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113. Workers' Compensation Insurance Coverage.

a. Definitions:

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

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

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

- b. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- c. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- d. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- e. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - i. 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
 - ii. 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:
 - i. 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;
 - ii. 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;

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- iii. 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;
 - iv. obtain from each other person with whom it contracts, and provide to the contractor:
 - (1) a certificate of coverage, prior to the other person beginning work on the project; and
 - (2) 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;
 - v. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - vi. 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
 - vii. contractually require each person with whom it contracts, to perform as required by paragraphs (i) - (vii), 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.

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.

114. 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.

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115. 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.

If Vendor is unable to provide notice within twenty-hour (24) hours, Vendor shall provide prompt notice, without delay, depending on the circumstances, along with a written statement describing the reason(s) Vendor was unable to provide notice within twenty-four hours. 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 30 days of TSLAC's written request, then TSLAC shall have the right to collect such costs.

116. 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:

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- i. Date and time of sanitization/destruction,
- ii. Description of the item(s) and serial number(s) if applicable,
- iii. Inventory number(s), and
- iv. 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:
 - i. Backup media containing TSLAC data shall be encrypted at all times.
 - ii. 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.

117. ENTIRE AGREEMENT. The TSLAC contract, any Purchase Order, these TSLAC Standard Terms and Conditions for TexShare and/or TexQuest Agreements, all attachments thereto which are hereby incorporated by reference herein, the specified TSLAC Solicitation and its exhibits, Vendor's Response to such Solicitation, Vendor's Best and Final Offer, if any, and any exhibits or attachments thereto, and any Vendor-supplied license or subscription agreement, all collectively constitute the entire agreement between TSLAC and Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the above documents, shall be binding or valid. Each person whose signature appears hereon represents, warrants and guarantees that he or she has been duly authorized and has full authority to execute this contract on behalf of the party on whose behalf this contract is executed.