

Texas State Library and Archives Commission
Terms and Conditions

All of the following terms and conditions are hereby made part of this contract with the Texas State Library and Archives Commission (TSLAC) by reference. Signing a Purchase Order with a false statement is a material breach of contract and shall void the Purchase Order and the Vendor shall be removed from all contact lists. Please note that a Purchase Order is a legally binding document and therefore is considered a Contract by TSLAC.

Contracts awarded by TSLAC shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in the courts of competent jurisdiction in Austin, Travis County, Texas. Nothing in this Contract or its Appendices shall be construed to waive the State's sovereign immunity. The federal or state courts of the United States located in Texas shall have jurisdiction to hear any dispute under this contract, and service may be made upon TSLAC by first class mail to its address as set forth herein.

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

1. **Notices.** Unless specifically noted elsewhere in this Purchase Order, any written notices required under this Purchase Order will be either hand delivered to Vendor's office address specified on the signature page of this Purchase Order or to TSLAC's Purchasing Department, 1201 Brazos Street, Room 309, Austin, Texas 78701, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. Either party may change the designated notice address by written notification to the other party.
2. **Debarred Vendors List.** Vendor represents and warrants that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local government entity and that Vendor is in compliance with the State statues and rules relating to procurement and that Vendor or its subcontractors are not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
3. **Duty to Disclose.** If circumstances change or additional information is obtained regarding any of the representations and warranties, or any other disclosure statements, provided by Vendor subsequent to the date of this Purchase Order, Vendor's duty to disclose continues through the term of this Purchase Order.
4. **Sales and Use Tax.** The TSLAC, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Vendor may be able to claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. Excise Tax Exemption Certificates are available upon request.
5. **Observance of TSLAC Rules and Regulations.** Vendor agrees that at all times its employees will observe and comply with all regulations when accessing the TSLAC facilities, including, but not limited to, parking and security regulations.
6. **Non-Appropriation of Funds.** The State funds are contingent on the availability of lawful appropriates by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this Purchase Order; the order will terminated as of the date that the funding expires, and the State will have no further obligation to make any payments.
7. **No Other Benefits.** Vendor shall have no exclusive rights or benefits other than those set forth herein.
8. **Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying.** Vendor represents and warrants that TSLAC's payment to Vendor and Vendor's receipt of appropriated or other funds under this or any resulting Purchase Order is prohibited from use to pay or employ a lobbyist. Refer to Texas Government Code §§ 556.005 or 556.008. *[Updated 08/10/2016]*
9. **Public Information Act.** Information, documentation, and other material in connection with this Solicitation or Purchase Order may be subject to public disclosure pursuant to Texas Government Code § 552.021 (the "Public Information Act"). Any part of a submitted Response that is of a confidential or proprietary nature must be clearly and prominently marked on each page as such by the Vendor.
10. **Confidentiality and Open Records.** Vendor shall take all necessary and appropriate action to safeguard all sensitive data and other confidential information from unauthorized disclosure. Whenever the transmission of confidential information is necessary, Vendor shall transmit the information electronically, and such electronic transmission shall be secure and the data encrypted, at a minimum, using 128 AES encryption to protect it from unauthorized disclosure.

Notwithstanding any provisions of this Purchase Order to the contrary, Vendor understands that TSLAC will comply with the Texas Public Information Act as interpreted by judicial opinions and opinions of the State's Attorney General. Within three (3) days of receipt, Vendor shall refer to TSLAC any third party requests received directly by Vendor for information to which Vendor has access as a result of or in the course of performance under this Purchase Order. Vendor is required to make any information created or exchanged with the state pursuant to this Purchase Order, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

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

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- 12. No Conflicts.** Vendor represents and warrants that Vendor has no actual or potential conflicts of interest in providing services to TSLAC under this Purchase Order and that Vendor's provision of services under this Purchase Order would not reasonably create an appearance of impropriety. Without limitation on the foregoing, other disclosures required under this Purchase Order, and other prohibited work provisions of this Purchase Order, Vendor shall, throughout the term of this Purchase Order, comply with and provide all of the following to TSLAC, upon request: a copy of Vendor's most recent audit, if any, together with a full disclosure of any and all internal control weaknesses, if any; disclosure and detailed description of Vendor's most recent peer review, if any, stating the date of the review and irregularities, if any, and concluding comments; disclosure and detailed description of any emerging irregularities, if any, that could materially affect TSLAC's interests; and disclosure and detailed description of how Vendor determines whether Vendor's outside auditors provide consulting or other services to Vendor or Vendor's clients or to TSLAC.
- 13. Specifications.**
The State will not be bound by any oral statement or representation contrary to the written specifications.
- Unless otherwise specified, items shall be new and unused and of current production.
 - All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or 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.
- 14. Delivery.**
- a) Delivery shall be made during normal business hours (7:30am-4:30pm, CT), unless prior approval or specific instructions have been provided from the TSLAC Purchasing Department.
 - b) No substitutions are permitted without written approval of the TSLAC's Purchasing Department.
 - c) If delay is foreseen, Vendor shall give written notice to the TSLAC. Vendor must keep the TSLAC advised at all times of status of order or completion of services. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TSLAC to purchase supplies or services elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor.
- 15. Permits, Licenses.** Vendor represents and warrants that it has obtained all necessary permits, licenses, easements, waivers, and permissions of whatsoever kind required for its performance and the performance of its subcontractors under this Purchase Order.
- 16. Contract Fulfillment.** If federal or state laws or regulations or other federal or state requirements are amended and judicially interpreted so that either party cannot reasonably fulfill this Purchase Order, and if the parties cannot agree to an amendment that would enable substantial continuation of the Purchase Order, the parties shall be discharged from any further obligations under this Purchase Order.
- 17. Control; Ownership; Legal Proceedings.** Vendor shall immediately notify TSLAC in writing of any actual or anticipated change in the control or ownership of Vendor and of any legal or administrative investigations or proceedings initiated against Vendor regardless of the jurisdiction from which such proceedings originate.
- 18. Time Limits.** Time is of the essence in the performance of this Purchase Order. Vendor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Purchase Order.
- 19. Inspection and Tests.** All goods will be subject to inspection and test by the State. Authorized TSLAC personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the Response or on samples taken from regular shipments. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of award.
- 20. Payment.** Payment shall be made in accordance with Texas Prompt Payment Act, as specified in the Texas Government Code § 2251. TSLAC shall not pay any amounts for any purpose to Vendor or any entity, except as expressly provided in the Purchase Order. 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 Purchase Order.
- 21. Dispute Resolution.** Unless an applicable state statute or applicable federal law establishes another procedure for the resolution of disputes, the dispute resolution process provided for in the Texas Government Code § 2260, shall be used, as further described herein, by TSLAC and the Vendor to attempt to resolve all disputes arising under this contract. Vendor claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in the Texas Government Code § 2260, Subchapter B, of the. To initiate the process, Vendor shall submit written notice, as required by subchapter B, to the Chief Financial Officer or the designate. Said notice shall specifically state that the provisions of the Texas Government Code § 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Vendor and the TSLAC otherwise entitled to notice under the parties' contract. Compliance by

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Vendor with Subchapter B is a condition precedent to the filing of a contested case proceeding under the Texas Government Code § 2260, Subchapter C. The contested case process provided in the Texas Government Code § 2260, Subchapter C, is Vendor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TSLAC if the parties are unable to resolve their disputes under this Section. Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by TSLAC nor any other conduct of any representative of TSLAC relating to this contract shall be considered a waiver of sovereign immunity to suit. The submission, processing and resolution of Vendor's claim is governed by the published rules adopted by the Office of the Attorney General pursuant to the Texas Government Code § 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found in the Texas Administrative Code. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Vendor, in whole or in part.

22. **Gifts.** The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response or Purchase Order.
23. **Compensation.** Pursuant to Texas Government Code § 2155.004, the Vendor has not received compensation for participation in the preparation of the specifications for this Solicitation or Purchase Order.
24. **Certification Regarding Non-Payment of Child Support.** Pursuant to Family Code § 231.006 (d), re: child support, the Vendor certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to § 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
25. **Eligibility.** Under Texas Government Code, § 2155.004 of the the vendor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Vendor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State.
26. **Liability for Taxes.** Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Purchase Order, 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 Purchase Order.
27. **HUBs.** Vendor represents and warrants that it shall comply with the Historically Underutilized Business requirements of this Purchase Order.
28. **Indemnification.** Vendor shall defend, indemnify, and hold harmless the State of Texas and Customers, ITS OFFICERS, AND EMPLOYEES, AND VENDORS, FROM ANY AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF VENDOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF VENDOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. VENDOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEXAS STATE LIBRARY AND ARCHIVES COMMISSION (TSLAC).

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSLAC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSLAC OR ITS EMPLOYEES. arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
29. **Debt.** Vendor agrees that any payments due under this Purchase Order will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Vendor shall comply with rules adopted by TSLAC under the Texas Government Code § 403.055, § 403.0551, § 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State.
30. **Executive Head of a State Agency.** Pursuant to Texas Government Code § 669.003, the TSLAC may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Solicitation Response, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.
31. **State Auditor's Clause.** Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

32. Infringements.

- a) Vendor shall indemnify and hold harmless TSLAC and the State of Texas, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, trade and service marks, copyrights, trade secrets or other proprietary rights, and any other intellectual or intangible property rights in connection with the PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to TSLAC's specific instructions, (iv) any intellectual property right owned by or licensed to TSLAC, or (v) any use of the product or service by TSLAC that is not in conformity with the terms of any applicable license agreement.
- c) If Vendor becomes aware of an actual or potential claim, or TSLAC provides the Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against TSLAC, shall) at Vendor's sole option and expense; (i) procure for the Vendor the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TSLAC's use in non-infringing.

33. Patents and Copyrights. Vendor shall defend and indemnify TSLAC and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from TSLAC's or Vendor's use of or acquisition of any services or other items provided to TSLAC by Vendor or otherwise to which TSLAC has access as a result of Vendor's performance under this Purchase Order, 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 Purchase Order and has acquired all such licenses, patents and claims.

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

35. Default. If the Vendor fails to provide the goods or services contracted for according to the provisions of the Purchase Order, or fails to comply with any of the terms and conditions of the Purchase Order, the TSLAC may, upon written notice of default to the Vendor, immediately terminate all or any part of the Purchase Order. 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 Purchase Order.

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 Purchase Order, or to recover damages for the breach of any agreement being derived from the Purchase Order. The exercise of any of the foregoing remedies will not constitute a termination of the Purchase Order 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 Purchase Order. The Respondent shall be liable for all costs and expenses, including court costs, incurred by the TSLAC with respect to the enforcement of any of the remedies listed herein.

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

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

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

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

- 40. Severability.** If one or more provisions of this agreement, or the application of any provision to any party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of the agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.
- 41. No Waiver.** Nothing in this agreement shall be construed as a waiver of the state's sovereign immunity. This agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TSLAC does not waive any privileges, rights defenses, or immunities available to TSLAC by entering into this agreement or by its conduct prior to or subsequent to entering into this agreement.
- 42. Property Rights.** For purposes of this Purchase Order, the term "work" is defined as all reports, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Purchase Order. The TSLAC and Vendor intend this Purchase Order to be a Purchase Order for services, and each considers the work and any and all documentation or other products and results of the services to be rendered by Vendor to be a work made for hire. By execution of a Purchase Order for these services, Vendor acknowledges and agrees that the work (and all rights therein) belongs to and shall be the sole and exclusive property of the TSLAC.

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

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

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

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

- 43. Acceptance of Products and Services.** All products furnished and all services performed under this agreement shall be to the satisfaction of TSLAC and in accordance with the specifications, terms, and conditions of this Purchase Order. TSLAC reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.
- 44. Deceptive Trade Practices Act (DTPA).** Vendor represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit, and that Vendor has not been found to be guilty of such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit, and that such officers have not been found to be guilty of such practices in such proceedings.
- 45. Immigration.** Vendor represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 ("Immigration Act"), and the Illegal Reform and Immigrant Responsibility Act of 1996 ("IRIRA") regarding employment verification and retention of verification forms for any individuals hired who will perform any labor or services under this Purchase Order. Vendor also represents and warrants that it shall comply with the requirements of the Immigration Act regarding creation of the lottery system for granting visas and IRIRA which created three (3) year, ten (10) year and permanent bars to entrance into the United States.

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- 46. Criminal Conviction Certification.** The Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TSLAC as to the facts and circumstances surrounding the conviction. Vendor has a continuing duty to amend, supplement or correct this representation and warranty not later than ten (10) days after discovering additional information relating to felony criminal convictions of Vendor or any of its employees. Vendor shall not allow any employee convicted of a felony criminal offense to perform tasks related to the Purchase Order without such disclosure and express permission from TSLAC.
- 47. Subcontracting.** It is contemplated by the parties hereto that the Vendor shall conduct the performances provided by this Purchase Order substantially with its own resources and through the services of its own staff. In the event the Vendor should determine that it is necessary or expedient to subcontract for any of the performances specified herein, the Vendor shall subcontract for such performances only after the Vendor has transmitted to TSLAC a true copy of the subcontract the Vendor proposes to execute with a subcontractor and has obtained TSLAC's written approval for subcontracting the subject performance in advance of executing a subcontract. The Vendor, in subcontracting for any products or performances specified herein, expressly understands and acknowledges that in entering into such subcontracting(s), TSLAC is in no manner liable to any subcontractor(s) of the Vendor. In no event shall this provision relieve the Vendor of the responsibility for ensuring that the finished products and/or services rendered under all subcontracts are rendered so as to comply with all terms of this contract.
- 48. Assignment.** The Vendor will not assign its rights under this Purchase Order or delegate the performance of its duties under this Purchase Order without prior written approval from TSLAC.
- 49. Accessibility.** TSLAC is required to follow Texas Administrative Code, Title 1, Part 10, Chapter 206, Accessibility and Usability of State Web Sites, Texas Administrative Code, Title 1, Part 10, Chapter 213, and the Federal Section 508, Accessibility Standards.
- 50. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in the Texas Government Code § 2155.003 of. The Rule outlines the ethical standards required of public purchaser, employees, and vendors who interact with public purchasers in the conduct of state business. Specifically, a TSLAC employee may not have an interest in, or in any matter be connected with a Purchase Order or Solicitation for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or Purchase Order for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TSLAC or purchasers of other state agencies.
- 51. Convictions in connection with Hurricane Katrina, Hurricane Rita, and subsequent disasters.** Per Senate Bill 608, 80th Legislative Session, TSLAC will not accept Responses, nor award Purchase Orders to persons convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Katrina, Hurricane Rita, and subsequent disasters.
- 52. Equal Opportunity.** Vendor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age and disability in the performance of awards.
- 53. Drug Free Workplace.** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 54. Force Majeure.** Neither Vendor nor TSLAC shall be liable to the other for any delay in, or failure of performance, of any requirement included in any award resulting from a Solicitation caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 55. Termination.** Vendor shall have the right to terminate Purchase Orders awarded from this Purchase Order upon a material breach of its terms by TSLAC, which are not cured within thirty (30) days of written notice. If Vendor:
- (a) terminates or suspends its business
 - (b) becomes subject to any bankruptcy or insolvency proceeding under any Federal or State statute or
 - (c) becomes or subject to direct control by a trustee, receiver, or similar authority,

TSLAC may, in addition to its other legal rights and remedies, terminate this agreement on seven (7) days notice to Vendor. Upon such termination, Vendor will offer TSLAC a prorated refund or subscription fee.

In the event that the Purchase Order 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 Purchase Order.

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

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57. Termination Remedies. Upon an Event of Default, TSLAC, without limiting any other rights or remedies it may have by law, equity, or under this Purchase Order, will have the right to institute an action for actual damages and/or injunctive relief and/or to terminate the Purchase Order immediately. TSLAC's termination of this Purchase Order 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 Purchase Order or otherwise required by applicable law.

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

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

59. Supporting Documents; Right to Audit; Independent Audits. Pursuant to Texas Government Code § 2262.154, Vendor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Purchase Order funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Purchase Order and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Services" as defined in this Purchase Order. Vendor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this Purchase Order, for purposes of inspecting, monitoring, auditing, or evaluating by TSLAC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. *[Updated on 08/10/2016]*

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

61. Records Retention. Vendor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Purchase Order funds were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Purchase Order and the State's property seven (7) years after the expiration or termination of the Purchase Order. *[Updated on 08/10/2016]*

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

- a) Standard Workers Compensation Insurance as required by the Texas Workers' Compensation Act and Employers' Liability covering all personnel who will provide services under the Purchase Order 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 Purchase Order; 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

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Vendor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with 'A' rating from Best, and authorized to provide the corresponding coverage. Vendor also represents and warrants that all policies contain endorsements prohibiting cancellation, 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 Purchase Order and shall provide TSLAC with an executed copy of the policies immediately upon request and at no expense. *[Updated 08/10/2016]*

63. Workers' Compensation Insurance Coverage.

a) Definitions:

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

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

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

- b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- c) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- e) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- g) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - 3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 4) obtain from each other person with whom it contracts, and provide to the contractor:
 - i. a certificate of coverage, prior to the other person beginning work on the project; and
 - ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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- 5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - 6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - 7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.
- l) **VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TSLAC AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.**

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 PURCHASE ORDER. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE TSLAC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 64. Vendor Responsibility for Damage to Government Property.** The Vendor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Vendor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Purchase Order. The Vendor shall notify the TSLAC Project Manager in writing of any such damage within one (1) calendar day.
- 65. Vendor Performance.** The TSLAC may monitor the performance of the Purchase Order issued under this Solicitation. All services and goods under the Purchase Order shall be performed at an acceptable service levels and in a manner consistent with acceptable industry standards, custom, and practice. The Vendor will receive a hard copy of this report, as well as an e-mailed copy. The TSLAC will provide a sample of the Vendor Performance Report upon request. More information can be found at http://comptroller.texas.gov/procurement/prog/vendor_performance/vendor-performance-faq/.
- 66. Change Management.** Vendor shall assign only qualified personnel to this Purchase Order. 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 Purchase Order. Subcontractors providing services under the Purchase Order shall meet the same requirements and level of experience as required of the Vendor. No subcontract under the Contract shall relieve the Vendor of responsibility for ensuring the requested services are provided. If Vendor uses a subcontractor for any or all of the work required, the following conditions shall apply:
- a) Vendors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
 - b) Subcontracting shall be solely at Vendor's expense.
 - c) TSLAC retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
 - d) Vendor shall be the sole contact for TSLAC. Vendor shall list a designated point of contact for all TSLAC inquiries.
- 67. Federal, State, and Local Requirements.** Vendor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Vendor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Vendor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Vendor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this Section

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

This Purchase Order may be amended only upon written agreement between TSLAC and Vendor; however, this Purchase Order 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 Purchase Order provided such Purchase Order Change Notices reference the Purchase Order.

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

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

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

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

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

74. Recovered Materials. Contractors must comply with Section 6002 of the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items that contain the highest percentage of recovered materials practicable, as designated in the guidelines of the Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR) Part 247.

75. TSLAC Anti-Fraud Policy. Vendor represents and warrants that it has read and understood and shall comply with the Comptroller of Public Account's Anti-Fraud Policy located on the Comptroller's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads.

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

- 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 2) Vendor shall provide TSLAC with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TSLAC with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

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

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

- a) A description of the nature of the Security Incident;
- b) The type of TSLAC information involved;
- c) Who may have obtained TSLAC information;
- d) What steps Vendor has taken or will take to investigate the Security Incident;
- e) What steps Vendor has taken or will take to mitigate any negative effect of the Security Incident; and
- f) A point of contact for additional information.

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

- a) Who is known or suspected to have gained unauthorized access to TSLAC information;
- b) Whether there is any knowledge if TSLAC information has been abused or compromised;
- c) What additional steps Vendor has taken or will take to investigate the Security Incident;
- d) What steps Vendor has taken or will take to mitigate any negative effect of the Security Incident; and
- e) What corrective action Vendor has taken or will take to prevent future similar unauthorized use or disclosure.

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

79. Information Security Requirements.

- a) Vendor shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to TSLAC confidential information.
- b) Access to sensitive or confidential TSLAC information. Vendor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard sensitive or confidential TSLAC information and to protect it from unauthorized disclosure. If communications with Vendor necessitate the release of confidential TSLAC information, the Confidential Treatment of Information Acknowledgement form (CTIA) must be signed by each individual who will require access to or may be exposed to that information. Vendor shall access TSLAC's systems and sensitive or confidential TSLAC information only for the purposes for which it is authorized.

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

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

No later than sixty (60) days from Purchase Order 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

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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 Purchase Order.

- d) TSLAC reserves the right to audit the security measures in effect on Vendor's connected systems without prior warning. Vendor must secure its own connected systems in a manner consistent with an auditable information security framework. TSLAC's audit can consist of a review of third party audit results of Vendor's security measures (e.g., SSAE-16 Type II, ISO 27002 assessment). TSLAC also reserves the right to immediately terminate network and system connections not meeting such requirements.
- e) TSLAC data shall not be accessed from, stored at or transported to locations outside of the United States.
- f) Where applicable, encryption shall conform to or exceed Federal Information Processing Standard (FIPS) 140-2:
 - 1) Backup media containing TSLAC data shall be encrypted at all times.
 - 2) Transmission of TSLAC data across public networks shall be protected by encryption methods such as Virtual Private Network ("VPN"), Secure Shell File Transfer Protocol ("SFTPS"), or File Transfer Protocol over SSL/TLS ("FTPS").
- g) If Vendor is a software manufacturer, then Vendor represents and warrants that it has implemented processes for the protection, detection, remediation, mitigation and timely customer notification of software vulnerabilities associated with its software provided under this agreement.

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

81. E-Verify. By entering into a Purchase Order, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Purchase Order, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- a) All persons employed to perform duties within Texas, during the Term of the Purchase Order; and
- b) All persons (including subcontractors) assigned by the Vendor to perform work pursuant to the Purchase Order, within the United States of America.

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

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

82. Business with Iran, Sudan, or Terrorist Organizations. Contractor hereby represents and warrants that it does not, and shall not for the duration of any resulting contract or purchase order hereunder, engage in any business operations, including but not limited to acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce with Iran, Sudan or a foreign terrorist organization. [Updated 09/20/2017]

83. Boycott of Israel. Contractor hereby represents and warrants that it does not, and shall not for the duration of any resulting contract or purchase order hereunder, boycott Israel as defined under Texas Government Code § 808.001(1). [Updated 09/20/2017]

Texas State Library and Archives Commission
Texas Historical Records Advisory Board (THRAB) Grant Terms and Conditions

I. GENERAL TERMS AND CONDITIONS

- A. The Vendor will comply with the following parts of the Texas Comptroller of Public Accounts UGMS revised June 2004, located at: www.comptroller.texas.gov/purchasing/docs/ugms.pdf.
- Part II. Cost Principles for State and Local Governments and Indian Tribal Governments (2 CFR 225), Cost Principles for Non-Profit Organizations (2 CFR 230), Cost Principles for Educational Institutions (2 CFR 220), or Federal Acquisition Regulation (FAR) 31.2, as applicable.
- Part III. State Uniform Administrative Requirements for Grants and Cooperative Agreements (Adapted from OMB Circulars A-102 and A-122)
- Part IV. State of Texas Single Audit Circular (Adapted from OMB Circular A-133)
- B. For grants funded with Federal funds, Vendor will also comply with the Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (including recent revisions), located at: www.whitehouse.gov/omb/grants/grants_circulars.html.
- C. The Vendor will comply with the NHPRC's 36 Code of Federal Regulations, Part 1206, 1208, 1211, 1212, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (adapted from OMB Circular A-102).
- D. Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the Texas State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by Sub-Vendors through Vendor, and the requirement to cooperate, is included in any sub-grant awarded per NHPRC's 36 Code of Federal Regulations Part 2600.
- E. The Vendor agrees to maintain all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award for three years after the last State Program Report for the THRAB Annual Plan. The Vendor will maintain and retain their records for seven years from the initial execution of the contract.
- F. The Vendor agrees to develop or revise, as necessary, any specific written documentation of its current procedures for (1) collecting and reporting performance measures; (2) conducting a fixed asset inventory; and or, (3) any other issues identified in Vendor's internal audit report or grant activities. Drafts of this procedural documentation will be submitted to Vendor by dates established mutually between Grantor and Grantee. Grantor will provide review and guidance to enable final versions to be approved on or before established deadlines.
- G. Vendor understands the federal awarding agency, NHPRC, reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use; and to authorize others to use, for Federal Government purposes: (a) The copyright of any work developed under the contract and (b) Any rights of copyright to which Vendor purchases ownership with these federal funds (OMB A-102, Subpart C, __36).

Texas State Library and Archives Commission
Texas Historical Records Advisory Board (THRAB) Grant Terms and Conditions

II. ENFORCEMENT

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

INVOICING INSTRUCTIONS
NON-COMPLIANCE WITH INSTRUCTIONS MAY DELAY PAYMENT

Please use the following procedure when submitting your invoice:

1. Invoices must be in U.S. dollars
2. Invoice must be issued to the Texas State Library and Archives Commission (TSLAC), Attn: ACCOUNTS PAYABLE.
3. Invoices **must** be submitted to the “Bill to” address shown on the Purchase Order or Payment Section of the Contract. If you prefer to submit your invoice electronically, **submit your invoice to the following email address: AP@tsl.texas.gov**
4. Your invoice must provide Vendor name, remit to address, and Vendor invoice number.
5. The TSLAC Purchase Order or Contract Tracking Number must be included on the invoice and packing slips. **Invoices submitted without the Purchase Order or Contract Tracking Number will not be in compliance and will result in delay of payment.**
6. Vendor’s Texas Identification Number or Federal Tax ID Number must be included on the invoice. This information can be found on the Purchase Order in the “Vendor ID” field or you may contact the TSLAC Purchasing Department.
7. Vendor must provide an itemized invoice that includes the detailed description of each item or service provided. Items, services, or project deliverables must correspond with the description listed on the Purchase Order or Contract.
8. Quantity delivered, unit, and total price of each item or service must be shown, and all prices extended on the invoice.
9. All extensions on the invoice must be totaled and the grand total shown.
10. Discount, if applicable, must be stated, and deducted to arrive at a Net total for the invoice.
11. Final delivery date of merchandise or period of service must be shown on the invoice.

DIRECT DEPOSIT

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

SALES AND USE TAX

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

FRANCHISE TAX CERTIFICATION

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

PAYMENT

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

CERTIFICATION REGARDING NON-PAYMENT OF CHILD SUPPORT

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

DELINQUENT TAX/DEBT NOTIFICATION

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

DISPUTE RESOLUTION

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

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