

Texas State Library and Archives Commission
Terms and Conditions

All of the following terms and conditions are hereby made part of this Interagency Contract (IAC) with the Texas State Library and Archives Commission (TSLAC) by reference.

- 1. 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 statutes 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>.
- 2. Observance of TSLAC Rules and Regulations.** Vendor agrees that at all times its employees will observe and comply with all regulations when accessing the TSLAC facilities, including, but not limited to, parking and security regulations.
- 3. Non-Appropriation of Funds.** The State funds are contingent on the availability of lawful appropriates by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this contract; the order will be terminated as of the date that the funding expires, and the State will have no further obligation to make any payments.
- 4. Delivery.**
 - a) Delivery shall be made during normal working hours (7:30am-4:30pm, CT), unless prior approval or specific delivery instructions have been provided by 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. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TSLAC to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- 5. 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.
- 6. 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.
- 7. Patents and Copyrights.** The Performing Agency agrees to protect TSLAC from claims involving infringement of patents or copyrights.
- 8. Default.** In the event that the Performing Agency fails to carry out or comply with any of the terms and conditions of the agreement with TSLAC, TSLAC may notify the Performing Agency of such failure or default in writing and demand that the failure or default be remedied within ten (10) days. In the event that the Performing Agency fails to remedy such failure or default within the ten (10) day period, TSLAC shall have the right to cancel the agreement upon thirty (30) days written notice or immediately.
- 9. Cancellation.** The cancellation of the agreement, under any circumstances whatsoever, shall not affect or relieve Performing Agency 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 TSLAC at law or in equity.
- 10. 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.
- 11. Publicity.** Performing Agency 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.
- 12. 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.
- 13. Property Rights.** For purposes of this Contract, the term "work" is defined as all reports, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Contract. The TSLAC and Performing Agency intend this Contract to be a contract for services, and each considers the work and any and all documentation or other products and results of the services to be rendered by Performing Agency to be a work made for hire. By execution of a contract for these services, Performing Agency 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, Performing Agency 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,

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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. Performing Agency 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 Performing Agency for TSLAC shall be considered work-made-for-hire for TSLAC within the meaning of the copyright laws. Performing Agency shall assign all rights, title and interest in such copyrightable materials to TSLAC. Should this work product prove to be patentable, Performing Agency 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.

- 14. Acceptance of Products and Services.** All products furnished and all services performed under this Contract 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.
- 15. Subcontracting.** It is contemplated by the parties hereto that the Performing Agency 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 Performing Agency should determine that it is necessary or expedient to subcontract for any of the performances specified herein, the Performing Agency shall subcontract for such performances only after the Performing Agency has transmitted to TSLAC a true copy of the subcontract the Performing Agency 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 Performing Agency, 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 Performing Agency. In no event shall this provision relieve the Performing Agency 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.
- 16. 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.
- 17. Force Majeure.** Neither Performing Agency nor TSLAC shall be liable to the other for any delay in, or failure of performance, of any requirement included 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.
- 18. Termination.** Performing Agency shall have the right to terminate contracts upon a material breach of its terms by TSLAC, which are not cured within thirty (30) days of written notice. Upon such termination, Performing Agency will offer TSLAC a prorated refund or subscription fee.
- 19. Limitation on Authority; No Other Obligation.** Performing Agency shall have no authority to act for or on behalf of TSLAC except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Performing Agency may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TSLAC.
- 20. Change Management.** Performing Agency shall assign only qualified personnel to this Contract. Performing Agency, 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. Performing Agency 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 Performing Agency. No subcontract under the Contract shall relieve the Performing Agency of responsibility for ensuring the requested services are provided. If Performing Agency uses a subcontractor for any or all of the work required, the following conditions shall apply: a) Performing Agencies planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors. b) Subcontracting shall be solely at Performing Agency's expense. c) TSLAC retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors. d) Performing Agency shall be the sole contact for TSLAC. Performing Agency shall list a designated point of contact for all TSLAC inquiries.
- 21. Records Retention.** Vendor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property seven (7) years after the expiration or cancellation of the Purchase Order. *[Updated 08/10/2016]*
- 22. Applicable Law & Conforming Amendments.** Vendor must comply with all laws, regulations, requirements and guidelines applicable to a Vendor providing good or 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 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 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 (POCN) for ordering and tracking purposes consistent with this Purchase Order. *[Included on 08/10/2016]*

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23. 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/>.

Updated August 10, 2016

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, **use 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>