

TEXAS STATE TECHNICAL COLLEGE PURCHASE ORDER TERMS AND CONDITIONS

- a. Venue; Governing Law. As required by Chapter 135 of the Texas Education Code, McLennan County or Travis County, Texas, will be the proper place of venue for suit on or in respect of the Purchase Order. The Purchase Order and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, without regard to conflict of law provisions.
- b. Representations and Warranties by Contractor. If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Purchase Order, and the individual executing the Purchase Order on behalf of Contractor has been duly authorized to act for and bind Contractor.
- c. Tax Certification. If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under such Chapter, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- d. Payment of Debt or Delinquency to the State. To the extent applicable, pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under the Purchase Order may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- e. Products and Materials Produced in Texas. If Contractor will provide services under the Purchase Order, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under the Purchase Order, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- f. State Auditor's Office. Contractor understands that acceptance of funds under the Purchase Order constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
- g. Fees & Payment Terms. All invoices shall be payable to Contractor within thirty (30) days after TSTC's receipt of invoice and delivery of the Product or Services in accordance with the Texas Prompt Payment Act, currently codified in Section 2251.021(a), Texas Government Code. Interest shall be payable by TSTC on all past due amounts at the rate specified in Section 2251.025(b) of such Code. Notwithstanding anything to the contrary, Contractor understands and acknowledges that TSTC's payment processes are stipulated by the Texas Prompt Payment Act, and nothing in the Purchase Order shall be construed to prevent or restrict TSTC from full compliance with such Act.
- h. Eligibility Certification. To the extent applicable, pursuant to Sections 2155.004, 2155.006, 2261.053, and 2155.077, Texas Government Code, Contractor certifies that the individual or business entity named in the Purchase Order is not ineligible to receive the award of or payments under the Purchase Order and acknowledges that the Purchase Order may be terminated and payment withheld if these certifications are inaccurate.
- i. Texas Family Code Child Support Certification. To the extent applicable, pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Purchase Order and acknowledges that the Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
- j. COVID-19 Vaccine Passport Prohibition. The Contractor certifies that it will comply with the requirements of Texas Health and Safety Code, Section 161.0085(c).
- k. Critical Infrastructure Affirmation. If applicable, pursuant to Texas Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor affiliate of Contractor or its parent company is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code Section 2274.0103, or (2) headquartered in any of those countries.
- l. Energy Company Boycotts. If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the Purchase Order.
- m. Firearm Entities and Trade Associations Discrimination. If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Purchase Order against a firearm entity or firearm trade association.
- n. Independent Contractor. In performing any services under this Purchase Order, Contractor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Contractor agrees to indemnify, exonerate and hold harmless TSTC.
- o. Excluded Parties. If applicable, Contractor verifies and certifies that (a) pursuant to Subchapter F, Chapter 2252 of the Texas Government Code, Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization; (b) pursuant to the provisions of Chapter 2271 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of the Purchase Order; and (c) Contractor is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control. Contractor acknowledges this Purchase Order may be terminated and payment withheld if this certification is inaccurate.
- p. Tax Exemption. Contractor understands and accepts that TSTC, as an agency of the State of Texas, is exempt from most State and Federal taxes. Contractor will not attempt to pay taxes on TSTC's behalf and TSTC will not reimburse Contractor for any taxes paid. A tax-exempt certificate is available to Contractor upon request.
- q. Access by Individuals with Disabilities. To the extent applicable, Contractor represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to TSTC under this Purchase Order (collectively, "EIRs") comply with the applicable requirements set forth in 1 TAC Chapter 213 and 1 TAC Section 206.70 (as authorized by Subchapter M, Chapter 2054, Texas Government Code). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to TSTC, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty; or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that the Contractor fails or is unable to do so, then TSTC may terminate this

Purchase Order and Contractor will refund to TSTC all amounts TSTC paid under the Purchase Order within thirty (30) days after the termination date.

- r. Protected Data Security. For purposes of this section, "Service Provider" and Contractor are the same. "TSTC Confidential Information" means records maintained by TSTC, and records obtained by Service Provider from TSTC under this Purchase Order, including (1) records and data provided electronically, on paper, or via online access or e-mail, (2) records and data that Service Provider has converted into another format or medium (such as handwritten or electronic notes), and (3) records and data incorporated in any manner into Service Provider's records, files or data compilations.
1. To the extent applicable, Service Provider shall protect the confidentiality of TSTC Confidential Information and comply with all statutory, regulatory and Purchase Order requirements. Service Provider's protection of the confidentiality of TSTC Confidential Information will survive the termination of this Purchase Order. Service Provider shall keep and maintain complete and accurate records sufficient to allow TSTC, the Texas State Auditor's Office, the United States government, and their authorized representatives to determine Service Provider's compliance with this Purchase Order. Service Provider shall be responsible and liable for any and all damages resulting from a breach by Service Provider including damages and losses of third parties. Service Provider shall reimburse TSTC for any costs incurred by TSTC in reimbursing third parties damaged by Service Provider's breach and costs incurred in attempts by TSTC to limit third party losses resulting from Service Provider's breach. Service Provider agrees to accept liability for any damage to TSTC's hardware, software, or TSTC Confidential Information when such damage is caused by the actions or negligence of employees, contractors, sub-contractors or agents of Service Provider, whether or not the individual was an authorized User under this Purchase Order.
 2. Security Breach Notification. To the extent applicable, Service Provider agrees to notify TSTC as soon as it becomes aware of any actual or unintended access of the TSTC data that may access, process, or store data, files, confidential information or personal data produced under, provided under or related to this Purchase Order or any Scope of Work subject to this Purchase Order. Unintended access includes, but is not limited to, compromise by a computer worm, search engine web crawler, password compromise or access by an unauthorized individual or automated program. Service Provider agrees to notify TSTC within twenty-four (24) hours of the discovery of the actual or suspected unintended access.
 3. Disposal. To the extent applicable, Service Provider shall dispose of any TSTC Confidential Information and any copies thereof after the limited purposes of the Purchase Order or any Statements of Work are achieved, except for TSTC Confidential Information possessed by any court. Disposal means the return of TSTC Confidential Information to TSTC or the destruction of TSTC Confidential Information, as directed by TSTC. Disposal includes deletion of personal identifiers in lieu of destruction. In any case, Service Provider shall dispose of all TSTC Confidential Information within thirty (30) calendar days after the termination, cancellation, or expiration of the Purchase Order, and shall certify to such disposal upon request by TSTC.
 4. Access Limited. To the extent applicable, Service Provider shall limit access to TSTC Confidential Information to Service Provider's employees who need access to achieve the limited purposes of the Purchase Order or any related Statement of Work.
 5. Mobile Device and Removal. To the extent applicable, Service Provider shall not place TSTC Confidential Information on mobile, remote, or portable storage devices, or remove storage media from Service Provider's facility, without the prior written authorization of TSTC.
 6. Acceptance Testing. To the extent applicable, upon receipt of the initial feature set of the Service Provider's services prior to launch of the Service Provider's services, or any subsequent enhancements to the Service Provider's services both Parties will test the Deliverable for compliance with the specifications in the detailed design document provided to TSTC by Service Provider in accordance with TSTC's launch checklist (Acceptance Testing). If a dispute arises regarding testing criteria, TSTC will make the final determination. Acceptance of any Deliverable will occur upon the earlier of either: (a) Service Providers receipt of a notice from TSTC stating that the Deliverable has met the Acceptance Criteria; or (b) 60 days, or other mutually agreeable time period, after the date of delivery, unless notice of non-acceptance (including specific reasons for non-acceptance) is provided to Service Provider within the 60-day period. Service Provider will use commercially reasonable efforts to correct any non-conformance in a timely manner. The Parties will provide each other with commercially reasonable assistance as necessary to correct any non-conformance, including information necessary to recreate the error or non-conformity identified. The Parties will work together in good faith to complete Acceptance Testing according to any applicable development schedule. Upon successful completion of Acceptance Testing the Parties will notify each other of final acceptance.
 7. Cybersecurity Training. If applicable, Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
 8. Biometric Identifier. If applicable, Contractor represents and warrants that it will comply with the requirements of Chapter 560 of the Texas Government Code relating to the disclosure of a biometric identifier.
 9. Cloud Computing State Risk and Authorization Management Program. If applicable, pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Contractor represents and warrants that it complies with the requirements of the state risk and authorization management program and Contractor agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.
 10. Background Checks. To the extent applicable, Contractor will at its expense conduct a background check of any personnel who have access to TSTC Confidential Information prior to their commencement of work on the services. Contractor will not permit any person who has been convicted of any crime or is the subject of an arrest warrant to be assigned to perform services without the advance written approval of TSTC. If Contractor or any person performing services is later subject to any criminal charges, Contractor will immediately notify TSTC in writing and remove such person from performing the services, except as TSTC agrees otherwise in writing.
- s. FERPA Protection of Confidential Data. For purposes of this section, "Service Provider" and Contractor are the same, and "Institution" and TSTC are the same. To the extent that 34 *Code of Federal Regulations* § 99.33(a)(2) is applicable, Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act and with the terms set forth in this subsection. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the Institution may use the information, but only for the purposes for which the disclosure was made. Definition: *Covered data and information (CDI)* includes paper and electronic student education record information supplied by Institution, as well as any data provided by Institution's students to the Service Provider. Acknowledgment of Access to CDI: Service Provider acknowledges that the Purchase Order allows the Service Provider access to CDI. Prohibition on Unauthorized Use or Disclosure of CDI: Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from or on behalf of Institution (or its students) except as permitted or required by the Purchase Order, as required by law, or as otherwise authorized in writing by Institution. Service Provider agrees not to use CDI for any purpose other than the purpose for which the disclosure was made. Upon termination, cancellation, expiration or other conclusion of the Purchase Order, Service Provider shall return all CDI to Institution or, if return is not feasible, destroy any and all CDI. Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Service Provider shall, within one day of discovery, report to Institution any use or disclosure of CDI not authorized by this Purchase Order or in writing by Institution. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or

disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Institution.

- t. Disaster Recovery Plan. If applicable, in accordance with 13 TAC § 6.94(a)(9), Contractor shall provide to TSTC the descriptions of its business continuity and disaster recovery plans upon the request of TSTC.
- u. Subcontracting. If Contractor intends to subcontract all or a portion of the Work under this Purchase Order, Contractor must identify all proposed Subcontractors ("Subcontractors") to TSTC in its submitted proposal. Contractor will not delegate any of its duties or responsibilities under the Purchase Order to any Subcontractors, except as expressly provided for in the Purchase Order. Subcontractors providing Work under the Purchase Order must meet the same requirements and level of experience required of Contractor. The utilization of any Subcontractor for provided work under the Purchase Order will not relieve Contractor of the responsibility for ensuring the requested Work is provided in accordance with the requirements herein. If applicable, the Contractor certifies that any engineering or architectural firms providing Work as subcontractors under the Purchase Order will be selected based on demonstrated competence and qualifications in the manner provided by Texas Government Code, Chapter 2254, Subchapter A. Furthermore, Contractor indemnifies TSTC against any penalty or expenses for violation of Texas Government Code, Chapter 2254, Subchapter A as outlined in Texas Government Code, Chapter 2254, Subsection 2254.005. To the extent applicable, this Purchase Order is subject to Chapter 2161 of the Texas Government Code and applicable sections of the Texas Administrative Code. Contractor shall use good faith efforts to subcontract the Work to historically underutilized businesses ("HUB(s)") in accordance with the Contractor's HUB Subcontracting Plan ("HSP"). Except as specifically provided in the HSP, Contractor shall not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. If at any time during the term of the contract, the Contractor desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by TSTC before changes will be effective under the contract. The Contractor must comply with provisions under Chapter 2161 of the Texas Government Code and applicable sections of the Texas Administrative Code, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. Before the desired changes to the approved HUB subcontracting plan become effective, said changes must be approved in writing by a TSTC Contract Manager in the Office of Contract Administration. Contractor will comply with all of its duties and obligations under Chapter 2161 of the Texas Government Code and applicable sections of the Texas Administrative Code. In addition to other rights and remedies, TSTC may exercise all rights and remedies authorized by Chapter 2161 of the Texas Government Code and applicable sections of the Texas Administrative Code. FOR ANY PURCHASE ORDERS SUBJECT TO GOVERNMENT CODE, CHAPTER 2161, SUBCHAPTER F, CONTRACTOR SHALL SUBMIT A PROGRESS ASSESSMENT REPORT ("PAR") TO TSTC WITH EACH INVOICE. THE PAR SHALL BE REQUIRED AS A CONDITION FOR PAYMENT.
- a. Former Agency Employees. If applicable, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of TSTC during the twelve (12) month period immediately prior to the date of execution of the contract.
- b. Dispute Resolution. If applicable, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code, as it may be amended from time to time, must be used to attempt to resolve any dispute arising under this Purchase Order.
- c. Limitations. Contractor is aware that there may be constitutional and statutory limitations on the authority of TSTC, as an agency of the State of Texas, to enter into certain terms and conditions of the Purchase Order, including, but not limited to, those terms and conditions relating to liens on TSTC's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; jury waivers; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; insurance requirements; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on TSTC except to the extent authorized by the laws and Constitution of the State of Texas. Contractor further acknowledges that, pursuant to Section 51.9335(h) of the Texas Education Code, a provision required by applicable law to be included in the Purchase Order is considered to be a part of the Purchase Order without regard to whether the provision appears on the face of the Purchase Order or whether the Purchase Order includes any provision to the contrary. Nothing in the Purchase Order is a waiver by TSTC or the State of Texas of sovereign immunity, or any other immunities, from suit or from liability that TSTC or the State of Texas may have by operation of law.
- d. Indemnification. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TSTC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE PURCHASE ORDER AND ANY PURCHASE ORDERS ISSUED UNDER THE PURCHASE ORDER. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TSTC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSTC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSTC OR ITS EMPLOYEES.
- e. Standard of Care. For applicable architectural and engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Contractor shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.
- f. Background Checks and Identification. If the applicable services will be performed in whole or in part on TSTC premises, Contractor must comply with the background checks and identification provided below:
 - 1. Criminal Background Checks. Contractor is required to perform an appropriate criminal background screening on each and every one of its employees or assigns that are on TSTC premises. Contractor shall share any negative background check results with TSTC prior to the employee or assign coming onto TSTC premises and TSTC, in its sole discretion, shall determine if said employee or assign shall be allowed on TSTC premises. Contractor will not knowingly assign any individual to provide services who has a history of criminal conduct unacceptable to TSTC. Contractor also ensures that any of its employees or assigns who have negative background check results are in compliance with federal laws and the laws of the State of Texas. At any time during the term of the Purchase Order, TSTC may request, and Contractor shall provide, verification of compliance with these requirements.
 - 2. Sexual Offender Search. TSTC recognizes that some sexual offenders, after having served their sentence, are no longer considered to be a threat to society, and the State of Texas has approved them to work in higher education environments. Contractor will ensure that it, and all of its subcontractors and assigns that will be on TSTC property have been searched on the Texas Public Sex Offender Registry and National Sex Offender Public Website at <https://publicsite.dps.texas.gov/SexOffenderRegistry/Search> and <http://www.nsopw.gov/> ("Registries"). Contractor will ensure that any employees or subcontractors found on the Registries or any other state or federal sexual

offender registry are in compliance with federal laws and the laws of the State of Texas regarding sexual offenders. Any employees or Subcontractors that are shown on the sexual offender registries must be documented. Documentation shall include explanation and verification of any employees or Subcontractors that appear on the sexual offender lists; and show that those on the lists have met the requirements of the State of Texas to work on the property of higher education institutions. At any time during the term of the Purchase Order, TSTC may request, and Contractor shall provide, verification of compliance with these requirements.

3. **Access and Identification.** All of Contractor's personnel and authorized subcontractors, while on TSTC premises, must have all of the following: (i) valid State of Texas ID or driver's license, and (iii) a photo ID bearing the name of the company for which the individual works, the individual's name, and a recent photo of the individual.
- g. **Ethics.** Contractor and its employees, agents, representatives and subcontractors have read and understand TSTC's Ethics and Standards of Conduct Policy HR 2.1.12 available at <https://secure2.compliancebridge.com/tstc/TSTCpublic/index.php?fuseaction=app.main> as of May 2, 2024, and applicable state ethics laws and rules available at <https://www.ethics.state.tx.us/> as of May 2, 2024. The Contractor represents and warrants that 1) neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause TSTC employees to violate TSTC's Ethics and Standards of Conduct Policy or applicable state ethics laws or rules, 2) pursuant to Section 2155.003 of the Texas Government Code, Contractor 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 Purchase Order, 3) no member of the Board has a direct or indirect financial interest in the transaction that is the subject of the Purchase Order, and 4) the Contractor's performance under the Purchase Order will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- h. **Antitrust.** Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of the Purchase Order to any competitor or any other person engaged in the same line of business as Contractor.
- i. **Texas Public Information Act.** Contractor understands that TSTC will comply with the Texas Public Information Act, Chapter 552, Texas Government Code, which might require public disclosure of TSTC records related to the Purchase Order. If applicable, Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the Purchase Order and the Contractor agrees that the Purchase Order can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- j. **Travel and Per Diem.** Contractor understands that any travel or per diem required by Contractor to perform its obligations under the Purchase Order will be at Contractor's expense. However, TSTC has sole discretion to and may pay Contractor's travel and per diem requests, but prior to expenditure Contractor must have approval from TSTC in writing, and if approved by TSTC all travel and per diem that Contractor requests are subject to, and shall not exceed, the reimbursement limitations applicable to Texas state employees in conducting official state business as prescribed by applicable law, rules, and regulations including, but not limited to, Chapter 660 of the Texas Government Code, the General Appropriations Act and rules adopted by the Comptroller.
- k. **Outside Terms.** TSTC rejects and will not be bound by Contractor's "click-wrap" terms and conditions, "browse-wrap" terms and conditions, "shrink-wrap" terms and conditions, or any other terms and conditions which can be found on an internet webpage, hereinafter collectively referred to as "Internet Terms". TSTC rejects and will not be bound by any terms and conditions on invoices or acknowledgements whether or not said invoices or acknowledgements are signed by a representative of TSTC. Said Internet Terms or invoice/acknowledgement terms and conditions will not currently, nor in the future, bind TSTC or be made applicable to the Purchase Order, unless assent to said Internet Terms or invoice/acknowledgement terms and conditions is shown by the signatures of duly authorized representatives from both Parties.
- l. **Assignment.** As outlined in 2262.056 of the Texas Government Code, Contractor shall not assign its rights under the Purchase Order or delegate the performance of its duties under the Purchase Order without prior written approval from TSTC. Any attempted assignment in violation of this provision is void and without effect.
- m. **Termination.** Upon written notice to Contractor, TSTC may terminate this Purchase Order, in whole or in part, without cause. If TSTC terminates without cause, TSTC will pay Contractor all reasonable costs incurred up to the date of termination. Under no circumstance will TSTC pay Contractor for anticipatory or lost profits. In the event of a material failure by Contractor to perform in accordance with the terms of this Purchase Order ("default"), TSTC may terminate this Purchase Order upon ten (10) days' written notice of termination setting forth the nature of the default; provided that, the default is through no fault of TSTC. Termination will not be effective if the default is fully cured by Contractor prior to the end of the ten (10) day period.
- n. **Force Majeure.** Neither Party to this Purchase Order will be liable or responsible to the other for any loss or damage, or for any delays or failure to perform, due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("Force Majeure Occurrence").
- o. **Delivery, Substitutions, Invoices.** Contractor will keep TSTC advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Contractor will give prompt written notice TSTC. Upon notice, TSTC may extend the delivery date in its sole discretion. Contractor will only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of TSTC. Default in promised delivery or failure to conform to the requirements of this Purchase Order authorizes TSTC to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor will show this Purchase Order number on all packages, shipments, and invoices.
- p. **Electronic Funds Transfer.** Section 51.012, Texas Education Code, authorizes TSTC to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from TSTC through electronic funds transfer methods, including the automated clearing house system (also known as ACH). To the extent allowed, prior to the first payment under this Purchase Order, TSTC will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to TSTC in writing at least thirty (30) days in advance of the effective date of the change.
- q. **Title and Risk of Loss.** Title to and risk of loss to any goods to be delivered under this Purchase Order will not pass to TSTC until TSTC actually receives and takes possession of such goods at the point of delivery.
- r. **Warranties.** In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:
 1. All goods and services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by TSTC (collectively "specifications"), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. TSTC will have the rights of inspection and approval and may reject and return goods or require re-performance of services at Contractor's expense if defective or not in compliance with TSTC's specifications. Defects will not be deemed waived by TSTC's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.
 2. No disclosure, description, or other communication of any sort will be made by Contractor to any third person of the fact of TSTC's purchase of goods or services under this Purchase Order, or of the details and characteristics of the goods or services, without TSTC's prior written consent. Anything furnished to Contractor by TSTC pursuant to this Purchase Order including samples, drawings, patterns,

and materials will remain the property of TSTC, will be held at Contractor's risk, and will be returned to TSTC upon TSTC's request, and no disclosure or reproduction thereof in any form will be made without TSTC's prior written consent.

3. Contractor is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances (collectively, "Applicable Laws").
 4. All goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by all Applicable Laws, including those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code ("Texas hazard Communication Act").
 5. Contractor is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet ("MSDS") for each product Contractor, its employees, agents or subcontractors brings on TSTC's premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
 6. Use or sale of any goods delivered under this Purchase Order, except (with respect to patents) goods produced to TSTC's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
 7. The price to be paid by TSTC will be that contained in Contractor's bid or proposal, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches its warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, TSTC may cancel this Purchase Order without liability to Contractor.
 8. Contractor will make records of Contractor's costs, reimbursable expenses and payments pertaining to this Purchase Order available to TSTC or its authorized representative during business hours and retain those records for four (4) years after final payment or abandonment of the project, unless TSTC otherwise instructs Contractor in writing.
 9. If this Purchase Order requires Contractor's presence on TSTC's premises or in TSTC's facilities, Contractor will cause its employees, representatives, agents, and subcontractors to become aware of, fully informed about, and in full compliance with all applicable TSTC rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
 10. The foregoing representations, covenants, certifications, warranties and Purchase Orders will survive acceptance of goods as well as performance of services under this Purchase Order.
- s. Insurance. If Contractor's employees, agents, suppliers or subcontractors will be present on TSTC's property, Contractor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<u>Coverages</u>	<u>Limits</u>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (including contractual liability)	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Business Auto Liability	\$1,000,000 combined single limit

All policies (except Workers' Compensation) will name TSTC, the Board, and their officers and employees as Additional Insured. A Waiver of Subrogation in favor of TSTC and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to TSTC prior to commencement of any services under this Purchase Order. Contractor will endorse all policies to require insurance carriers to notify TSTC of cancellation, termination, material change, or non-renewal of any policy.

- t. Notices. Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Purchase Order to TSTC will be in writing and will be sent via registered or certified mail, overnight courier, or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by email (to the extent an email address is set forth below), when received:

Texas State Technical College
 Attn: Procurement
 3801 Campus Drive
 Waco, Texas 76705
 contractadmin@tstc.edu

or such other person or address as may be given in writing by TSTC to Contractor.

- u. Undocumented Workers. The Immigration and Nationality Act (8 United States Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-9 Form") as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Purchase Order in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, TSTC may terminate this Purchase Order. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- v. State of Texas Computer Equipment Recycling Program Certification. Pursuant to Section 361.965, Texas Health and Safety Code, Contractor certifies that it is full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Subchapter Y, Chapter 361, Texas Health and Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328. Contractor acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
- w. Federal Funding Provisions. If this Purchase Order is made with federal funds awarded to TSTC, Contractor covenants and agrees that in performing its duties and obligations under the Purchase Order, Contractor will comply with 2 C.F.R. §§ 200.321-323 and any applicable clause in Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, pursuant to 2 C.F.R. §§ 200.327. In the event of any conflict among the clauses applicable to the Purchase Order, including those not applicable solely to federal grants, the most stringent clause will apply.