

TEXAS STATE TECHNICAL COLLEGE (TSTC) Purchase Order Terms and Conditions

1. **DELIVERY; SUBSTITUTIONS; INVOICES; SALES TAX:** 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.
2. **SALES TAX; ELECTRONIC FUNDS TRANSFER:**
 - (a) TSTC, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the goods and services covered by this Purchase Order, in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322.
 - (b) 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.
3. **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.
4. **WARRANTIES:** In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:
 - (a) Contractor will comply with all requirements of this Purchase Order.
 - (b) If Contractor is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized and in good standing to conduct business in the State of Texas.
 - (c) If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), Contractor is not currently delinquent in the payment of any taxes due under Chapter 171, or Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
 - (d) Pursuant to Section Sections 21.07.088 and 2252.903, *Texas Government Code*, any payments owing to Contractor under this 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) In accordance with Sections 2155.004 and 2155.006, *Texas Government Code*, Contractor is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment withheld if these certifications are inaccurate.
 - (f) In accordance with Section 231.006, *Texas Family Code*, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
 - (g) 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.
 - (h) 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.
 - (i) 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").
 - (j) 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*").
 - (k) 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.
 - (l) 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.
 - (m) 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 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.
 - (n) 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.
 - (o) 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.
 - (p) Contractor has not given or offered to give, nor does Contractor intend 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 this Purchase Order.

TEXAS STATE TECHNICAL COLLEGE - Purchase Order Terms and Conditions (cont'd)

- (q) The foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of goods as well as performance of services under this Purchase Order.
5. **ACCESS BY INDIVIDUALS WITH DISABILITIES.** Contractor represents and warrants (the "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, the "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 Contractor fails or is unable to do so, then TSTC may terminate this Purchase Order and Contractor will refund to TSTC all amounts TSTC has paid under this Purchase Order within thirty (30) days after the termination date.
 6. **ANTI TRUST LAWS; CLAIMS FOR OVERCHARGES:** Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to TSTC any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., or of the State of Texas, Texas Business & Communication Code Sec. 15.01, et seq.
 7. **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.
 8. **INDEMNITY:** CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS TSTC, THE TSTC BOARD OF REGENTS ("BOARD") AND THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER.
 9. **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.

10. **VENUE; CHOICE OF LAW:** McLennan County, Texas, will be the proper place of venue for suit on or in respect to this Purchase Order. This Purchase Order and all of the rights and obligations of the parties hereto and all of the terms and conditions of this Purchase Order will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
11. **ASSIGNMENT AND DELEGATION:** Contractor may not assign any of its rights or delegate any of its obligations under this Purchase Order without TSTC's prior written consent. Any assignment or delegation attempted by Contractor in violation of this clause will be void and ineffective for all purposes.
12. **ENTIRE AGREEMENT; MODIFICATIONS:** This Purchase Order supersedes all prior agreements, written or oral, between Contractor and TSTC and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing.
13. **BREACH OF CONTRACT CLAIMS:** To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Purchase Order and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by TSTC and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of TSTC will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of this Purchase Order by TSTC nor any other conduct, action or inaction of any representative of TSTC relating to this Purchase Order constitutes or is intended to constitute a waiver of TSTC's or the state's sovereign immunity to suit; and (ii) TSTC has not waived its right to seek redress in the courts.
14. **SUBCONTRACTING:** Contractor will use good faith efforts to subcontract the goods or services performed under this Purchase Order in accordance with the Contractor's Historically Underutilized Business Subcontracting Plan ("HSP") submitted in connection with this Purchase Order, if any. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. This Purchase Order is subject to 34 TAC Section 20, Subchapter D, Division 1. Contractor will comply with all of its duties and obligations under 34 TAC Section 20, Subchapter D, and Division 1. In addition to other rights and remedies, TSTC may exercise all rights and remedies authorized by 34 TAC Section 20, Subchapter D, Division 1.

TEXAS STATE TECHNICAL COLLEGE - Purchase Order Terms and Conditions (cont'd)

- 15. LOSS OF FUNDING:** Performance by TSTC under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then TSTC will issue written notice to Contractor and TSTC may terminate this Purchase Order without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TSTC.
- 16. STATE AUDITOR'S OFFICE:** Contractor understands that acceptance of funds under this 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 Section 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.
- 17. LIMITATIONS:** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TSTC (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS PURCHASE ORDER, INCLUDING TERMS AND CONDITIONS (IF ANY) 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; 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; 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.
- 18. ETHICS MATTERS; NO FINANCIAL INTEREST:** Contractor and its employees, agents, representatives and subcontractors have read and understand TSTC's Ethics and Standards of Conduct Policy (H R 2 . 2 . 1 2) available at <http://www.tstc.edu/governance/hr> and applicable state ethics laws and rules. 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. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Purchase Order.
- 19. 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, confirmed facsimile transmission (to the extent a facsimile number is set forth below), 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 facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

Peggy Wilkey, CTPM
Executive Director-Procurement Operations
3801 Campus Drive
Waco, Texas 76705

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

- 20. 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.
- 21. 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.
- 22. RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS:** Each individual who is assigned to perform services under this Purchase Order will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing services under this Purchase Order. Prior to commencing services, Contractor will (1) provide TSTC with a list ("List") of all individuals who may be assigned to perform services, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on TSTC's campus who has a history of criminal conduct unacceptable for a TSTC campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform services. Prior to commencing performance of services under this Purchase Order, Contractor will provide TSTC a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide TSTC an updated certification letter each time there is a change in the individuals assigned to perform services.
- 23. FORCE MAJEURE:** Neither party hereto 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 acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence").

TEXAS STATE TECHNICAL COLLEGE - Purchase Order Terms and Conditions (cont'd)

24. TERMINATION:

- (a) 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.
- (b) 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-day period.

25. EXTERNAL TERMS: This Purchase Order completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Purchase Order ("External Terms"). The External Terms are null and void and will have no effect under this Purchase Order, regardless of whether TSTC or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrink wrap, cling wrap, browse wrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that TSTC or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

26. PUBLIC INFORMATION: TSTC strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act ("TPIA"), Chapter 552, Texas Government Code. In accordance with Section 552.002 of TPIA and Section 2252.907, Texas Government Code, and at no additional charge to TSTC, Contractor will make any information created or exchanged with TSTC pursuant to this Purchase Order (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by TSTC that is accessible by the public.

27. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL: Pursuant to the provisions of Chapter 2270 of the Texas Government Code, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

28. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST

ORGANIZATIONS: Pursuant to the provisions of Chapter 2252 of the Texas Government Code, Contractor verifies that it is not identified on a list prepared and maintained under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code.

29. CONFIDENTIAL DATA: If the item(s) or service(s) specified in this Purchase Order require Contractor/Vendor access to Confidential Data (e.g. social security numbers, credit card numbers, data protected by the Family Educational Rights and Privacy Act (FERPA), data classified under the Health Insurance Portability Act (HIPAA), etc.), the Contractor/ Vendor may create, received from or on behalf of TSTC, and have access to records or systems containing Confidential Data only after Contractor/Vendor has certified compliance and approval by TSTC regarding measures to safeguard and protect data. Contractor/Vendor represents, warrants, and certifies that it will:

- a) Hold information in the strictest confidence and will not use or disclose information except as permitted or required by this Purchase Order, required by law, or otherwise authorized by TSTC in writing.
- b) Safeguard information according to commercially reasonable administrative, physical, and technical standards. (e.g. National Institute of Standards and Technology, Center for Internet Security, Gramm-Leach Bliley Act, Payment Card Industry Data Security Standards (PCI-DSS)).
- c) Continually monitor its operations and take any action necessary to assure the information is safeguarded in accordance with the terms of this Purchase Order.

If an impermissible use or disclosure of any of the Confidential Data occurs, Contractor/Vendor will provide written notice to TSTC within one business day after discovery of use or disclosure. Contractor/Vendor will promptly provide TSTC all information requested by TSTC regarding the impermissible use or disclosure. In addition to any other termination rights set forth in this Purchase Order and any other rights at law or equity, if TSTC reasonably determines that the Contractor/ Vendor has breached any restrictions or obligations set forth in this section, TSTC may immediately terminate this Purchase Order without notice or opportunity to cure.

30. FEDERAL FUNDING PROVISIONS: If this Purchase Order is made with federal funds awarded to TSTC, the following provisions are made a part of this Purchase Order, as applicable. In the event of any conflict among the clauses applicable to the Order, including those not applicable solely to federal grants, the most stringent clause will apply

- (a) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (c) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (d) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute

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the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (f) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (g) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (h) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (i) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

IN WITNESS WHEREOF, a duly authorized representative of the Contractor has agreed to the terms of this Agreement and thereby executes and delivers this Agreement to TSTC.

CONTRACTOR

By: _____

(Authorized Signature)

(Printed Name)

(Title)

(Date)