Lamar State College Port Arthur
PURCHASE ORDER TERMS AND CONDITIONS

THE BELOW TERMS AND CONDITIONS ARE INCORPORATED INTO ALL PURCHASE ORDERS – ACCEPTANCE OF THE PURCHASE ORDER INDICATES VENDOR AGREES TO THE BELOW TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS GOVERN AND TAKE PRECENDENCE OVER ANY TERM AND CONDITION CONTAINED IN VENDOR'S QUOTE OR RESPONSE, OR ADDITIONAL DOCUMENTATION PROVIDED BY VENDOR. IF VENDOR IS PROVIDING INFORMATION RESOURCE SERVICES (PER TAC 202.1), THE TERMS AND CONDITIONS OF THE INFORMATION SECURITY EXHIBIT ARE ALSO INCORPORATED INTO THE PURCHASE ORDER AND SHALL ALSO TAKE PRECEDENCE OVER ANY CONTRARY TERM AND CONDITION CONTAINED IN VENDOR'S QUOTE OR RESPONSE, OR ADDITIONAL DOCUMENTATION PROVIDED BY VENDOR.

1. DELIVERY

   a. If delay in delivery is foreseen, Vendor shall notify Lamar State College Port Arthur (**LSCPA**), Procurement Services office at purchasing@lscpa.edu. LSCPA may, in its sole discretion, extend the delivery date if LSCPA determines the reasons are valid. Default in promised delivery (without acceptable reasons as determined by LSCPA) or failure to meet specifications, authorizes LSCPA to purchase supplies elsewhere and charge full increase in cost, if any, to defaulting vendor.

   b. No substitutions, cancellations or price changes are permitted without the prior written approval of LSCPA's Procurement Services office.

   c. Delivery shall be made during normal business hours (Monday – Friday, 8:00 am – 5:00 pm) to the shipping address noted on the Purchase Order (the **Order**). Materials will be considered received by LSCPA upon final acceptance by the requestor of the goods or services.

   d. **Title and Risk of Loss.** Title to and risk of loss to any goods to be delivered under the Order will not pass to LSCPA until LSCPA actually receives and takes possession of such goods at the point of delivery.

2. PAYMENT

   a. **Prompt Payment.** So long as Vendor has provided LSCPA with its current and accurate Federal Tax Identification Number in writing and Vendor is not in default under the Order, LSCPA will pay Vendor for goods and services in accordance with the Prompt Payment Provisions of Chapter 2251, *Texas Government Code*. LSCPA will incur no penalty for late payment, if payment is made in accordance with these Prompt Payment Provisions. LSCPA will notify Vendor, in writing, of any error or disputed amount in an invoice submitted for payment not later than the 21st day after LSCPA receives the invoice. Pursuant to Section 2251.042, *Texas Government Code*, LSCPA may withhold from payments required no more than 110 percent of the disputed amount.

   b. **Sales Tax.** As an agency of the State of Texas, LSCPA is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (**TAC**) §3.322. Pursuant to 34 TAC §3.322(c)(5), LSCPA is not required to provide a tax exemption certificate to establish its tax exempt status.

   c. **Electronic Funds Transfer.** Section 51.012, *Texas Education Code*, authorizes LSCPA to make payments through electronic funds transfer methods. Vendor agrees to receive payments from LSCPA through electronic funds transfer methods, including the automated clearing house system

(**ACH**). Vendor agrees to provide Vendor's banking information and taxpayer identification number to LSCPA, in the format requested by LSCPA, prior to the first payment. Changes to Vendor's information should be communicated to LSCPA in the same manner at least thirty (30) days in advance of the effective date of the change.

d. Vendor shall submit an itemized invoice showing the purchase order number to the bill-to address noted on the Order.

e. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Vendor agrees that any payments owing to Vendor under this Order may be applied directly toward any debt or delinquency that Vendor 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.

3. INSURANCE

In the event the Vendor, its employees, agents or subcontractors enter premises occupied by or under the control of LSCPA in the performance of the Order, the Vendor must obtain and maintain the minimum insurance coverages set forth below. Vendor is not relieved of any liability or other obligations assumed or pursuant to the Order by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

a. **Workers' Compensation Insurance** with statutory limits for the state of Texas, and Employer's Liability Insurance with limits of not less than:

Employers Liability - Each Accident - $1,000,000
Employers Liability - Each Employee - $1,000,000
Employers Liability - Policy Limit - $1,000,000

Policies must include Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas.

b. **Commercial General Liability Insurance** with limits of not less than:

Each Occurrence Limit - $1,000,000
Damage to Rented Premises - $300,000
Medical Expenses (any one person) - $10,000
Personal & Advertising Injury - $1,000,000
General Aggregate - $2,000,000
Products - Completed Operations Aggregate - $2,000,000

Policy must include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this order, fully insuring Vendor's (or subcontractor's) liability for bodily injury (including death) and property damage.

c. **Business Auto Liability Insurance** covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 Combined Single Limit Bodily Injury and Property Damage.

d. For Orders that involve the handling of hazardous material, or Vendor's operation may create or exasperate an environmental hazard, **Pollution Liability Insurance (including Pollution Liability**

Coverage) with limits of not less than $1,000,000 per loss and $2,000,000 annual aggregate is required.

e. For Orders with potential risks related to data privacy, network or information security, **Cyber Liability Insurance** with limits of not less than $10,000,000 for each wrongful act is required. This policy must cover:
   - Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of LSCPA's data, whether by Vendor or any of subcontractor or cloud service provider used by Vendor;
   - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
   - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
   - Liability for technological products and services;
   - PCI fines, fees, penalties and assessments;
   - Cyber extortion payment and response costs;
   - First and Third-Party Business Interruption Loss resulting from a network security failure;
   - Liability for technological products and services;
   - Costs of restoring, updating or replacing data; and
   - Liability losses connected to network security, privacy, and media liability.

f. **Additional Insurance Requirements.**
   - Insurance must be placed with insurers duly licensed or authorized to do business in the state of Texas and with an "A.M. Best" rating of not less than A- VII.
   - Upon request, Vendor must furnish an original, latest edition Certificate of Insurance written on a standard ACORD form acceptable to LSCPA, evidencing that it has procured the insurance required herein. LSCPA reserves the right to require Vendor to provide certificates of insurance, declaration pages, and/or endorsements evidencing the terms and conditions required herein at any time. Each insurance policy required by this Order must be in effect at or prior to commencement of work under this Order and remain in effect for the duration of the project.
   - With the exception of Workers' Compensation and Employer's Liability and Professional Liability, LSCPA, its officers, employees, agents, and volunteers must be included as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Vendor. Commercial General Liability must include LSCPA and its officers, employees, agents, and volunteers as additional insureds for both on-going and completed operations.
   - All policies must be endorsed to provide a waiver of subrogation in favor of LSCPA.
   - All policies of insurance must be endorsed to be primary and non-contributory with any insurance coverages and/or self-insurance maintained by LSCPA.
   - All insurance policies must provide for written notice of cancellation to be sent to LSCPA in accordance with policy provisions. In the event of notice of cancellation of or material change in any insurance required herein, within two (2) days upon receiving such notice, Vendor shall provide written notice to LSCPA.
   - Vendor must require and verify that any and all subcontractors which are not protected under Vendor's own insurance policies maintain insurance of the same nature and in the same amounts as required of Vendor in this Order.

4. TERMINATION

a. **Termination for Convenience.** Upon written notice to the Vendor, LSCPA may terminate the Order, in whole or in part, whenever LSCPA determines that such termination is in the best interest of LSCPA. LSCPA shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the Order. However, the Vendor shall not be reimbursed for anticipatory profits.

b. **Termination for Default.** When the Vendor has not performed or has unsatisfactorily performed the Order, payment shall be withheld at the discretion of LSCPA. Failure on the part of a Vendor to fulfill contractual obligations shall be considered just cause for termination of the Order and the Vendor is not entitled to recover any costs incurred by the Vendor up to the date of termination.

c. **Termination for Loss of Funding.** Performance by LSCPA under the 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 of Regents of The Texas State University System (the **Board**). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then LSCPA will issue written notice to Vendor and LSCPA may terminate the Order without further duty or obligation hereunder. Vendor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of LSCPA.

5. WARRANTIES AND CERTIFICATIONS

a. **Representations and Warranties by Vendor.** If Vendor is a corporation or a limited liability company, Vendor 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.

b. **Tax Certification.** If Vendor is a taxable entity as defined by Chapter 171, *Texas Tax Code* (**Chapter 171**), then Vendor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Vendor is exempt from the payment of those taxes, or that Vendor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

c. **Eligibility Certifications.** Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Vendor certifies that the individual or business entity named in the Order is not ineligible to receive the award of or payments under the Order and acknowledges that the Order may be terminated and payment withheld if these certifications are inaccurate.

d. **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Vendor certifies that it is not ineligible to receive the award of or payments under the Order and acknowledges that the Order shall be terminated, and payment shall be withheld if this certification is inaccurate.

e. **Access by Individuals with Disabilities.** Vendor represents and warrants (the **EIR Accessibility Warranty**) that the electronic and information resources and all associated information, documentation, and support that it provides to LSCPA under the Order (collectively, the **EIRs**) comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Vendor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility

Warranty, then Vendor represents and warrants that it will, at no cost to LSCPA, 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 Vendor fails or is unable to do so, then LSCPA may terminate the Order and Vendor will refund to LSCPA all amounts LSCPA has paid under the Order within thirty (30) days after the termination date.

f. **Debarment and Suspension.** Pursuant to and in compliance with Executive Orders 12549 and 12689 and Section 180.300 of the Code of Federal Regulations, LSCPA cannot purchase goods and/or secure services from vendors that have been debarred, suspended, proposed for debarment, or otherwise excluded from or ineligible to participate in Federal or State assistance programs or activities. By accepting LSCPA's Order, Vendor is certifying that, to the best of its knowledge, Vendor and/or its Principals are not suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by the Federal government and/or the State of Texas. Vendor further certifies that it is not subject to a vendor hold by the State of Texas and/or that it is not subject to debarment or suspension by the Texas Comptroller. If it is ever determined that Vendor is suspended or debarred from doing business with the State of Texas or U.S. Federal government, LSCPA may immediately terminate the Order and will not issue any payment for goods/services rendered.

g. **Entities that Boycott Israel.** Pursuant to Section 2270.002 of the *Texas Government Code*, Vendor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this order. Vendor shall state any facts that make it exempt from the boycott certification.

h. **Firearm Entities and Trade Associations Discrimination.** Pursuant to Chapter 2274 of the *Texas Government Code*, for Orders that exceed $100,000, Vendor certifies 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 Order against a firearm entity or firearm trade association.

i. **Energy Company Boycotts.** Pursuant to Chapter 2274 of the *Texas Government Code*, for Orders that exceed $100,000, Vendor certifies that it:

(1) does not boycott energy companies as defined in Section 809.001 (1)(A) *Texas Government Code* (i.e., fossil fuel companies); and

(2) will not boycott energy companies during the term of the Order.

j. **Vaccine Passport Prohibition.** Vendor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract.

k. **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102 of *Texas Government Code*, Vendor certifies that neither it nor its parent company, nor any affiliate of Vendor 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 Section 2274.0103 of *Texas Government Code*, or

(2) headquartered in any of those countries.

l. **Hardening of Texas's Critical Infrastructure.** Pursuant to Executive Order GA-48 (2024), Vendor certifies that it, and, if applicable, any of its holding companies or subsidiaries, is not:

(1) Listed in Section 889 of the 2019 National Defense Authorization Act (**NDAA**); or

(2) Listed in Section 1260H of the 2021 NDAA; or

(3) Owned by the government of a country listed on US Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4; or

(4) Controlled by any governing or regulatory body located in a country on the US Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4.

m. **Foreign Terrorist Organizations.** Pursuant to Chapter 2252.152 of the *Texas Government Code*, Vendor certifies Vendor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges the Order may be terminated and payment withheld if this certification is inaccurate.

n. **Ethics Matters; No Financial Interest.** Vendor and its employees, agents, representatives and subcontractors have read and understand LSCPA's Conflicts of Interest Policy and Code of Ethics at https://www.lamarpa.edu/lamar/media/lamar/files/policies/policy-and-procedure-manual.pdf and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). Neither Vendor nor its employees, agents, representatives or subcontractors will assist or cause LSCPA employees to violate LSCPA 's Conflicts of Interest Policy, LSCPA's Ethics Code, or applicable state ethics laws or rules. Vendor 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 Order.

Further, if this Order requires TSUS Board of Regents Approval prior to issuance or has a value of at least $1,000,000, Vendor agrees to comply with §2252.908, *Texas Government Code* (**Disclosure of Interested Parties Statute**), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing the TEC and LSCPA with information required on the form promulgated by TEC. Vendor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php.

6. AUDIT

a. **Right to Audit.** Vendor agrees that LSCPA, or any of its duly authorized representatives, at any time during the term of this Order, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of Vendor (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Vendor's charges incurred in its performance under this Order. Such records will be

kept by Vendor for a period of four years after Final Payment under this Order. Vendor agrees to refund LSCPA within thirty (30) days of being notified by LSCPA of any overpayments disclosed by any audits.

b. **State Auditor's Right to Audit.** Vendor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds. Vendor shall cooperate with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Vendor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Vendor relating to this contract for any purpose.

7. NOTICES

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Order will be in writing and will be sent via certified mail, hand delivery, overnight courier, or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, with correct postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, or email (to the extent an email address is set forth below), when received:

If to LSCPA:	Lamar State College Port Arthur PO Box 310 Port Arthur, TX 77641 *Or via email:* *purchasing@lamarpa.edu*
If to Vendor:	As per address / email information noted on the Order.

or other person or address as may be given in writing by either party to the other in accordance with this Section.

8. INDEMNIFICATION

VENDOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS LSCPA AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") 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 ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS ORDER, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF VENDOR, OR IT AGENTS, EMPLOYEES, SUBVENDORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY VENDOR OR ANYONE FOR WHOSE ACTS VENDOR MAY BE LIABLE. THE FOREGOING SHALL NOT APPLY IF DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNITEES. IN ADDITION, VENDOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE INDEMNITEES 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 ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS ORDER. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, LSCPA AGREES TO COOPERATE REASONABLY WITH VENDOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. LIMITATIONS

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF LSCPA (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE ORDER, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON LSCPA'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 LSCPA EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

10. SOVEREIGN IMMUNITY

Notwithstanding any provision of this Order, nothing herein shall be construed as a waiver by Lamar State College Port Arthur of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Order, the terms of this paragraph shall control.

11. CYBERSECURITY TRAINING PROGRAM

Pursuant to Section 2054.5192, *Texas Government Code*, Vendor and its subcontractors, officers, and employees, who are provided credentials granting access to LSCPA's computer system also known as LSCPA's information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by LSCPA. The cybersecurity training program must be completed during the term and any renewal period of this Order. Vendor shall verify in writing completion of the program to LSCPA within the first thirty (30) calendar days of the term and any renewal period of this Order. Failure to comply with the requirements of this section are grounds for termination for cause of this Order.

12. BACKGROUND CHECKS

Vendor will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on LSCPA campuses:

- Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students;
- Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by LSCPA;
- Vendor will determine on a case-by-case basis whether each individual assigned to perform services under this Order is qualified to provide the services. Vendor will not knowingly assign any individual to provide services on LSCPA campuses who has a history of criminal conduct

unacceptable for a university campus or healthcare center, including violent or sexual offenses.

Vendor will provide LSCPA a letter signed by an authorized representative of Vendor certifying compliance with this Section. Vendor will provide LSCPA an updated certification letter each time there is a change in the individuals assigned to perform services under this Order.

13. GENERAL

a. **Products and Materials Produced in Texas.** If Vendor will provide services under the Order, Vendor covenants and agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under the Order, Vendor 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.

b. **Buy American Iron and Steel.** For Orders in which iron or steel products will be used, Vendor agrees to comply with Section 2252.202, *Texas Government Code*, requiring any iron or steel products produced through a manufacturing process and used in the project be produced in the United States.

c. **Independent Contractor.** Vendor recognizes that it is engaged as an independent contractor and acknowledges that LSCPA has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. Vendor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with that status, that it will neither hold itself out as, nor claim to be an officer, partner, employee or agent of LSCPA, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of LSCPA, including unemployment insurance benefits, social security coverage or retirement benefits. Vendor agrees to make its own arrangements for any fringe benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Laws. All of Vendor's employees providing services to LSCPA will be deemed employees solely of Vendor and will not be deemed for any purposes whatsoever employees, agents or borrowed servants of, acting for or on behalf of, LSCPA. No acts performed or representations, whether oral or written, made by Vendor with respect to third parties will be binding upon LSCPA.

d. **Work Material.** All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Vendor Parties in connection with the Services (**Work Material**), whether or not accepted or rejected by LSCPA, are the property of LSCPA and for LSCPA's exclusive use and re-use at any time without further compensation and without any restriction. Vendor grants and assigns to LSCPA all rights in and claims to the Work Material and will cooperate with LSCPA in obtaining or enforcing LSCPA's rights and claims. Vendor will not use the Work Material except as expressly authorized by this Order. Vendor will not apply for any copyright, patent or other property right related to the Work Material.

e. **Public Information.** LSCPA strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, *Texas Government Code*. Vendor is required to make any information created or exchanged with the state pursuant to this Order, that is not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be

deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.

f. **Records Retention Requirements for Orders Over One Million.** For each Order that exceeds a total value of one million dollars, and in accordance with Section 552.372 of the *Texas Government Code*, Vendor agrees to:

(1) preserve all contracting information (as this term is defined in *Texas Government Code*, Section 552.003 (7)) related to this Order in accordance with the records retention requirements applicable to LSCPA for the duration of this contract;

(2) promptly provide to LSCPA any contracting information related to this Order that is in the custody or possession of Vendor on request of LSCPA; and

(3) on completion of this Order, either: (A) provide at no cost to LSCPA all contracting information related to this Order that is in the custody or possession of Vendor, or (B) preserve the contracting information related to this Order in accordance with the records retention requirements applicable to LSCPA.

Vendor further agrees that the requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Order and Vendor agrees that this Order can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

g. **Travel Expenses.** If LSCPA specifies in writing that travel is a part of the services under this Order, LSCPA will reimburse, without mark-up, reasonable expenses for travel (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred by Vendor directly and solely in support of this Order and approved by LSCPA. Travel will be limited to amounts authorized under LSCPA's travel policy. A copy of the travel policy will be provided to Vendor upon request. In the event travel expenses are paid by appropriated funds, travel expenses are limited to amounts authorized by the Comptroller of Public Accounts for the State of Texas for state employees (https://fmx.cpa.texas.gov/fmx/travel/textravel/rates/current.php). Vendor will not be reimbursed by LSCPA for expenses that are prohibited or that exceed the allowable amounts provided in the then current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses, Vendor may be required to submit receipts, invoices, and other documentation requested by LSCPA.

LSCPA reserves the right to pay the then-current per diem rate established under their policy to cover travel expenses in lieu of Vendor submitting receipts and other associated documentation for expenses.

LSCPA reserves the right to negotiate lump sum payments to cover estimated travel expenses in lieu of reimbursing actual travel expenses. In such cases, the payments will be paid to Vendor and reported to Vendor as reportable compensation.

h. **Breach of Contract Claims.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to the 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 LSCPA and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. The chief business officer of LSCPA will examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Order by LSCPA

nor any other conduct, action or inaction of any representative of LSCPA relating to the Order constitutes or is intended to constitute a waiver of LSCPA's or the state's sovereign immunity to suit; and (ii) LSCPA has not waived its right to seek redress in the courts.

i. **Nondiscrimination.** In their execution of the Order the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. The parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, or veterans' status. Any breach of this covenant may result in termination of the Order.

j. **Press Releases and Use of LSCPA Name.** Except when defined as part of the services provided under the Order, Vendor will not make any press releases, public statements, or advertisement referring to the services provided or the engagement of Vendor as an independent Vendor of LSCPA in connection with the Order or release any information relative to the Order or services provided under the Order for publication, advertisement or any other purpose without the prior written approval of LSCPA.

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

l. **Venue; Governing Law.** The Order and all claims arising from the Order shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to the Order and all claims arising from the Order shall be brought in the federal or state courts serving Jefferson County in the State of Texas.

m. **Terms Controlling.** In the event there is a conflict between the terms and conditions of Vendor's quote, or any other documents associated with the Order, and these terms and conditions, these terms and conditions will control.

In accordance with *Texas Education Code*, Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the Agreement or Contract without regard to:

(1) Whether the provision appears on the face of the Agreement or Contract; or
(2) Whether the Agreement or Contract includes any provision to the contrary.

TEXAS STATE UNIVERSITY SYSTEM
INFORMATION SECURITY EXHIBIT

To the extent there is a conflict between a term or condition contained in this IT Exhibit and the associated purchase order or executed Agreement (the **Agreement**) between the parties, the terms and conditions contained in this IT Exhibit shall take precedence and its terms and conditions shall govern and control the parties' contractual relationship.

Applicability:

THIS EXHIBIT IS APPLICABLE IF CONTRACTOR IS PROVIDING INFORMATION RESOURCES TO THE REQUESTING INSTITUTION FOR THE REQUESTING INSTITUTION'S USE.

Definitions:

Requesting Institution: The Texas State University System (**System**) Administration or any of the System's seven (7) Component Institutions that elects to enter into an Agreement with Contractor to utilize Contractor's Services.

Information Resources: The term "Information Resources" has the meaning set forth in TAC 202.1. In addition, Information Resources may include the following examples:

1. all physical and logical components of the Requesting Institution's wired and wireless network infrastructure;
2. any device that connects to or communicates electronically via the Requesting Institution's network infrastructure, including computers, printers, and communication devices, both portable and fixed;
3. any fixed or portable storage device or media, regardless of ownership, that contains the Requesting Institution's data;
4. all data created, collected, recorded, processed, stored, retrieved, displayed, or transmitted using devices connected to the Requesting Institution's network;
5. all computer software and services licensed by the Requesting Institution;
6. support staff and services employed or contracted by the Requesting Institution to deploy, administer, or operate the above-described resources or to assist the Requesting Institution community in effectively using these resources;
7. devices, software, or services that support the operations of the Requesting Institution, regardless of physical location (e.g., SAAS, PAAS, IAAS, cloud services); and
8. telephones, audio and video conferencing systems, phone lines, and communication systems provided by the Requesting Institution.

Confidential Information: Data that have been designated as private or confidential by law or by the Requesting Institution. Confidential Information includes, but is not limited to, employment records, medical records, student records, education records, personal financial records (or other personally identifiable information), audit logs, research data, trade secrets, and classified government information. Confidential Information shall not include public records that by law must be made available to the general public. To the extent there is doubt as to whether any data constitute Confidential Information, the data in question shall be treated as Confidential Information until a determination is made by the Requesting Institution or proper legal authority.

Authorized Agent of Requesting Institution: An officer of the Requesting Institution with designated data, security, or signature authority.

1. **Mandatory Compliance**

Contractor agrees to comply with all applicable state and federal laws and regulations. Contractor agrees to provide credible evidence, to the sole satisfaction of the Requesting Institution, of the below compliance requirements (i) prior to entering into this Agreement with Requesting Institution, and (ii) the earlier of three (3) years during the term of any agreement entered into or before the contract renewal period, if applicable, thereafter. Contractor understands and acknowledges that Contractor's failure to provide credible evidence satisfactory to the Requesting Institution regarding the same prior to entering into any agreement shall result in no contract being awarded to Contractor. Contractor further understands and acknowledges that Contractor's failure to provide credible evidence satisfactory to the Requesting Institution regarding the same during the term of an already executed agreement shall constitute a breach of the agreement by Contractor and the Requesting Institution may automatically terminate the agreement and pursue whatever remedies available to the Requesting Institution under contract, at law, or in equity.

1.1 **Texas Risk and Authorization Management Program (TX-RAMP).** Pursuant to Sections 2054.0593(d)-(f) of the Texas Government Code relating to cloud computing, state risk and authorization management program, if Contractor's service is a cloud computing service as defined by Texas Government Code Section 2054.0593 (a), Contractor represents and warrants that Contractor's cloud computing service complies with the requirements of the state risk and authorization management program, and Contractor agrees that throughout the term of the Agreement, Contractor shall maintain its certifications and continue to comply with the program requirements.

1.2 **Other Applicable Laws and Regulations.** Applicable laws and regulations may include, but are not limited to, the following:

A. The Family Educational Rights and Privacy Act (**FERPA**)
B. The Health Insurance Portability and Accountability Act (**HIPAA**)
C. The Gramm-Leach-Bliley Act (**GLBA**)
D. Payment Card Industry Data Security Standards (**PCI DSS**)

1.3 **Confidential Information in Internet Websites and Mobile Applications**. Pursuant to Texas Government Code Section 2054.516, if Contractor's service includes an Internet website or a mobile application that processes confidential information for the Requesting Institution, then prior to processing Requesting Institution data, Contractor agrees to provide the Requesting Institution with:

A. The results or attestation of a vulnerability and penetration test by an independent third party. For clarity, similar testing performed internally by Contractor personnel is not a sufficient substitute for work performed by a qualified, independent third party.
B. Information regarding the following:

(1) A description of the logical architecture of the websites and/or applications;
(2) Descriptions of the flow of data between logical components of the websites and/or applications; and
(3) Technical description of all authentication mechanisms for the websites and/or applications.

1.4 **Artificial Intelligence**

A. If Contractor's service includes artificial intelligence technology, Contractor agrees to comply with §219.11 of Texas Administrative Code as it applies to vendors and AI system providers.

B. **Heightened Scrutiny AI Systems**. In accordance with §219.24(d) of Texas Administrative Code, if Contractor's service is a Heightened Scrutiny AI System, as defined by Texas Government Code §2054.003(6-a), Contractor certifies that it will implement an AI risk management framework such as that published by the National Institute of Standards and Technology or a comparable standard.

C. **Impact Assessment for Heightened Scrutiny AI Systems**. If Contractor has developed its own AI Impact Assessment it must provide a copy of the artificial intelligence impact assessment to the Requesting Party as required by TAC §219.23(d).

D. **Public-Facing Artificial Intelligence Disclosure.** If the Contractor provides or enables a public-facing artificial intelligence system under this Agreement, the Contractor shall ensure the system supports clear disclosure to users that they are interacting with an artificial intelligence system, consistent with TAC §219.11(g), unless a reasonable person would understand the interaction involves an artificial intelligence system. Contractor shall notify the Requesting Party of any system change that could affect the applicability or adequacy of such disclosure.

1.5 **Security Controls for State Agency Data.** In accordance with Section 2054.138 of the Texas Government Code, Contractor certifies that it will comply with the security controls required under Section 2 of this Exhibit and will maintain records and make them available to Requesting Institution as evidence of Contractor's compliance with the required controls.

2. **Security Controls**

2.1 **Cybersecurity Framework.** Contractor agrees to maintain security controls that, at a minimum, conform to an industry-accepted cybersecurity framework, including for example, NIST SP 800-53, NIST SP 800-171, ISO 27001, or the CIS Critical Security Controls.

2.2 **Information System Security.** Contractor agrees, at all times, to maintain commercially reasonable information security protection(s) that, at a minimum, include network firewalls, intrusion detection/prevention, and periodic vulnerability and penetration testing conducted by a qualified third party. Contractor further agrees to maintain secure environments that are patched and up to date with all appropriate and/or necessary information security updates.

2.3 **Data Confidentiality**. Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Confidential Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to Requesting Institution or an individual identified within the data or information in Contractor's custody.

2.4 **Data Ownership**. Requesting Institution owns all data processed, stored and/or transmitted by Contractor in accordance with the Agreement. Such data must only be used for the purpose of the Agreement.

A. **Data Description**. A description of all Requesting Institution data to which the Contractor has access must be specified in the Agreement, and notifications of any changes must be made in writing by the Contractor within 30 days of the change.

B. **End of Agreement Data Handling**. Contractor agrees within 30 days of termination of the Agreement or receipt of a written request submitted by an Authorized Agent of Requesting Institution, that it must:

(1) return all data, including backup and recovery data, to the Requesting Institution in a useable electronic form;
(2) erase, destroy, and render unreadable all Requesting Institution data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file-restoration utilities; and
(3) certify in writing that these actions have been completed.

2.5 **Data Security**. Contractor agrees to protect and maintain the security of Requesting Institution's data and agrees to conform to the following measures to protect and secure data:

A. **Data Transmission.** Contractor agrees that any and all transmission or exchange of system application data with the Requesting Institution and/or any other parties shall take place using secure, authenticated, and industry-accepted strong encryption mechanisms.

B. **Data Custodianship**. Contractor agrees that any and all of the Requesting Institution's data in Contractor's custody will be stored, processed, and maintained solely on Contractor information systems as designated in the Agreement. Requesting Institution's data in the custody of the Contractor shall not be stored on or transferred to any end-user computing device or any portable storage medium by Contractor or its agents, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes (e.g., backup tapes or drives). All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an Authorized Agent of Requesting Institution. An appropriate officer with the necessary authority can be identified by the Requesting Institution's Information Security Officer for any general or specific case.

C. **Data at Rest.** Contractor agrees to store all of the Requesting Institution's data, including its backup and recovery data, in encrypted form, using sufficiently strong, industry accepted encryption algorithms commensurate with the classification of the information being protected (e.g., AES 128-bit).

D. **Key Management.** Encryption keys must be stored using industry-accepted methods that include storage on information systems separate from the data they decrypt.

E. **Data Re-use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not

be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by federal law, Contractor further agrees that none of the Requesting Institution's data (of any kind) shall be revealed, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by an Authorized Agent of Requesting Institution.

2.6 **Safekeeping and Security.** As part of the Contractor's service, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers and similar security codes, identifiers, passwords, or other authenticators issued to Contractor's employees, agents, contractors, or subcontractors. Contractor agrees to require its employees to report a lost or stolen device or information within 24 hours of such device or information being lost or stolen.

2.7 **Audit Logs.** The Contractor's service shall record audit logs (e.g., application-specific user activities, exceptions, information security events such as successful and rejected events, use of privileges, log-on failed-attempts & successes, log-off, data accessed, data attempted to be accessed, administrative configuration changes, and the use of advanced privileges). All logs pertaining to Requesting Institution's usage of Contractor's service shall be available to Requesting Institution at all times or it shall be promptly made available, without unreasonable delay, to an Authorized Agent of Requesting Institution upon request. These audit logs shall contain sufficient data including but not limited to:

A. User or process identifiers (e.g., the actor or group if applicable);
B. Timestamps including time zone;
C. Source and destination addresses (e.g., IP addresses); and
D. Action or Event descriptions which may include filenames, success or failure indications, and access control or flow control rules invoked.

2.8 **Test / Development Environments.**

A. Requesting Institution data contained within Contractor's test or development environments must be treated as would data in production environments and are subject to the same requirements for safeguards described within this Exhibit.

B. Contractor will make available to the Requesting Institution a development instance separate from the production instance. This environment shall be made available prior to the Requesting Institution's use of the production instance and this environment shall continue to be made available as long as the Requesting Institution is using Contractor's Service.

2.9 **Account Credentials.**

A. Any user accounts provisioned inside the Contractor's service for use by Requesting Institution must be unique and individually assigned.

B. Where applicable, federated authentication services (e.g., SAML, ADFS, or CAS) shall be used.

C. The password management for any non-federated accounts intended for use by the Requesting Institution must comply with institution password policies unless the

Contractor formally requests in writing an exception which must first be approved by the Requesting Institution's Information Security Officer.

2.10 **Maintaining Updated Contacts.** The Contractor shall provide Requesting Institution the appropriate contact(s) necessary for Requesting Institution to maintain the requirements set forth in this Exhibit as well as the Agreement. Any updates to the contact information shall be provided in writing to Requesting Institution within ten (10) business days.

3. **Data Breach**

Contractor agrees to comply with all applicable state and federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to:

3.1 Notify the appropriate Requesting Institution's breach notification address (listed below) and any Authorized Agents of Requesting Institution without unreasonable delay and no later than 48 hours after breach discovery.

(1) Texas State University System Administration: breachnotifications@txstate.edu
(2) Texas State University: breachnotifications@txstate.edu
(3) Sam Houston State University: breachnotifications@shsu.edu
(4) Lamar University: breachnotifications@lamar.edu
(5) Sul Ross State University: breachnotifications@sulross.edu
(6) Lamar State College Port Arthur: breachnotifications@lamarpa.edu
(7) Lamar State College Orange: breachnotifications@lsco.edu
(8) Lamar Institute of Technology: breachnotifications@lit.edu

3.2 Include the following information in the notification:

(1) a description of the impacted products or services;
(2) a full description of all breached data fields;
(3) the number of breached records;
(4) date of breach (suspected or known);
(5) date of breach discovery by Contractor;
(6) method of breach (e.g., accidental disclosure, malicious intrusion);
(7) information security program point of contact including name, email and phone details;
(8) and remediation status (complete, in process - with detail).

3.3 Assume responsibility for informing all such individuals in accordance with applicable law.

4. **Mandatory Disclosure of Confidential Information**

If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Confidential Information, the Contractor must provide Requesting Institution written notice without unreasonable delay so that Requesting Institution may seek an appropriate protective order or other remedy. If a remedy acceptable to Requesting Institution is not obtained by the date that the Contractor must comply with the request, the Contractor will furnish only that portion of the Confidential Information that it is legally required to furnish, and the Contractor

shall require any recipient of the Confidential Information to exercise commercially reasonable efforts to keep the Confidential Information confidential.

5. **Non-Disclosure**

Contractor is permitted to disclose Confidential Information to its employees, authorized contractors and subcontractors, agents, consultants, and auditors on a need-to-know basis only, provided that all such contractors, subcontractors, agents, consultants and auditors have written confidentiality obligation to Contractor.

6. **Survival**

The confidentiality obligations shall survive termination of any agreement with Contractor and for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of Requesting Institution.