

**STEPHEN F. AUSTIN STATE UNIVERSITY (“UNIVERSITY”)
PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

University’s purchase order, the following terms and conditions, and any other document executed by an authorized representative of the Parties (“Agreement”) comprise the entire agreement between University and Contracting Party with respect to the goods and services described in the purchase order. The Agreement shall be deemed accepted by Contracting Party on the earlier of (a) shipment of goods or rendering of services ordered, in total or in part, or (b) within 15 days of issuance of the Purchase Order by University, absent written notification to University of non-acceptance. Notwithstanding anything in the Agreement to the contrary, if there is any conflict or contradiction between the provisions of the Agreement and those in any other document, including Contracting Party’s invoice, or within the documents that comprise the Agreement, these terms and conditions will control and supersede all additional or conflicting provisions, and Contracting Party waives any claim to the contrary.

NOTES TO CONTRACTING PARTY:

1. Advise the Purchasing Agent immediately of any exceptions to this Purchase Order. Changes must be approved prior to shipment or rendering of services ordered. Failure to advise will constitute acceptance of all terms and conditions, including price and description, shown on this order.
2. Contracting Party agrees to comply with all University Purchase Order General Terms and Conditions stated herein and on purchase order document.
3. The Purchase Order Number shall be referred to on all invoices, packages, packing lists, shipping notices and any correspondence relating to this Purchase Order.

DELIVERY:

1. If delay is foreseen, Contracting Party shall give written notice to University’s Procurement Services department. University’s Procurement Services department reserves the right to extend the delivery date if reasons are acceptable, or to cancel the order and purchase the goods and services elsewhere. Default in promised delivery (without accepted reasons) authorizes University to charge the full increase in cost and handling to the defaulting Contracting Party.
2. No substitutions or cancellations are permitted without the written approval of University’s Procurement Services department.
3. A current Material Safety Data Sheet (MSDS) must accompany all products requiring one in accordance with current state and federal laws and regulations.
4. Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by seller to buyer shall pass to buyer upon buyer’s inspection and acceptance of such items at buyer’s location.
5. All items supplied shall be new and unused, in first class condition, including containers suitable for shipment and storage, unless otherwise specified. New shall not be construed as excluding recycled or remanufactured products. Failure to meet specifications places the Contracting Party in default and authorizes University to purchase the goods or services elsewhere and charge the full increase in cost and handling to the defaulting Contracting Party.

INVOICING: Invoices must include, at a minimum, the following information. Contracting Party name on purchase order and invoice must match.

1. Purchase Order Number
2. Remittance Address
3. Charges only for items shipped

TAX EXEMPT: University is exempt from Federal Excise Tax and State Sales Tax-Subtitle E, Chapter 151, Section 151.309 of the Tax Code, for purchases of tangible personal property described in this numbered order, purchased from the Contracting Party and/or shipper, as this property is being secured for the exclusive use of the State of Texas. Tax Exemption Letter will be furnished upon request.

PAYMENT TERMS: Payment terms for amounts due from University to Contracting Party under the Agreement (including but not limited to due dates, late fees, and interest) are governed by Chapter 2251 of the Texas Government Code. University is not responsible for the payment of collection costs or attorney’s fees unless explicitly required by law.

ALTERNATIVE DISPUTE RESOLUTION; GOVERNING LAW: This Agreement and the applicable statute of limitations for any disputes under this Agreement shall be brought in a court of competent jurisdiction in Nacogdoches or Angelina County, Texas and governed by Texas law. To the extent that Chapter 2260, Texas Government Code, is applicable to the Agreement 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, shall be used by University and Contracting Party to attempt

to resolve any claim for breach of contract made by Contracting Party that cannot be resolved in the ordinary course of business. The Vice President for Finance & Administration of University shall examine Contracting Party's claim and any counterclaim and negotiate with Contracting Party in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contracting Party, (ii) neither the issuance of the Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (iii) University has not waived its right to seek redress in the courts.

SUBCONTRACTORS: If Contracting Party subcontracts any of the work set forth in the Agreement, Contracting Party shall ensure that each subcontractor, vendor, affiliate, agent or representative agrees to and complies with all provisions of the Agreement. Contracting Party will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.

ASSIGNMENT: Contracting Party shall not assign any of its rights under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of University. Contracting Party shall not delegate any performance under this Agreement, except with the prior written consent of University. Any purported assignment of rights or delegation of performance in violation of this provision is null and void.

ACCESS TO PUBLIC INFORMATION: Contracting Party is required to make any information created or exchanged with University pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to University. Contracting Party acknowledges that University may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

ACCESS BY INDIVIDUALS WITH DISABILITIES: To the extent Contracting Party is providing Electronic Information Resources, as described herein, to University, Contracting Party represents and warrants that the electronic and information resources, as defined by Texas law, and all associated information, documentation and support that it provides to University under the Agreement ("Electronic and information Resources (EIR) Accessibility Warranty"; collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapters 206 and 213 of the Texas Administrative Code. University may review, test, evaluate and monitor Contracting Party's EIRs for compliance with the EIR Accessibility Warranty. Contracting Party agrees to cooperate fully and provide University timely access to EIRs and other items and information needed to conduct such review, evaluation, testing and monitoring. Neither the review, testing (including acceptance testing), evaluation, or monitoring of any EIR, nor the absence of such review, testing, evaluation, or monitoring will result in a waiver of the University's right to contest the Contracting Party's assertion of compliance with the EIR Accessibility Warranty. To the extent Contracting Party becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contracting Party represents and warrants that it will, at no cost to University, 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 Contracting Party fails or is unable to do so, then University may terminate the Agreement and Contracting Party will refund to University all amounts University has paid under the Agreement during the time Contracting Party was out of compliance with the EIR Accessibility Warranty within thirty (30) days after the termination date.

PATENTS OR COPYRIGHTS: TO THE EXTENT UNIVERSITY IS RECEIVING A LICENSE TO USE INTELLECTUAL PROPERTY OWNED BY CONTRACTING PARTY, CONTRACTING PARTY AGREES TO PROTECT, DEFEND, AND INDEMNIFY UNIVERSITY FROM ANY AND ALL CLAIMS INVOLVING ALLEGED INFRINGEMENTS OF CONTRACTING PARTY'S PATENTS AND COPYRIGHTS. Contracting party warrants that intellectual property licensed to University does not infringe the intellectual property rights of any third parties.

SECURE ERASURE OF HARD DISK PRODUCTS AND/OR SERVICES: Contracting Party agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Contract for such products and/or services, in accordance with 1 TAC 202.

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

LOSS OF FUNDING: Performance by University under the Agreement 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 University (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contracting Party and University may terminate the Agreement without further duty or obligation hereunder. Contracting Party acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

TERMINATION FOR CONVENIENCE: University may terminate this Agreement in writing at any time upon providing at least thirty (30) days written notice to Contracting Party. University will only be liable for payment for Services received prior to the effective date of such termination.

CONFLICT OF INTEREST: Contracting Party and each person signing on behalf of Contracting Party certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of University's Board of Regents, nor any employee or person, whose salary is payable in whole or in part by University, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreements relates, or in any of the profits, real or potential, thereof.

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

PAYMENT OF DEBT OR DELINQUENCY TO THE STATE: Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contracting Party agrees that any payments owing to Contracting Party under the Agreement may be applied directly toward any debt or delinquency that Contracting Party 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.

ELIGIBILITY TO RECEIVE PAYMENT: In accordance with Section 231.006 of the Texas Family Code and Sections 2155.004 and 2155.006 of the Texas Government Code, Contracting Party certifies that it is not ineligible to receive this Agreement or any payments under this Agreement and acknowledges that University may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.

REPRESENTATIONS AND WARRANTIES BY CONTRACTING PARTY: If Contracting Party is a corporation, limited liability company, or any other entity organized and existing under state law, Contracting Party warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contracting Party has been duly authorized to act for and bind Contracting Party.

PRODUCTS AND MATERIALS PRODUCED IN TEXAS: If Contracting Party will provide services under the Agreement, Contracting Party covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under the Agreement, Contracting Party 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.

STATE AUDITOR'S OFFICE: Contracting Party understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. Contracting Party agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contracting Party will include this provision in all contracts with permitted subcontractors.

SOVEREIGN IMMUNITY: The Parties stipulate and agree that no provision of, or any part of the Agreement between University and Contracting Party, or any subsequent change order, amendment, or other Agreement modification shall be construed: (1)

as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to University beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the United States.

CONFIDENTIALITY: During the course of the work and/or services to be provided under this Agreement and for a period of five (5) years thereafter, Contracting Party may come in contact with confidential information of University. Contracting Party agrees to treat as confidential the information or knowledge that becomes known to Contracting Party during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by University. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contracting Party shall promptly notify University of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to University all confidential information in Contracting Party's possession or control. Contracting Party shall further comply with all University information security policies that may apply.

TRAVEL EXPENSES: If the Agreement requires University to reimburse Contracting Party for travel expenses, Contracting Party shall invoice all requests for reimbursement in accordance with the State of Texas travel, meal and lodging reimbursement guidelines and limitations applicable to State of Texas employees.

DELIVERY, TITLE, AND RISK OF LOSS: All work performed by Contracting Party pursuant to the Agreement will be at Contracting Party's exclusive risk until final and complete acceptance of the work by University. Unless otherwise agreed to in writing, Contracting Party shall arrange and pay for all shipping charges, transit insurance, taxes, and custom charges and any fees and duties in connection with shipment of goods. In the case of any loss or damage to the work prior to University's acceptance, such loss or damage will be Contracting Party's responsibility. Delivery of any goods to University pursuant to the Agreement must be FOB destination. Contracting Party shall hold title to and risk of loss of goods under the Agreement, including during tender to carrier until final delivery to, inspection and acceptance by University, at which time title and risk of loss and damage to goods shall transfer to University.

INDEMNIFICATION: CONTRACTING PARTY SHALL INDEMNIFY AND HOLD HARMLESS UNIVERSITY AND ITS DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL LIABILITY, LOSS, EXPENSES (INCLUDING REASONABLE LITIGATION COSTS AND ATTORNEY FEES), OR CLAIMS FOR INJURY OR DAMAGES ARISING OUT OF THE PERFORMANCE OF THE AGREEMENT (COLLECTIVELY, "CLAIM") TO THE EXTENT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY CONTRACTING PARTY, ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS.

COMPLIANCE: Contracting Party shall observe and abide by all applicable local, state, and federal laws, regulations, and University policies and procedures.

TITLE IX: University strictly adheres to Title IX of the Education Amendments of 1972, the federal Campus Sexual Violence Elimination Act; United States Department of Education regulations and directives; and the University's sexual misconduct policy and procedures ("Regulations"). Specifically, the Regulations apply to all students, employees, visitors, and other third parties on University-controlled property, including institutions and entities with whom University places its students. Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and sexual misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to: 1) Report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; 2) Cooperate with University's Title IX investigation; and, 3) Cooperate fully with all sanctions that University may impose against such individual, organization, or entity, who is found to have violated the Regulations. If the individual, organization, or entity fails to adhere to any of the aforementioned requirements, University reserves the right to take appropriate action, including but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and immediate termination of business or contractual relationships.

OTHER AGREEMENTS; CLICK THROUGH LICENSE: This Agreement is the entire agreement between University (including University's employees) and Contracting Party. Contracting Party may enter into terms of use agreements, end user license agreements ("EULA"), shrink-wrap provisions, or other agreements or understandings with users of a site or software who are not University's employees. University shall not be liable for the actions of the users of any application, site or services, other than University's employees and to the extent permitted herein. In the event that Contracting Party enters into terms of use agreements, terms of services agreements, EULA, shrink-wrap, click-through or other agreements or understandings, whether verbal or in writing, with University's employees, such as by requiring the employee to click an on screen indicator indicating "I

accept" before allowing the user to access the application, site or service, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply. Contracting Party acknowledges and agrees that no University employee other than its President has the authority to bind University in contract. University will not be bound to any other terms and conditions set forth in any documents, agreements or policies posted on Contracting Party's website unless such terms and conditions are set forth in this Agreement. Contracting Party may not unilaterally change any term or condition of this Agreement. A provision of this Agreement is not waived unless made in writing by an authorized representative of the waiving party.

NON-DISCRIMINATION: By accepting this purchase order, Contracting Party certifies that it will not discriminate on the basis of race, color, religion, national origin, sex, age, disability, genetic information, citizenship, veteran status, or any other basis prohibited by law or University policy, and will indemnify University from any claims regarding Contracting Party's discrimination.

FERPA COMPLIANCE: To the extent applicable, Contracting Party agrees to hold student information, including any personally identifiable student information or education records as those terms are defined under federal law, ("Confidential Data") in strict confidence and warrants to University that it will use reasonable industry practices to establish and maintain adequate procedures to ensure the confidentiality and privacy of such Confidential Data from unauthorized use or disclosure in violation of the Federal Family Educational Rights and Privacy Act ("The Buckley Amendment or "FERPA"), 20 USC 1232 g and not to use or disclose Confidential Data except as permitted or required by this Agreement, as required by law, or as otherwise authorized by University in writing. Contracting Party further agrees not to use Confidential Data for any purpose other than the purpose for which the disclosure to Contracting Party was made. Contracting Party shall continue to maintain the confidentiality and privacy of the Confidential Data retained in its system after cancellation, expiration or other conclusion of this Agreement. Upon termination, cancellation, expiration or other conclusion of this Agreement, Contracting Party shall return all Confidential Data to University or, if return is not feasible, destroy any and all Confidential Data. If Contracting Party destroys the information, it shall provide University with a certificate confirming the date of destruction of the data. Contracting Party shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Data received from, or on behalf of University or its students. These measures will be extended by contract to all subcontractors used by Contracting Party. Contracting Party shall, within one day of discovery, report to University any use or disclosure of confidential information not authorized by this Agreement or in writing by University. Following this report, Contracting Party will conduct a timely and thorough investigation in an attempt to identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, and (iii) who made the unauthorized use or received the unauthorized disclosure. At the conclusion of this investigation, Contracting Party will furnish a confidential written report to University indicating the results of the investigation, what Contracting Party has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and what corrective action Contracting Party has taken or shall take to prevent future similar unauthorized use or disclosure.

U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM: By entering into the Agreement, Contracting Party certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: (i) all persons employed to perform duties within Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by Contracting Party to perform work pursuant to the Agreement, within the United States of America. Contracting Party shall provide, upon request of University, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above by Contracting Party, and Contracting Party's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be terminated, at the discretion of the University and at no fault to the University, with no prior notification. Contracting Party shall also be responsible for the costs of any re-solicitation that the University must undertake to replace the terminated Agreement.

ISRAEL NON-BOYCOTT VERIFICATION: Pursuant to Section 2270.002, Texas Government Code, Contracting Party hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement, as that term is defined by Section 808.001(1), Texas Government Code.

CONTRACTS WITH FOREIGN TERRORIST ORGANIZATIONS PROHIBITED: Pursuant to Section 2252.152, Texas Government Code, and to the extent applicable, Contracting Party hereby represents, verifies, and warrants that it does not do business with Iran, Sudan, or any foreign terrorist organization identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153, Texas Government Code.

EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED: Contracting Party acknowledges that, through its acceptance of this Agreement, it will be subject to the restrictions against employment of former state officers or employees contained in Section 572.069, Texas Government Code.