

# Texas Higher Education Coordinating Board (THECB)

## Terms and Conditions

### INVOICING INSTRUCTIONS

THE INVOICE SHOULD INCLUDE BUT IS NOT LIMITED TO INCLUDING:

1. Invoice must be e-mailed to [accounts payable@highered.texas.gov](mailto:accounts payable@highered.texas.gov) or mailed to Financial Services Accounts Payable, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711;
2. Vendor's name, mailing and e-mail address (if applicable) must be in the same order as stated on the Purchase Order;
3. The name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
4. THECB's name and delivery address;
5. THECB's Purchase Order number;
6. The contract number or other reference number, if applicable;
7. A valid Texas Identification Number (TIN) issued by the Comptroller of Public Accounts
8. A description of each item for the goods or services listed on the purchase order in sufficient detail to identify the order that relates to the invoice. Item numbers must be shown to correspond with the item numbers of the Purchase Order;
9. Quantity delivered, unit and total price of each item must be shown and all prices extended on the invoice. All extensions on the invoice must be totaled and grand total shown;
10. Discounts, if applicable must be stated, extended and deducted to arrive at a net total for the invoice;
11. Shipment date of merchandise must be shown on invoice;
12. Date of purchase order must be shown on invoice;
13. Other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

PAYMENT – Vendor shall submit an itemized invoice according to the above invoicing instructions. THECB will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice, in accordance with Texas Government Code, Chapter 2251 Payment for Goods and Services.

### PURCHASE ORDER INCORPORATED TERMS AND CONDITIONS

The Texas Higher Education Coordinating Board (“THECB”) and the vendor named on the attached Purchase Order (the “Vendor”) (collectively, the “Parties”) desire to enter into a contract. The Vendor’s bid (the “Vendor’s Bid Form”) represents the offer, which THECB accepts per its issuance of the attached Purchase Order. The Vendor’s Bid and the Purchase Order (along with all the terms and conditions listed herein, which are incorporated into the Purchase Order) comprise the Parties’ agreement (the “Contract”).

## General and Special Provisions of Contract, Certain Certifications

Contractor further certifies the following:

1. **Former Agency Employees:** Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.
2. **Prior Disaster Relief Contract Violation:** Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
3. Pursuant to Section 2261.252 of the Texas Government Code, a state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest: (1) a member of the agency's governing body; (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; (3) a family member related to an employee or official described above in (1) or (2) within the second degree of affinity or consanguinity.
4. Pursuant to Section 2263 of the Texas Government Code, financial advisors or service providers must disclose in writing to the administrative head of the state governmental entity and the State Auditor's Office (SAO) the following. For this purpose, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker. Such disclosure shall be in compliance with the provisions of Texas Government Code 2263.005.
5. **Executive Head of a State Agency:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it/he/she is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.
6. **HB1295:** Pursuant to Texas Government Code Section 2252.908, which was added by H.B. 1295, 84<sup>th</sup> Leg. Session, R.S. (2015), Contractor agrees to submit a disclosure of interested parties to the THECB at the time Contractor submits the signed contract to the THECB. This section applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.
7. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees who will be involved in the Contract Project have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised THECB as to the facts and circumstances surrounding the conviction(s) and has received THECB's prior written consent to proceed.
8. **Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code §572.069:** Contractor certifies that is has not employed and will not employ a former THECB or state officer who participated in a procurement or contract negotiation for THECB involving Contractor within two years after the state officer or employee left state agency employment or service.  
This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

1. Termination:

- a. Convenience of the State: THECB, in its sole discretion, has the right to terminate this Contract, in whole or in part, by notifying Contractor in writing of such termination. Notification of the termination shall state the effective date of the termination.
- b. Termination for Cause: THECB may, by written notice to Contractor, immediately terminate this Contract for cause if: (a) THECB is not reasonably satisfied with Contractor's Services; (b) default or abandonment by Contractor occurs; or (c) Contractor fails to comply fully with any term or condition of this Contract, through no material fault of THECB. If THECB deems it appropriate under the circumstances, THECB will provide a three (3) day advance written notice of intent to terminate to Contractor, and THECB will provide Contractor with an opportunity for consultation with THECB prior to termination during that three (3) day period.
- c. If Contractor fails or refuses to perform its obligations under this Contract, THECB may exercise any and all rights as may be available to it by law or in equity. In the event THECB exercises its right to terminate for cause, Contractor is responsible for paying damages to THECB including but not limited to re-procurement costs (if applicable), and any other consequential damages to the State of Texas and THECB resulting from Contractor's non-performance.
- d. Abandonment or Default: If the Contractor Abandons or Defaults on the Contract, THECB reserves the right to terminate the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. In such event, the Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by THECB based on the seriousness of the default.
- e. Interpretation: THECB may terminate this Contract immediately upon notice to Contractor in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Contract, on the part of THECB, wholly unreasonable or impossible. THECB reserves the right, at its sole discretion, to unilaterally amend this Contract throughout the Contract Term to incorporate any modifications necessary for THECB's compliance, as an agency of the state of Texas, with all applicable state and federal laws, rules, regulations, requirements, and guidelines.
- f. Non-Appropriation: This Contract is subject to termination by THECB, either in whole or in part, if state funds become unavailable. The THECB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If THECB becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render Contractor's delivery or performance under this Contract impossible or unnecessary, this Contract will be terminated, either in whole or in part. In the event of a termination under this Section, THECB will not be liable to Contractor or any other person or entity for any payments, damages or any other amounts which were otherwise due or which may be caused or associated with such termination and THECB is not required to give prior notice of such termination.
- g. Effect of Termination: Upon any termination, all indemnities, including without limitation those set forth in this Contract, as well as Contract provisions regarding confidentiality, records retention, right to audit, ownership, and dispute resolution, shall survive the termination of this Contract for any reason whatsoever and shall remain in full force and effect. In the event of any termination, Contractor shall,

unless otherwise mutually agreed upon in writing, cease all Services immediately upon the effective date of termination, except such Services that THECB deems are necessary to wind-up in a cost-effective manner. For any termination by THECB other than termination for non-appropriation, THECB shall be liable to Contractor for only that portion of the Services authorized by THECB and which have been completed prior to the effective date of termination, provided that THECB shall not be liable for any work performed that is not acceptable to THECB and/or does not meet Contract requirements, plus any necessary work deemed appropriate by THECB to cost-effectively wind-up.

- h. **Transfer of Duties:** In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption.
2. **Amendment:** This Contract may be modified only by written amendment executed by the Parties hereto; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.
3. **Indemnification:**  
**Acts or Omissions:** CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THECB AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
4. **Sovereign Immunity:** The Parties stipulate and agree that no provision of, or any part of this Contract between THECB and Contractor, or any subsequent amendment 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 THECB 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 State of Texas and the United States. The State of Texas and THECB do not waive sovereign immunity by entering into this Contract and specifically retain such immunity and all defenses available to them under the laws of the State of Texas or the common law.
5. **Assignment:** Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect.
6. **Delegation, or Subcontracting:** Unless as otherwise provided for in this Contract, no contractual rights, interest, or obligation shall be delegated or subcontracted by Contractor without prior written approval of THECB. No delegation or subcontract approved by THECB shall relieve Contractor of any obligation or responsibility under this Contract. It is the parties intent that to the extent subcontracting is approved by THECB, Contractor shall

make a good faith effort to subcontract with Historically Underutilized Business(es) (HUB) as defined in Texas Government Code §2161.001(2) during the performance of this Contract. The goal of the HUB program is to promote full and equal business opportunities for all businesses contracting with the State of Texas.

7. **Right to Audit; Records Retention:** Contractor understands that acceptance of funds under this Contract, or indirectly through a subcontract under this Contract, acts as acceptance of the authority of the State Auditor's office, THECB or any successor agency, as well as any external auditors selected by the State Auditor's office, THECB or, in contracts involving federal funds, any auditors selected by the United States, including, but not limited to the cognizant federal agencies and/or federal Offices of the Inspector General (collectively referred to as "Audit Entities"), to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including promptly providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards.
  - a. Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts (which includes all receipts of expenses incurred by Contractor) shall be retained by Contractor and made available for inspecting, monitoring, programmatic or financial auditing, or evaluation by THECB and by others authorized by law or regulation to do so for a period of not less than seven (7) years from the date of completion of the Contract or the date of receipt by THECB of Contractor's final claim for payment or final expenditure report or until any litigation/billing issues are resolved, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Services provided in this Contract. Contractor and any subcontractors shall provide any Audit Entities with any information such entity deems relevant to any monitoring, investigation, evaluation, or audit.
  - b. Contractor's failure to comply with this subsection (Right to Audit; Records Retention) shall constitute a material breach of this Contract and shall authorize THECB and the State of Texas to immediately assess appropriate damages for such failure. THECB reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records on work performed under this Contract. Contractor shall reimburse THECB for any over-payments within thirty (30) calendar days of receipt of THECB's written notice.
  - c. **State Auditor's Right to Audit:** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
8. **Child Support Obligation Family Code Applicability:** By signing this Contract, Contractor certifies that under Section 231.006, Family Code, Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and

payment may be withheld or recouped if this certification is inaccurate. If this certification is shown to be false, Contractor is liable to THECB for attorneys' fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or Contract. Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

9. **Dispute Resolution:** If THECB determines that any work product is not acceptable, THECB shall notify Contractor of the specific deficiencies in writing. Contractor shall then undertake all steps necessary to correct any deficiencies at no additional cost to THECB. In the event any issues cannot be resolved, the dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by THECB and Contractor to attempt to resolve any claim for breach of Contract. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.
10. **Public Disclosure:** Contractor understands and agrees that no public disclosures or news releases pertaining to this Contract, including any results, findings or reports conducted to fulfill requirements of this Contract, shall be made without prior written approval of THECB.
11. **Confidentiality, Public Information Act, and FERPA:** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that as a Texas state agency, THECB is subject to and will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Contractor will cooperate with THECB in the production of documents responsive to any such requests under the Public Information Act at no additional charge to THECB.
  - a. THECB will make a determination whether to submit a Public Information Act request to the Attorney General. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor will notify THECB's contact within 24 hours of receipt of any third party requests for information it receives relating to this Contract. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to this contract, and 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 and shall cooperate with THECB in doing so. Contractor agrees to maintain the confidentiality of information received from THECB and the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Contractor will not disclose any information to which it is privy under this Contract without the prior written consent of THECB. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and THECB, its officers and employees for any claims for damages that arise from the disclosure by Contractor of information also held by the State of Texas or THECB to which Contractor is privy under this Contract.
  - b. Contractor agrees to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 CFR Part 99.
  - c. **Protection of Confidential Data (Covered Data and Information)**  
Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in the Family Educational

Rights and Privacy Act (34 CFR § 99.33 (a)(2)) and with the terms set forth below in 6.11.4 – 6.11.9. 34 CFR 99.33 (a)(2) states that the officers, employees, and agents of a party that receive education record information from THECB may use the information, but only for the purposes for which the disclosure was made.

- d. Acknowledgment of Access to Covered Data and Information (CDI)  
Contractor acknowledges that the Contract allows the Contractor access to CDI.
- e. Prohibition on Unauthorized Use or Disclosure of CDI  
Contractor agrees to hold CDI in strict confidence. Contractor shall not use or disclose CDI received from or on behalf of THECB except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by THECB. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
- f. Return or Destruction of CDI  
Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all CDI to THECB or, if return is not feasible, destroy any and all CDI. If the Contractor destroys the information, the Contractor shall provide THECB with a certificate confirming the date of destruction of the data.
- g. Breach  
Any violation of these FERPA provisions by Contractor shall be deemed a material breach of the Contract.
- h. Maintenance of the Security of Electronic Information  
Contractor 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 CDI received from, or on behalf of THECB. These measures will be extended by contract to all subcontractors used by Contractor.
- i. Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information  
Contractor shall, within one hour of discovery, report to THECB any use or disclosure of CDI not authorized by this Contract or in writing by THECB. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use and who received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as requested by THECB.

## 12. Infringements

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THECB AND THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, OFFICERS, AND DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE

CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- a. Contractor shall have no liability under this section if the alleged infringement is caused in whole or in significant part by: (i) THECB's use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product by THECB without Contractor's approval, (iii) any modifications made to the product by the Contractor pursuant to THECB's specific instructions, (iv) any intellectual property right owned by or licensed to THECB by a person or entity other than the Contractor, or (v) any use of the product or service by THECB that is not in substantial conformity with the terms of any applicable license agreement.
  - b. If Contractor becomes aware of an actual or potential claim, or THECB provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against THECB, shall), at Contractor's sole option and expense; (i) procure for THECB the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that THECB's use is non-infringing.
- 13. Ownership/Work Made for Hire:** All work product generated as a result of this Contract Project, including but not limited to all information, materials, products, research, reports, studies, statistical analyses, work papers, approaches, designs, deliverables, systems, documentation, methodologies, concepts, research materials, data, photos, software, intellectual property or other property produced or generated in connection with this Contract that had not previously been produced or generated by Contractor, either completed or partially completed, shall be the sole property of THECB and all rights, title, and interest in and to the work product shall vest in THECB upon payment for the Services.
  - a. All such work product shall be delivered to THECB by Contractor upon completion, termination, or cancellation of this Contract. All property rights, including publication rights, hereunder shall be retained by THECB, and Contractor shall assert no right in law or equity to such work product. THECB shall have the right to obtain and to hold in its own name any and all patents, copyrights, marks, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof.
  - b. Contractor shall ensure that this provision, "Ownership/Work Made for Hire," is contained in any subcontract Contractor is authorized by THECB to award. Contractor may, at its own expense, keep copies of all its materials for its personal files. Contractor shall not use, willingly allow, or cause to have such work product used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of THECB; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of work.
- 14. Governing Law and Venue:** The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.
- 15. Additional Contractor Responsibilities:** Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Contract, including applicable workers compensation laws, compensation statutes and



regulations, and licensing laws and regulations. When requested to do so by THECB, Contractor shall furnish THECB with satisfactory proof of its compliance. Contractor shall be responsible for damage to THECB's equipment, and/or the workplace and its contents, by its, or its subcontractors' work, negligence in work, personnel, and equipment. Contractor shall be responsible and liable for the safety and health of its employees and contractors while they are performing work for THECB under this Contract. Contractor shall provide all labor and equipment necessary to furnish the goods or perform the Services. All employees of Contractor shall be a minimum of 18 years of age and experienced in the type of work to be performed. Contractor shall permit no visitors or relatives of Contractor's employees and contractors on THECB's property unless they also are bona fide employees or subcontractors of Contractor.

- 16. Conflict of Interest:** Contractor represents and warrants that Contractor, its principals, employees, or subcontractors have no potential conflict of interest in providing Services to THECB under this Contract, and that the provision of Services under this Contract does not create an appearance of impropriety. Failure to disclose a conflict of interest, at any time during the duration of this Contract, shall be cause for termination of this Contract. Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 17. Financial Interests; Gifts:** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from THECB or any agency of the State of Texas for participation in preparation of specifications for this Contract.
- 18. Additional Contractor's Representations:** Contractor hereby covenants, represents and warrants that Contractor (including, for purposes of this section, its employees, consultants, subcontractors, and agents) (1) has the technical expertise and general skills necessary to perform competently and professionally the Services in accordance with this Contract, (2) is not a party to or bound by any agreement, obligation, or understanding which restricts or limits in any way Contractor's right to enter into this Contract or Contractor's right or ability to perform Contractor's obligations under this Contract, (3) shall not use the trade secrets, intellectual property rights, copyrights, or other proprietary rights of any third party in the performance of Contractor's obligations under this Contract without having first lawfully obtained the right, in writing, to do so, and (4) has the necessary equipment, facilities and workers to perform Contractor's obligations under this Contract.
- 19. Antitrust:** The undersigned affirms under penalty of perjury of the laws of the State of Texas that: "(1) in connection with this Contract, neither I nor any representative of the Contracted Party have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Contract, neither I nor any representative of the Contracted Party have violated any federal antitrust law; and (3) neither I nor any representative of the Contracted Party have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contracted Party or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contracted Party."
- 20. Equal Opportunity:** Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, religion, political belief, sex, age, or disability in the performance of this Contract.
- 21. Independent Contractor:** Contractor shall be an independent contractor in all matters relating to this Contract. Contractor and its employees, agents, and subcontractors shall not be deemed or construed to be the employees or agents of THECB for any purposes whatsoever. Contractor agrees and acknowledges that Contractor, its employees and

agents, and Contractor's subcontractors are independent contractors of THECB and/or the State of Texas and are not employees of THECB or the State of Texas, and Contractor agrees that it shall have complete responsibility in the area of employment law and relations regarding its own employees, contractors, and agents, including but not limited to: wrongful discharge lawsuits, unemployment issues, workers' compensation, employment taxes, any other benefits and reimbursement due to losses in these areas. Consistent therewith, Contractor agrees that it shall make its own arrangements to provide its employees with all necessary employee benefits, including unemployment and workers' compensation benefits, and THECB is, in no way, a party to such arrangements. Regarding its employees, Contractor shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.

- a. Contractor agrees and acknowledges that Contractor and Contractor's employees or assistants shall not be entitled to any State of Texas benefit on account of the services provided hereunder. If THECB or the State of Texas shall nonetheless become liable for such payments or obligations, Contractor shall promptly pay or reimburse THECB or the State of Texas for such liability or obligation.

**22. Eligibility/Authorization to Work in the United States:** Contractor shall ensure that all personnel provided to perform work under this Contract possess proof of eligibility/authorization to work in the United States in compliance with the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 including any amendments already adopted or as may be adopted hereafter, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 including any amendments already adopted or as may be adopted hereafter. Contractor shall maintain written records on all personnel provided under the Contract and shall provide such records to THECB upon request. Failure to maintain and provide records upon request shall represent a material breach of this Contract and THECB shall have the right to terminate the Contract for cause. Contractor shall ensure this section is included in all subcontracts it is authorized by THECB to enter.

**23. Taxes/ Workers' Compensation/Unemployment Insurance - Including Indemnity**

- a. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THECB AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.
- b. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THECB, THE STATE OF TEXAS AND THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS,

ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 24. Prohibition on Use of Funds for Lobbying:** Contractor represents and warrants that THECB's payments and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Texas Government Code, Sections 556.005 or 556.008.
- 25. Buy Texas:** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 26. Provision of Services:** Upon any request by THECB for the remittance of any Services for which THECB has made payment, Contractor shall immediately remit such Services to THECB. Any failure to remit such Services immediately shall be considered a material breach of this Contract.
- 27. Force Majeure:** THECB may grant relief from performance of this Contract if Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. Contractor shall notify THECB in writing if it believes that a force majeure may have occurred and THECB shall, in its sole discretion, determine if Force Majeure has occurred.
- 28. Notice:**
  - a. **Form of Notice.** All notices and other communications in connection with this Agreement shall be in writing.
  - b. **Method of Notice.** All notices must be given (i) by personal delivery, (ii) by an express courier (with confirmation), (iii) mailed by registered or certified mail (return receipt requested), (iv) facsimile, or (v) electronic mail to the parties at the address specified in this Agreement, or to the address that a party has notified to be that party's address for the purposes of this section.
  - c. **Receipt of Notice.** A notice in accordance with this Agreement will be effective upon receipt by the party to which it is given or, if mailed by registered or certified mail, upon the earlier of receipt or the third business day following mailing.
  - d. **THECB Notice Email:** [Contracts@highered.texas.gov](mailto:Contracts@highered.texas.gov)
- 29. False Statements; Breach of Representations:** Contractors represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the Contract.
- 30. Severability and Waiver:** The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity, legality, or enforceability of any other provisions.
  - a. Each and every right granted to the Parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, shall be cumulative and may be exercised from time to time. Failure by THECB or Contractor at any time to require strict performance of any contractual provision or obligation contained herein shall not constitute a waiver or diminish the rights of either party thereafter to demand strict compliance. Neither THECB's review, approval, acceptance of, nor payment for any of the Services provided in this Contract shall be construed to operate as a waiver of any rights under the Contract,

or of any cause of action arising out of the performance of the Services required by the Contract.

31. Boycotting Israel: (Only applicable to contracts with companies with ten or more full-time employees) that are valued at \$100,000 and above). If applicable: Pursuant to Sections 2271.001 and 2271.002 of the Texas Government Code, Contractor certifies that it does not boycott Israel and will not boycott Israel during the Contract Term.
32. Human Trafficking Prohibition: Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
33. Foreign Terrorist Organizations: Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
34. System for Award Management: THECB is federally mandated to adhere to the directions provided in the President’s Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it. Contractor certifies that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
35. Notification of Contract:  
(Only applies to Employees of a Texas state agency or any public or private institution of higher education.) THECB will send notification to the contractor’s employer, if Contractor is otherwise employed outside of their contracted work with THECB.
36. Insurance: Contractor agrees to maintain at its expense insurance as required for the work being performed under this Contract. Such insurance will protect THECB from all claims for bodily injury, death, or property damage which may arise out of or result from the performance of the Contractor’s obligations under the Contract. Contractor represents and warrants that it will, within ten (10) business days of award of contract, provide THECB with current certificates of insurance or other proof acceptable to THECB of the following insurance coverage:
  - a. Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Minimum Required Amounts of Insurance Coverage	
Type of Insurance	Each Occurrence/Aggregate
Workers’ Compensation	Statutory Limits
Employer’s Liability	
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Each Employee
Bodily Injury by Disease	\$1,000,000 Policy Limit
Commercial General Liability (occurrence based)	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented

Automobile Liability All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
Umbrella/Excess Liability	\$1,000,000 Per Occurrence

Note: The required insurance coverage must issue from a company or companies that:  
Have both a Financial Strength Rating of “A” or better from A.M. Best Company, Inc.; and  
Have a Financial Size Category Class of “VII” or better from A.M. Best Company, Inc.

- b. All insurance policies for required coverage must be issued by companies authorized to do business under the laws of the State of Texas and in a form satisfactory to THECB. All required insurance contracts must:
  - i. Be written on a primary and non-contributory basis with any other insurance coverages Contractor currently has in place; and
  - ii. Include a Waiver of Subrogation Clause.
- c. All certificates of insurance for required coverage other than workers compensation and professional liability must name the State of Texas and its Officers, Directors, and Employees as additional insureds.

Contractor shall:

- i. Provide written notice to THECB by e-mail at [Contracts@higherred.texas.gov](mailto:Contracts@higherred.texas.gov) and by U.S. First Class Mail to 1801 N. Congress Ave. Suite 12.200, Austin, TX 78701 at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;
- ii. Ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor’s performance under the Contract; and
- iii. Deliver to THECB by e-mail at [Contracts](mailto:Contracts@higherred.texas.gov) and by U.S. First Class Mail to 1801 N. Congress Ave. Suite 12.200, Austin, TX 78701 all renewal policies at least ten calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth in the Contract.
- d. Contractor must ensure that all provisions of the Contract concerning liability, duty, and standard of care, together with the indemnification provision, are underwritten by contractual liability coverage sufficient to include such Contractor’s obligations under the Contract.

**37. Key Personnel:** Contractor shall assign only qualified personnel to this Contract.

Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified to accomplish the required Services. Contractor shall provide to THECB prior written notice and obtain written approval from THECB prior to any change in key personnel involved in providing Services under this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor (see “Assignment, Delegation, or Subcontracting” provision for additional conditions regarding subcontracts). No subcontract under this Contract shall relieve Contractor of responsibility for ensuring the required Services are provided. THECB, in its sole discretion, may require Contractor to remove any employee, contractor, subcontractor, or vendor of the Contractor from providing work or services under the Contract. Contractor shall replace such removed personnel expeditiously so that its services are performed on a timely basis.

- 38. Debts and Delinquencies to the State:** Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
- 39. Deceptive Trade Practices; Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice, in any administrative hearing or court suit, and further, that if it has been the subject of either or both such allegations, that Contractor has not been found to be liable for any such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities which have been the subject of allegations of Deceptive Trade Practices Act conduct, violations thereof, or allegations of any unfair business practices, in an administrative hearing or court suit and further, that if such officer(s) has been the subject of either or both such allegations, that such officers have not been found to be liable for any such practices in such proceedings.
- 40. Suspension and Debarment:** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
- 41. Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 42. E-Verify: U.S. Department of Homeland Security's E-Verify System**
- a. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
  - b. All persons employed to perform duties within Texas, during the term of the Contract; and
  - c. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.
  - d. The Contractor shall provide, upon request of THECB, 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 the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.
  - e. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of THECB or the State of Texas and at no fault to THECB or the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that THECB or the State of Texas must undertake to replace the terminated Contract.
- 43. Drug Free Work Place:** The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 44. No Commissions:** THECB shall not pay any commissions to Contractor under this Contract.
- 45. Contacts: {division contact}** or successor.

- 46. Applicable Taxes:** This Contract shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, THECB, and all departments, agencies, and instrumentalities of the State of Texas exemptions from payment(s) of all taxes of whatever kind. More specifically, to the extent permitted by applicable law, THECB shall not directly or indirectly be liable for taxes of any kind. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. To the extent permitted by applicable law, THECB shall provide all applicable tax exemption certificates upon the Contractor's request.
- 47. Electronic and Information Resources Accessibility Standards, As Applicable per 1 TAC Chapter 213:**
- a. Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
  - b. Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
- 48. Smoking Policy:** THECB has a policy of being a smoke-free agency. The policy reflects THECB's commitment to providing a healthy environment for all THECB employees and visitors. This policy prohibits smoking within any state building. The Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of THECB.
- 49. Substitutions:** Substitutions are not permitted without the written approval of THECB.
- 50. Contracting Information Responsibilities (Applicable for Contracts \$1 million and Above):** Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 51. Cybersecurity Training:** Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- 52. Disaster Recovery Plan:** Upon request of Agency, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.
- 9. Franchise Tax Certification:** Contractor, certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Contractor is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise system, Contractor must do so prior to contracting with the State of Texas.
- 10. Certification Concerning Dealing with Public Servants:** Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment,

gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

11. **Certification Concerning Financial Participation:** Under Texas Government Code § 2155.004, Contractor certifies that the individual or business entity named in the contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specification for the Contract.
12. **Franchise Tax Certification:** Contractor, certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Contractor is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise system, Contractor must do so prior to contracting with the State of Texas.
13. **Certification Concerning Dealing with Public Servants:** Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.
14. **Certification Concerning Financial Participation:** Under Texas Government Code § 2155.004, Contractor certifies that the individual or business entity named in the contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specification for the Contract.
15. **Signature Authority:** Contractor represents and warrants that the individual submitting this document, and any other documents made part of this Contract, is authorized to sign such documents on behalf of the Contractor.

General and Special Provisions of Contract, Certain Certifications