

**Texas Tech University Health Sciences Center El Paso  
Purchase Order Terms and Conditions**

“TTUHSCEP” shall mean Texas Tech University Health Sciences Center El Paso.

**1. ACCEPTANCE OF PURCHASE ORDER:** Acceptance of this Purchase Order is expressly limited to the terms and conditions herein contained on both sides hereof. None of the terms and conditions contained in this Purchase Order may be modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of the TTUHSC EP and delivered by TTUHSC EP to Supplier, and each shipment received by TTUHSC EP from Supplier shall be deemed to be only upon the terms and conditions contained in this Purchase Order except as these may be added to, modified, superseded or otherwise altered by a written instrument signed by an authorized representative of TTUHSC EP and delivered by TTUHSC EP to Supplier, notwithstanding any terms and conditions that may be contained in any acknowledgement, invoice or other form of Supplier and notwithstanding TTUHSC EP’s act of accepting or paying for any shipment or similar act of TTUHSC EP. TTUHSC EP’s failure to object to provisions contained in Supplier’s documents shall not be deemed a waiver of the Purchase Order, the Terms and Conditions set forth herein and any exhibits (collectively also referred to as “Purchase Order”) which shall constitute the entire agreement between the parties.

**2. DELIVERY; SUBSTITUTIONS; INVOICES; SALES TAX:** Supplier will keep TTUHSC EP advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Supplier will give prompt written notice to TTUHSC EP. Upon notice, TTUHSC EP may extend the delivery date in its sole discretion. Supplier will only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of TTUHSC EP Purchasing Department. TTUHSC EP will not be bound by any oral statement or representation contrary to the written specifications of this Purchase Order. Default in promised delivery or failure to conform to the requirements of this Purchase Order authorizes TTUHSC EP to purchase goods or services elsewhere and charge to Supplier any excess cost of such repurchase. Supplier will show this Purchase Order number and complete “ship to” information, including attention line, on all packages, shipments, and invoices. Invoices must include Supplier Texas Vendor Identification Number and be addressed and mailed to:

Texas Tech University Health Sciences Center El Paso  
Accounts Payable Department  
130 Rick Francis St.  
MSC 51009  
El Paso, Texas 79905

TTUHSC EP, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the goods and services covered by this Purchase Order, in accordance with Section 151.309, Texas Tax Code, and Title 34 Texas Administrative Code (“TAC”) Section 3.322.

**3. TITLE AND RISK OF LOSS:** Title to and risk of loss to any goods to be delivered under this Purchase Order will not pass to TTUHSC EP until TTUHSC EP actually receives and takes possession of such goods at the point of delivery.

**4. WARRANTIES:** In addition to all warranties established by law, Supplier hereby represents, covenants, certifies, warrants and agrees that:

(a) Supplier will comply with all requirements of this Purchase Order.

(b) If Supplier is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized and in good standing to conduct business in the State of Texas.

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

(d) Pursuant to Section 403.055(h), Texas Government Code, any payments owing to Supplier under this Purchase Order may be applied to any debt or delinquent taxes that Supplier owes the State of Texas, until such debt or delinquent taxes are paid in full.

(e) In accordance with Sections 2155.004 and 2155.006, Texas Government Code, Supplier is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment withheld if these certifications are inaccurate.

(f) In accordance with Section 231.006, Texas Family Code, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.

(g) All goods and services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by TTUHSC EP (collectively "**specifications**"), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, covered by manufacturer's warranty, and free from all defects. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from a Nationally Recognized Testing Laboratory (NRTL). TTUHSC EP will have the rights of inspection and approval and may reject and return goods or require performance of services at Supplier's expense if defective or not in compliance with TTUHSC EP's specifications. Defects will not be deemed waived by TTUHSC EP's failure to notify Supplier upon receipt of goods or completion of services or by payment of invoice.

(h) No disclosure, description, or other communication of any sort will be made by Supplier to any third person of the fact of TTUHSC EP's purchase of goods or services under this Purchase Order, or of the details and characteristics of the goods or services, without TTUHSC EP's prior written consent. Anything furnished to Supplier by TTUHSC EP pursuant to this Purchase Order including samples, drawings, patterns, and materials will remain the property of TTUHSC EP, will be held at Supplier's risk, and will be returned to TTUHSC EP upon TTUHSC EP's request, and no disclosure or reproduction thereof in any form will be made without TTUHSC EP's prior written consent. Supplier is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances (collectively, "**Applicable Laws**").

(i) All goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by all Applicable Laws, including those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code ("**Texas hazard Communication Act**").

(j) Supplier is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet ("**MSDS**") for each product Supplier, its employees, agents or subcontractors brings on TTUHSC EP's premises, or

(2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act. For any chemicals purchased, mail Material Safety Data Sheet:

Texas Tech University Health Sciences Center  
El Paso Safety Services  
130 Rick Francis St.  
MSC 51031  
El Paso, Texas 79905

Include an additional Material Safety Data Sheet with the shipment.

(k) Use or sale of any goods delivered under this Purchase Order, except (with respect to patents) goods produced to TTUHSC EP's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.

(l) The price to be paid by TTUHSC EP will be that contained in Supplier's bid or proposal, which Supplier warrants to be no higher than Supplier's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Supplier breaches its warranty, the prices will be reduced to Supplier's current prices on orders by others or, in the alternative, TTUHSC EP may cancel this Purchase Order without liability to Supplier.

(m) Supplier will make records of Supplier's costs, reimbursable expenses and payments pertaining to this Purchase Order available to TTUHSC EP or its authorized representative during business hours and retain those records for four (4) years after final payment or abandonment of the project, unless TTUHSC EP otherwise instructs Supplier in writing.

(n) If this Purchase Order requires Supplier's presence on TTUHSC EP's premises or in TTUHSC EP's facilities, Supplier will cause its employees, representatives, agents, and subcontractors to become aware of, fully informed about, and in full compliance with all applicable TTUHSC EP rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

(o) Supplier has not given or offered to give, nor does Supplier intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Purchase Order.

(p) Supplier shall comply with applicable export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR) 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions/exceptions, Supplier shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Supplier shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Prior to disclosing or transferring to TTUHSC EP any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Supplier shall notify TTUHSC EP in writing of the nature and extent of the export control. TTUHSC EP shall have the right to decline any such technical data or product utilizing such data. In the event the Supplier sends such technical data or product that is subject to export control, without notice of the applicability of such export control, TTUHSC EP has the right to immediately terminate this Purchase Order.

(q) Supplier agrees that all writings or other materials produced by Supplier, its employees or agents relating to the work under this Purchase Order shall be deemed "works made for hire" as that term is defined in the U.S. Copyright Act, that all rights thereto shall be owned by TTUHSC EP, and that Supplier shall not assert any claim thereto. In the event that works are not considered "works made for hire" as that term is defined in the U.S. Copyright Act, the Supplier assigns any and all intellectual property rights, including but not limited to copyrights to any such works, and Supplier agrees to execute any necessary documentation to effect this assignment.

(r) The foregoing representations, covenants, certifications, warranties and Purchase Orders will survive acceptance of goods as well as performance of services under this Purchase Order.

**5. PAYMENT:** TTUHSC EP will make payment for purchases made by TTUHSC EP departments under this Purchase Order in accordance with Chapter 2251 of the Texas Government Code. Notwithstanding any provision of this Purchase Order to the contrary, TTUHSC EP will not be obligated to make any payment to Supplier if Supplier is in default under this Purchase Order. No payment made by TTUHSC EP will (a) be construed to be final acceptance or approval of that Product or Services to which the payment relates, or (b) relieve Supplier of any of its duties or obligations under this Purchase Order. The acceptance of each payment by Supplier will constitute a waiver of all claims by Supplier except those previously made in writing and identified by Supplier as unsettled at the time of the invoice for that payment. TTUHSC EP will have the right to verify the details set forth in Supplier's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Supplier at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.

**6. TRAVEL EXPENSES:** In the event the Purchase Order requires TTUHSC EP to reimburse Supplier for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**7. ACCESS BY INDIVIDUALS WITH DISABILITIES:** Supplier represents and warrants that the electronic and information resources (the "EIR Accessibility Warranty") and all associated information, documentation, and support that it provides to TTUHSC EP under this Purchase Order (collectively, the "EIRs") comply with the applicable requirements set forth in 1 TAC Chapter 213 and 1 TAC Section 206.70 (as authorized by Subchapter M, Chapter 2054, Texas Government Code.) To the extent Supplier becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Supplier represents and warrants that it will, at no cost to TTUHSC EP, 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 Supplier fails or is unable to do so, then TTUHSC EP may terminate this Purchase Order and Supplier will refund to TTUHSC EP all amounts TTUHSC EP has paid under this Purchase Order within thirty (30) days after the termination date.

**8. ANTITRUST LAWS; CLAIMS FOR OVERCHARGES:** Supplier warrants and represents that neither Supplier nor any party acting on behalf of Supplier has violated the antitrust laws of the United States or of the State of Texas. Supplier hereby assigns to TTUHSC EP any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., or of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.

**9. INDEPENDENT SUPPLIER:** Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship between the contracting Parties. The sole interest and responsibility of the Parties is that the services covered by this Agreement shall be performed and rendered in a competent, efficient, and satisfactory manner. No Party shall have the authority to represent or otherwise bind any other Party, nor shall any of the Parties' respective agents, employees or representatives be construed to be the agent, employee or representative of another Party.

Supplier is solely responsible for all persons employed in connection therewith, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Supplier agrees to indemnify, exonerate and hold harmless TTUHSC EP.

**10. USE OF NAME:** Nothing in this Purchase Order constitutes a license to use the name or indicia of TTUHSC EP. Any use of the TTUHSC EP name or indicia requires the express prior written permission of TTUHSC EP.

**11. INDEMNITY:** SUPPLIER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS TEXAS TECH UNIVERSITY SYSTEM, TTUHSC, AND ITS REGENTS, OFFICERS, DIRECTORS, EMPLOYEES, AUTHORIZED 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 BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM SUPPLIER'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF SUPPLIER, ANYONE DIRECTLY EMPLOYED BY SUPPLIER OR ANYONE FOR WHOSE ACTS SUPPLIER MAY BE LIABLE. 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. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE. IN ADDITION, SUPPLIER WILL DEFEND, INDEMNIFY 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 PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER.

**12. INSURANCE:** If this Purchase Order requires the presence on TTUHSC EP's premises of Supplier's employees, agents, suppliers or subcontractors (if any), Supplier agrees to maintain and to cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<b>Coverages:</b>	<b>Limits:</b>
<b>Commercial General Liability</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Medical Payments (Any One Person)	\$5,000
<b>Liquor Liability (if applicable)</b>	
Each Occurrence	\$1,000,000
Aggregate	\$2,000,000
<b>Automobile Liability</b>	
Bodily Injury/Property Damage (Each Accident)	\$1,000,000
Personal Injury Protection (if applicable)	Statutory
<b>Workers' Compensation</b>	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers' Liability)	\$1,000,000
	\$1,000,000
	\$1,000,000
<b>Crime Coverage (if applicable)</b>	50% of the contract value,; or \$100,000, whichever is greater

All policies (except Workers' Compensation) will name the Texas Tech University System Board of Regents ("TTUS Board"), TTUHSC EP, and its officers and employees as Additional Insured. A Waiver of Subrogation in favor of TTUHSC EP and the TTUS Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to TTUHSC EP prior to commencement of any services under this Purchase Order.

**13. CHOICE OF LAW; VENUE:** This Purchase Order and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Venue shall be in the state or federal courts of El Paso County, Texas.

**14. ASSIGNMENT AND DELEGATION:** Supplier may not assign any of its rights or delegate any of its obligations under this Purchase Order without TTUHSC EP's prior written consent. Any assignment or delegation attempted by Supplier in violation of this clause will be void and ineffective for all purposes.

**15. ENTIRE PURCHASE ORDER; MODIFICATIONS:** Except as provided below, this Purchase Order supersedes all prior agreements, written or oral, between Supplier and TTUHSC EP and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing. Terms and conditions of any contract or agreement issued by TTUHSC EP's authorized representative(s) in addition to this Purchase Order shall apply to the extent that these supplement the provisions of this Purchase Order. In the event there is a conflict between the documents constituting the agreements between the parties, the documents and provisions shall prevail in the following order: F(a) any contract or agreement issued by TTUHSC EP's authorized representative(s), (b) exhibits of this Purchase Order, and (c) these Terms and Conditions of this Purchase Order.

**16. CONTRACT DISPUTE RESOLUTION:** Supplier shall use Texas Government Code, Chapter 2260's dispute resolution process to attempt to resolve any claim for breach of contract arising under this Agreement that is not resolved in the ordinary course of business. Chapter 2260 requires Supplier to initiate the process by providing written notice of a claim and negotiating with TTUHSC EP, conditions precedent to the contested case process. Governed by rules adopted by the Texas Attorney General's Office, the contested case process is Supplier's sole and exclusive method to seek a remedy for breach, unless, after considering the Administrative Law Judge's report, the Legislature gives consent for Supplier to sue under Chapter 107 of the Civil Practices and Remedies Code. An event or claim for breach of contract is not grounds for Supplier to suspend performance under this Agreement.

TTUHSC EP DOES NOT WAIVE SOVEREIGN IMMUNITY BY ITS EXECUTION OF OR BY ANY CONDUCT OF ITS REPRESENTATIVES UNDER THIS AGREEMENT, AND THE DISPUTE RESOLUTION PROCESS DOES NOT AFFECT TTUHSC EP'S RIGHT TO ASSERT ALL CLAIMS AND DEFENSES IN A LAWSUIT.

**17. HUB SUBCONTRACTING:** If authorized, Supplier will use good faith efforts to subcontract the goods or services performed under this Purchase Order in accordance with the Supplier's Historically Underutilized Business ("HUB") Subcontracting Plan ("HSP") submitted in connection with this Purchase Order, if any. Except as specifically provided in the HSP, Supplier will not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. This Purchase Order is subject to 34 TAC Section 20.14, HUB Programs. Supplier will comply with all of its duties and obligations under 34 TAC Section 20.14. In addition to other rights and remedies, TTUHSC EP may exercise all rights and remedies authorized by 34 TAC Section 20.14.

**18. LOSS OF FUNDING:** Performance by TTUHSC EP under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the TTUS Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then TTUHSC EP will issue written notice to Supplier and TTUHSC EP may terminate this Purchase Order without further duty or obligation hereunder. Supplier acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TTUHSC EP.

**19. STATE AUDITOR'S OFFICE:** Supplier understands that acceptance of funds under this Purchase Order constitutes acceptance of the authority of the Texas State Auditor's Office, Texas Tech University System Office of Audit Services, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Supplier agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Supplier will include this provision in all contracts with subcontractors.

**20. LIMITATIONS:** The Parties acknowledge that TTUHSC EP is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as granted to it under the Constitution and laws of the State of Texas. Notwithstanding any provision of this Purchase Order, nothing in this Purchase Order is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas. Notwithstanding the generality or

specificity of any provision of this Purchase Order (including, without limitation, any provision pertaining to indemnification, a cap on liability, a limitation of damages, or a waiver or limitation of rights, remedies, representations or warranties), the provisions of this Purchase Order, as those provisions pertain to TTUHSC EP, are enforceable only to the extent authorized by the Constitution and laws of the State of Texas. TTUHSC EP will not be required to perform or refrain from performing any act that would violate the laws or Constitution of the State of Texas.

**21. ETHICS MATTERS:** TTUHSC EP is an entity subject to the Deficit Reduction Act of 2005 and including, but not limited to HSC OP 52.06, Standards of Conduct and Ethics Guide, HSC OP 52.03, Compliance Hotline, and HSC OP 52.04, Reporting Violations and Non-Retaliation Policy, as well as all relevant published TTUHSC EP compliance programs, which are available on its website: If Supplier performs coding/billing services or provides health care items or services on behalf of TTUHSC EP, upon request from TTUHSC EP, Supplier agrees to participate in TTUHSC EP's billing compliance and HIPAA privacy training sessions.

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

Patricia I. Myers  
Managing Director | Purchasing  
130 Rick Francis St.  
MSC 51010  
El Paso, Texas 79905  
Fax: 915-215-8813  
[patricia.i.myers@ttuhsc.edu](mailto:patricia.i.myers@ttuhsc.edu)

or such other person or address as may be given in writing by TTUHSC EP to Supplier.

**23. UNDOCUMENTED WORKERS:** The Immigration and Nationality Act (8 United States Code 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Supplier is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Supplier employs unauthorized workers during performance of this Purchase Order in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, TTUHSC EP may terminate this Purchase Order. Supplier represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

**24. STATE OF TEXAS COMPUTER EQUIPMENT RECYCLING PROGRAM CERTIFICATION:** Pursuant to Section 361.965, Texas Health and Safety Code, Supplier certifies that it is full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Subchapter Y, Chapter 361, Texas Health and Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328. Supplier acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.

**25. RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS:** Each individual who is assigned to perform services under this Purchase Order will be an employee of Supplier or an employee of a subcontractor engaged by Supplier. Supplier is responsible for the performance of all individuals performing services under this Purchase Order. Prior to commencing services, Supplier will (1) provide TTUHSC EP with a list ("List") of all individuals who may be assigned to perform services, and (2) have an appropriate criminal background screening performed on all the individuals. Supplier will determine on a case-by-case basis whether each individual assigned to perform services is qualified to provide the services. Supplier will not knowingly assign any individual to provide services on TTUHSC EP's campus who has a history of criminal conduct unacceptable for a TTUHSC EP campus or healthcare center, including violent or sexual offenses. Supplier will update the List each time there is a change in the individuals assigned to perform services. Prior to commencing performance of services under this Purchase Order, Supplier will provide TTUHSC EP a letter signed by an authorized representative of Supplier certifying compliance with this Section. Supplier will provide TTUHSC EP an updated certification letter each time there is a change in the individuals assigned to perform services.

**26. TEXAS EXECUTIVE ORDER NO. GA-48**

Pursuant to Executive Order No GA—48, the Contractor certifies IF THE Contractor fulfills this purchase order that it, and, if applicable, its holding companies or subsidiaries, are not:

- a. Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
- b. Listed in Section 1260H of the 2021 NDAA; or
- c. Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
- d. Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

**27. FORCE MAJEURE:** "Event of Force Majeure" means an event beyond the control of Contractor or University which prevents or makes a party's compliance with any of its obligations under this Contract illegal or impracticable, including but not limited to: act of God (including, without limitation, fire, explosion, earthquake, tornado, drought, and flood); war, act or threats of terrorism, hostilities (whether or not war be declared), invasion, act of enemies, mobilization, requisition, or embargo; rebellion, insurrection, military or usurped power, or civil war; contamination or destruction from any nuclear, chemical, or biological event; riot, commotion, strikes, go slows, lock outs, or disorder; epidemic, pandemic, viral outbreak, or health crisis; or directive of governmental authority. No party will be considered in breach of this Contract to the extent that performance of their respective obligations is prevented or made illegal or impracticable by an Event of Force Majeure that arises during the term (or after execution of the Contract but prior to the beginning of the term). A party asserting an Event of Force Majeure hereunder ("Affected Party") will give reasonable notice to the other party of an Event of Force Majeure upon it being foreseen by, or becoming known to, Affected Party. In the event of an Event of Force Majeure, Affected Party will endeavor to continue to perform its obligations under the Contract only so far as reasonably practicable.

**28. TERMINATION:**

- (a) Upon written notice to Supplier, TTUHSC EP may terminate this Purchase Order, in whole or in part, without cause. If TTUHSC EP terminates without cause, TTUHSC EP will pay Supplier all reasonable costs incurred up to the date of termination. Under no circumstance will TTUHSC EP pay Supplier for anticipatory or lost profits.
- (b) In the event of a material failure by Supplier to perform in accordance with the terms of this Purchase Order ("default"), TTUHSC EP may terminate this Purchase Order upon ten (10) calendar days' written notice of termination setting forth the nature of the default; provided that, the default is through no fault of TTUHSC EP. Termination will not be effective if the default is fully cured by Supplier prior to the end of the ten-day period.

**29. HIPAA COMPLIANCE:** It is the intent of the Parties to comply with all provisions of the Health Insurance Portability and Accountability Act of 1996, now codified at Title XI, Part C of the Social Security Act and as it may be amended and all regulations promulgated thereunder ("HIPAA"), as these may change from time to time. Supplier shall not, and shall require that its employees and agents, shall not, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by TTUHSC EP in writing, any individually identifiable patient or medical record information regarding TTUHSC EP patients, and the Supplier shall comply, and shall ensure that each of its employees and agents providing Services under this Agreement complies, with all federal and state laws and regulations, and all HIPAA rules, regulations and policies of TTUHSC EP regarding the confidentiality of such information. If required, Supplier agrees to execute TTUHSC EP's business associate agreement.

**30. NO FINANCIAL INTEREST:** Supplier certifies this Purchase Order is not prohibited under Tex. Gov't Code 2261.252(B) and agrees that if Supplier's certification is or becomes untrue, this Purchase Order is void, and Supplier will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this Purchase Order, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.

**31. NO BOYCOTT:** If this [Contract] has a value of \$100,000 or more that is to be paid wholly or partly from public funds of [TTUHSCs], and if [Contractor] is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code § 2271.002, [Contractor] affirmatively states that it does not boycott Israel and will not boycott Israel during the term of this [Contract]. In this paragraph, the terms “company” and “boycott Israel” shall have the meanings described in Texas Government Code § 808.001.

**32. HUMAN TRAFFICKING:** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or 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. **32. CONSTRUCTION MATERIAL:** To the extent this Purchase Order relates to a project as defined Tex. Gov’t Code 2252.201(5) (a project to construct, remodel, or alter a building, structure or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Tex. Gov’t Code 2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of this Purchase Order must be produced in the United States (as defined in Tex. Gov’t Code 2252.201(4)).

**33. EXCLUSION:** Supplier represents and warrants that neither Supplier or any employees or agents who provide items or Services under this Agreement are excluded, suspended or debarred from participation in any federal or state health care program or federally funded contracts. TTUHSC EP may conduct searches of Supplier’s name against various federal and state sanction and exclusion databases, including, but not limited to the HHS OIG List of Excluded Individuals/Entities (LEIE), the federal System for Award Management (SAM) and the Texas HHSC Exclusion List. Supplier agrees to immediately inform TTUHSC EP as soon as it is aware that it or any of its employees, agents or Suppliers providing items or services under the Agreement are subject to the imposition of any such sanctions or exclusion. This Agreement shall be subject to immediate termination by TTUHSC EP in the event Supplier, or any of its employees, agents or Suppliers, is listed on any federal or state sanction/exclusion list as being subject to sanctions or exclusion.

**34. EMERGENCY HEALTH AND SAFETY PROCEDURES:** In the event of pandemic, epidemic, viral outbreak, health crisis, or other emergency (“Emergency”), TTUHSC may, at its sole discretion, implement new or modified health and safety procedures in order to protect the health and safety of the TTUHSC community. In the event of Emergency, Supplier agrees to adhere to all such procedures and related directives from TTUHSC when entering onto and performing services on TTUHSC’s campus.

**34.1 COVID-19 HEALTH AND SAFETY PROCEDURES.** Published at: <https://www.ttuhs.edu/coronavirus/>

**35. INCORPORATED TERMS:** The Parties acknowledge and agree that the Required Contract Terms set forth at <http://www.texastech.edu/ogc/required-contract-terms.pdf> and the Required IT Terms set forth at <http://www.texastech.edu/ogc/contracting/required-IT-terms.pdf> are incorporated into this Agreement as if expressly stated herein (the “Incorporated Terms”).

**36. CONTROLLING TERMS:** Supplier agrees that this Purchase Order, including the Incorporated Terms, form the agreement between TTUHSC and Supplier. In the event of a conflict between the Incorporated Terms and any other term of this Purchase Order, Supplier acknowledges and agrees that the Incorporated Terms are controlling.

### **37. FEDERAL FUNDS**

**37.1** The federal government provides support for projects under which TTUHSC at El Paso purchases goods and/or services through one of three means: (a) through federal government procurement “contracts” subject to the Federal Acquisition Regulation (FAR), (b) through federal “grants” subject to OMB Circular A-110 which is superceded by 2 CFR 200 effective 12/26/2014 and (c) through “cooperative agreements,” which may include items from the FAR or from OMB Circular A-110, 2 CFR 200 or any combination of these regulations. TTUHSC at El Paso shall require Supplier is not otherwise aware of whether the funds are Federal funds, the Supplier shall inquire TTUHSC at El Paso. In addition, Supplier agrees to flow down all applicable regulations to lower-tier subSuppliers.

**37.1.1** Prohibition of non-Segregated Facilities FAR 52.222.21

**37.1.2** Equal Employment Opportunity FAR 52.222.26 and Executive Order 11246 as amended by Executive Order 11375 and supplemented by 41 CFR part 60

**37.1.3** Copeland Anti-kickback Act (for construction and repair) 18 USC 874 as supplemented by Department of Labor regulations 29 CFR part 3

**37.1.4** Davis-Bacon Act, as amended 40 USC 276a to a-7 and supplemented by Department of Labor regulations 29 CFR part 5

**37.1.5** Anti-kickback procedures FAR 52.203-7

**37.1.6** Restrictions on SubSupplier Sales to the Government FAR 52-203.6

**37.1.7** Contract Work Hours and Safety Standards Act FAR 522.222.4

**37.1.8** Rights to Inventions Made under a Contract or Agreement – 37 CFR part 401

**37.1.9** Preference for Privately Owned U.S.-Flag Commercial Vessels – FAR 52.247-64

**37.1.10** Preference for US Flag Carriers FAR 52.247-63

**37.1.11** Hazardous Material Identification and Material Safety Data policy (when applicable) FAR 52.223-3

**37.1.12** Filing of Patent Applications FAR 52.227-10

**37.1.13** Patents Rights – Retention by the Supplier Short and Long Forms FAR 52.22711, FAR 52.227.12 and FAR 52.227.13 Validation of Restrictive Markings on Technical Data SFAR 252.227-7037

**37.1.14** Buy American Act – Supplies FAR 52.225-1

**37.2 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$2,500**

**37.2.1** Affirmative Action for Workers with Disabilities – 52.222-36 and Executive Order 11758

**37.2.2** Occupational Safety and Health 29 USC 651

**37.2.3** Service Contracts Act

**37.2.4** Contract Work Hours and Safety Standards Act 40 USC 327-333

**37.3 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$10,000**

**37.3.1** Examination of Records by Comptroller General (if document was entered by negotiation FAR 52.215-1)

**37.3.2** Audit Negotiations (if document was entered by negotiation) FAR 52.215.2

**37.3.3** Walsh-Healy Public Contracts Act FAR 52.222.20Affirmative Action for Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222- 35

**37.3.4** Employment Reports on Special Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-37

**37.4 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$25,000**

**37.4.1** Restrictions on Certain Foreign Purchases FAR 52.225-13

**37.4.2** Responsibility for Supplies FAR 52.246-16

**37.4.3** Debarment and Suspension. Executive Orders 12549 and 12689, FAR 52.209.5

**37.5 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$100,000**

**37.5.1** Clean Air Act – 42 USC 7401, et. Seq and Executive Order 11738

**37.5.2** Federal Water Pollution Control Act 33 USC 1251, et seq

**37.5.3** Byrd Anti-Lobbying Amendment – 31 USC 1352

**37.5.4** Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions FAR 52.203-11

**37.5.5** Limitations on Payments to Influence Certain Federal Transactions FAR 52.20312

**37.5.6** Audit and Records – Negotiation (Applies only if this was entered into bynegotiation) FAR 52.215-2

**37.5.7** Utilization of Small Business Concerns FAR 52.219-8

**37.5.8** Notice and Assistance Regarding Patent and Copyright Infringements FAR 52.227.2

**37.5.9** Authorization and Consent Patents and Copyrights 52.227-1

**37.5.10** SubSupplier Cost or Pricing Data Modifications FAR 52.215-(10-13)

**37.6 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$500,000**

**37.6.1** Small Business Subcontracting Plan FAR 52.219-9

**37.7 AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING.** This Purchase Order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products). Suppliers may contact the Purchaser if they have questions about the funding provided on the Purchase Order.

**37.8 VIETNAM-ERA VETERANS' READJUSTMENT ACT OF 1974, AS AMENDED (VERAA), (38 U.S.C. 4212).** The Supplier and its subSuppliers shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime Suppliers and subSuppliers to employ and advance in employment qualified protected veterans.