

Purchase Order Terms & Conditions

1. DELIVERY; SUBSTITUTIONS; INVOICES: Contractor will keep Lone Star College System (“LSCS”) advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Contractor will give prompt written notice to LSCS. Upon notice, LSCS may extend the delivery date in its sole discretion. Contractor will only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of LSCS. Default in promised delivery or failure to conform to the requirements of this Purchase Order authorizes LSCS to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor will show this Purchase order number on all packages, shipments, and invoices.

2. 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 LSCS until LSCS actually receives and takes possession of such goods at the point of delivery.

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

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

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

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

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

(e) All goods and services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by LSCS (collectively “specifications”), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. LSCS will have the rights of inspection and approval and may reject and return goods or require re-performance of services at Contractor’s expense if defective or not in compliance with LSCS’s specifications. Defects will not be deemed waived by LSCS’s failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.

(f) No disclosure, description, or other communication of any sort will be made by Contractor to any third person of the fact of LSCS’s purchase of goods or services under this Purchase Order, or of the details and characteristics of the goods and services, without LSCS’s prior written consent. Anything furnished to Contractor by LSCS pursuant to this Purchase Order including samples, drawings, patterns, and materials will remain the property of LSCS, will be held at

Contractor's risk, and will be returned to LSCS upon LSCS's request, and no disclosure or reproduction thereof in any form will be made without LSCS's prior written consent.

(g) Contractor is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state, and local laws, regulations and ordinances (collectively, "Applicable Laws").

(h) 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").

(i) Contractor is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet ("MSDS") for each product Contractor, its employees, agents or subcontractors brings on LSCS's premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.

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

(k) The price to be paid by LSCS will be that contained in Contractor's bid or proposal, which Contractor warrants to be no higher than Contractor'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 Contractor breaches its warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, LSCS may cancel this Purchase Order without liability to Contractor.

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

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

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

4. ANTITRUST LAWS; CLAIMS FOR OVERCHARGES: Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to University 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.

5. SUBCONTRACTING: Contractor will use good faith efforts to subcontract the goods or services performed under this Purchase Order in accordance with the Contractor's Historically Underutilized Business Subcontracting Plan ("HSP") submitted in connection with this Purchase Order, if any. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. This Purchase Order is subject to 34 Texas Administrative Code Section 20.14. Contractor will comply with all of its duties and obligations under 34 Texas Administrative Code Section 20.14. In addition to other

rights and remedies, LSCS may exercise all rights and remedies authorized by 34 Texas Administrative Code Section 20.14.

6. STATE AUDITOR'S OFFICE: Contractor understands that acceptance of funds under this Purchase Order constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Texas Education Code § 51.9335(c). Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.

7. LIMITATIONS: THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF LSCS (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS PURCHASE ORDER, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON LSCS'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON LSCS EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

8. ETHICS MATTERS; NO FINANCIAL INTEREST: Purchases are not authorized from an employee or members of an employee's family, nor are purchases authorized from a company in which an employee or his or her family member owns a five percent (5%) or greater interest. For purposes of this policy, a family member (natural, foster, adopted or step), means a spouse, child, in-law, sister, brother, mother, father, grandparent, significant other or life partner.

A purchase that would otherwise not be permitted because of this conflict of interest policy may be allowed if obtained via a competitive process and:

- a. The goods or services being purchased are not under the direct or indirect authority of the approving employees' department or division; and
- b. The family member's bid is the lowest price bid that meets all bid specifications.

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that the Conflict of Interest Questionnaire ("CIQ") be completed and filed with LSCS by any vendor that enters or seeks to enter into a contract with LSCS. It is respectfully requested that you acquaint yourself with the appropriate code provisions. All vendors' bid responses must include a signed CIQ, or the vendor must have an updated CIQ on file with LSCS.

9. UNDOCUMENTED WORKERS: The Immigration and Nationality Act (8 United States Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-

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

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

11. FORCE MAJEURE: Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“force majeure occurrence”).

12. PAYMENT. For the services to be provided hereunder, LSCS shall pay Contractor according to the fees listed in the Purchase Order. Contractor shall submit invoices within a reasonable time frame. Payment in full will be made only upon final acceptance of items as shown on Purchase Order. Partial payments may be made if partial shipments have been received. Payment terms are net 45 upon receipt of proper invoice that referenced a Purchase Order number. Pursuant to Texas Government Code section 2251.021(b) late fees may only be assessed after the 45th day of LSCS’s receipt of proper invoice. Interest shall be payable on all past due amounts at the rate specified in Texas Government Code section 2251.025(b).

13. INSURANCE. Unless otherwise waived by LSCS, while performing services on LSCS property, Contractor shall maintain in full force and effect during the term of the Purchase Order the following insurance coverage while providing services on the property of LSCS: 1) Comprehensive Commercial General Liability insurance with limits for bodily injury and property damage of not less than \$1,000,000 per occurrence; 2) Commercial Automobile Liability insurance with limits of liability for bodily injury and property damage of not less than \$1,000,000 per occurrence; 3) Workers’ Compensation insurance with statutory limits (except to the extent that Contractor has opted out of the Workers’ Compensation insurance system in Texas). LSCS shall be named as an additional insured on the General Liability and Auto

policies, as evidenced by policy endorsements, if required. No cancellation of this insurance may be effected without endeavoring to provide thirty (30) days prior written notice to LSCS. Companies writing insurance under this article must be licensed to do business in the State of Texas.

14. DISPUTE RESOLUTION: To the extent that Chapter 2260, Texas Government Code, is applicable to this Purchase Order and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by LSCS and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of LSCS will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of this Purchase Order by LSCS nor any other conduct, action or inaction of any representative of LSCS relating to this Purchase Order constitutes or is intended to constitute a waiver of LSCS's or the state's sovereign immunity to suit; and (ii) LSCS has not waived its right to seek redress in the courts.

15. GOVERNING LAW. This Purchase Order and the services hereunder shall be governed by the laws of the State of Texas and venue in any action brought hereunder shall be in Harris County, Texas.

16. RIGHTS AND OBLIGATIONS. As an institution of higher education of the State of Texas, the rights, obligations and approval of this document by the Lone Star College System and/or its component institutions are subject to and limited by the laws of the State of Texas.

17. TERMINATION. LSCS may terminate some or all services under this Purchase Order, without cause, by providing Contractor ten (10) days written notice. In case of termination Contractor will be paid all reasonable costs incurred up to the date of termination. Under no circumstances will LSCS pay Contractor for anticipatory or lost profits.

18. INDEMNIFICATION BY CONTRACTOR. CONTRACTOR SHALL INDEMNIFY AND HOLD LSCS, ITS TRUSTEES, OFFICERS, EMPLOYEES, AGENTS AND COMPONENT CAMPUSES HARMLESS FROM ANY AND ALL MANNER OF SUITS, CLAIMS OR DEMANDS (1) ARISING OUT OF CONTRACTOR'S NEGLIGENT ACTS OR OMISSION ARISING UNDER THE PURCHASE ORDER ("INDEMNIFYING ACTS"). CONTRACTOR SHALL REIMBURSE LSCS FOR ANY AND ALL COSTS, DAMAGES AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES TO WHICH LSCS MAY BE SUBJECT AS A RESULT OF THE OCCURRENCE OF ANY INDEMNIFYING ACT. THIS PROVISION SHALL SURVIVE ANY TERMINATION OF THIS PURCHASE ORDER.

IN ADDITION, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER.

19. INDEPENDENT CONTRACTOR. Contractor hereby acknowledges that it is an independent contractor and all persons employed to furnish services hereunder are employees of Contractor and not of LSCS. All individuals performing services hereunder will be employees of Contractor and Contractor will pay for all wages, expenses, federal and state payroll taxes and any similar tax relating to such employees.

20. COMPLIANCE WITH LSCS POLICIES AND PROCEDURES. While on the premises of the System or its campuses, Contractor agrees that at all times its employees will observe and comply with all policies and procedures of LSCS including but not limited to smoking, parking and security directives. The Contractor will be required to follow LSCS's reasonable policies in dealing with improper conduct and discrimination and shall report all known incidents or injuries to LSCS. Contractor agrees that it will be responsible for all injuries that occur to Contractor's employees while on LSCS's property. If this Purchase Order requires Contractor's presence on LSCS's premises or in LSCS's facilities, Contractor will cause its employees, representatives, agents and subcontractors to become aware of, fully informed about, and in full compliance with all applicable LSCS rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, access restrictions, parking, and security directives.

21. NON WAIVER. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

22. PAYMENT OF TAXES. Contractor certifies that, upon the effective date of the Purchase Order, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of corporate franchise taxes. Contractor agrees that any false statement with respect to franchise tax status is a material breach, and LSCS is entitled to terminate this Purchase Order upon written notice to Contractor.

23. CHILD SUPPORT. A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. By agreeing to this Purchase Order, Contractor certifies that the individual or business entity named in the Purchase Order is not ineligible to receive payment from the state and acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate. (Family Code, Section 231.006).

24. NON APPROPRIATION. Notwithstanding the terms of the Purchase Order, as a governmental entity partially funded by the State of Texas, payment is contingent upon the availability of appropriated funds to LSCS. LSCS shall have the right to cancel the Purchase Order at the end of any current fiscal year (fiscal year defined as September 1 through August 31), if funds are not allotted for the next fiscal year to continue the Purchase Order. If funds

are withdrawn or do not become available, LSCS may cancel this Purchase Order by giving the Contractor written notice of its intention to cancel of not less than ten (10) days before the end of any then current fiscal year. Upon cancellation of the Purchase Order, LSCS shall not be responsible for any payment of any services rendered that occur after the date of timely cancellation of the Purchase Order, unless such services have been requested by LSCS.

25. TAXES. LSCS as a public junior community college is exempt from state and local sales taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act.

26. NONEXCLUSIVE. This Purchase Order is not an exclusive commitment and will not restrict in any way LSCS's right to contract with others for services and/or commodities similar to those specified in the Purchase Order. Contractor agrees not to subcontract out any part of the services hereunder without the written approval of LSCS.

27. ASSIGNMENT. Contractor may not assign, transfer, convey, or otherwise dispose of this Purchase Order or any right, title or interest herein without the prior written consent of LSCS. Any assignment or delegation attempted by Contractor in violation of this clause will be void and ineffective for all purposes.

28. NOTICES. All notices, requests, demands and other communications required hereunder shall be written and shall be deemed to have been personally delivered or when deposited in a regularly maintained receptacle of the United States Postal Service, postage prepaid, registered or certified, return receipt requested, or by delivery via Federal Express or other nationally-recognized express courier service and properly addressed to

Cynthia Bright, Executive Director - Procurement
Lone Star College System
5000 Research Forest Drive
The Woodlands, TX 77381

and

Robin McElveen, Executive Director - Accounts Payable
Lone Star College System
5000 Research Forest Drive
The Woodlands, TX 77381

29. USE OF NAME. Contractor shall not name LSCS in its external advertising, marketing programs or other promotional efforts, any data, pictures or other representation of LSCS except as expressly authorized in advance with prior written approval by LSCS's General Counsel.

30. CONFIDENTIALITY. Contractor shall maintain the confidentiality of all LSCS records and information to which it, its representatives or employees have access to and shall not disclose the same to any third parties without LSCS's prior consent, except as Contractor is required to disclose such information by law. In the event Contractor is requested to disclose such information, Contractor shall notify LSCS of such request prior to disclosing the information.

31. NOTIFICATION OF CRIMINAL HISTORY. A person or business entity that enters into a contract with LSCS must give advance notice to LSCS if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. Failure to provide this notice may result in termination of the Purchase Order.

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

33. ENTIRE AGREEMENT. The Purchase Order and these Terms and Conditions supersedes all prior agreements, written or oral, between Contractor and LSCS and will constitute the entire agreement between the parties. All prior negotiations between the parties are merged in this Purchase Order, and there are no understandings or agreements other than those incorporated herein. This Purchase Order may not be modified except by written instrument signed by both parties. This Purchase Order shall inure to and bind the successors, assigns, agents and representatives of the parties. 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.