

**ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF BID**  
**ANY EXCEPTIONS THERETO MUST BE IN WRITING**

The following are the terms and conditions for  
East Texas A&M University hereafter referred to as the Agency.

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**1. BIDDING REQUIREMENTS**

- 1.1 Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.2 Pricing must be quoted on a "per unit" basis, extended as indicated. Any trade discounts included must be itemized and deducted from extended prices. Unit Prices shall govern in the event of extension errors. Bidder guarantees product or service offered will meet or exceed specifications included as part of this Invitation for Bid (IFB). If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.3 Bids should be submitted on this form. Bids must be received by the Department of Purchasing on or before the hour and date specified for the bid opening.
- 1.4 Late or unsigned bids will not be considered under any circumstances.
- 1.5 Bids should be quoted "F.O.B. destination, freight prepaid and allowed". If quoting freight otherwise, show exact delivery cost and who bears cost if not included in unit price.
- 1.6 Bid prices are requested to be firm for the Agency acceptance within 90 days of bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discount will not be considered in determining an award. All cash discounts will be taken, if earned.
- 1.7 Bids should give Vendor ID Number, full name and address of bidder (enter in the block provided if not shown). Failure to sign bid will disqualify it. Person signing bid should show title or authority to bind his or her firm in a contract. Firm name should appear on each page of a bid, in the block provided in the upper right hand corner. The Vendor ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this number in the spaces provided on the front side (upper right) of the IFB if it is not printed. If this number is not known, complete the following: 1. Enter your Federal Employer Identification Number. 2. Sole owner should also enter Social Security Number.
- 1.8 Bid cannot be altered or amended after opening time. Any alterations made before opening time should be initialed by bidder or authorized agent of bidder. No bid can be withdrawn after opening time without approval by the Agency based on a written acceptable reason.
- 1.9 Purchases made for the Agency's use are exempt from the State Sales Tax and Federal Excise Tax. Do not include tax in bid. Excise Tax Exemption Certificate will be furnished by the Agency upon request.
- 1.10 The Agency reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the Agency and to reject any and all bid items at the sole discretion of the Agency. The Agency also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the Agency. Any contract may also be extended up to three months at the sole discretion of the Agency.
- 1.11 Products and services awarded as a result of this IFB/RFP may be extended to other Institutions of Higher Education as defined by Section 61.003 Education Code, Government Code Section 2155.134. Other individual institutions may or may not elect to use this agreement.
- 1.12 Consistent and continued tie bidding could cause rejection of bids by the Agency and/or investigation for antitrust violations.
- 1.13 Inquiries pertaining to IFBs must include the IFB number and opening date.

## **2. SPECIFICATIONS**

- 2.1 Any catalog, brand name or manufacturer's reference used in the IFB is descriptive only (not restrictive), and is used to indicate type and quality desired. Bids on brands of like nature and quality will be considered unless otherwise specified. If bidding on other than reference, bid should show manufacturer, brand or trade name, and other description of the product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. If bidder takes an exception to specifications or reference data in his or her bid, bidder will be required to furnish brand names, numbers, etc., as specified in the IFB.
- 2.2 All items shall be new and unused, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in IFB. Oral agreements to the contrary will not be recognized.
- 2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.4 Samples, when requested, must be furnished free of expense to the Agency. If not destroyed in examination, they will be returned to the bidder, upon request, at bidder's expense. Each sample should be marked with bidder's name and address, and the Agency bid number. Do not enclose in or attach bid to sample.
- 2.5 The Agency will not be bound by any oral statement or representation contrary to the written specifications of this IFB.
- 2.6 Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

## **3. TIE BIDS**

In case of tie bids, the award will be made in accordance with Rule §20.36 (b) (3) in Title 34 of the Texas Administrative Code.

## **4. DELIVERY**

- 4.1 Bid should show number of days required to place material in receiving Agency's designated location under normal conditions. Failure to state delivery time obligates supplier to complete delivery in 14 calendar days. Unrealistically short or long delivery promises may cause bid to be disregarded.
- 4.2 If delay is foreseen, supplier shall give written notice to the Agency. Bidder must keep the Agency advised at all times of the status of the order. The Agency has the right to extend delivery date if reasons appear valid. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Agency to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting supplier.
- 4.3 No substitutions or cancellation permitted without written approval of the Agency.
- 4.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from the Agency.

## **5. INSPECTIONS AND TESTS**

All goods will be subject to inspection and test by the Agency to the extent practicable at all times and places. Authorized Agency personnel shall have access to any supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used and the cost of the testing shall be borne by the bidder. Goods which have been delivered and rejected in whole or in part may, at the Agency's option, be returned to the bidder or held for disposition at bidder's risk and expense. Latent defects may result in revocation of acceptance.

## **6. AWARD OF CONTRACT**

A response to an IFB is an offer to contract with the Agency based upon the terms, conditions and specifications contained in the IFB. Bids do not become contracts until they are accepted and an authorized purchase order is issued.

The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Education Code, Title 3, Chapter 51, Section 51.9335, shall also be considered in making an award when specified. Any legal actions must be filed in Hunt County, TX.

**7. RENEWAL OF SERVICES**

If an award results from this solicitation, East Texas A&M University reserves the right to extend the term of the contract four (4) one-year periods, or as otherwise stated in the solicitation, provided both parties agree.

**8. PAYMENT**

8.1 Payment will be made upon submittal and approval of a valid invoice. The University shall make payment in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice. A properly submitted invoice will be in accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D. Payments.

8.2 All payments, to the maximum extent practical, shall be made by electronic direct deposit. Contractor is required to complete and submit to the A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:

<http://www.tamuc.edu/facultyStaffServices/financialServices/MiscellaneousItems/accountsPayable/forms/documents/directDepositVendor.pdf>

**9. PATENTS OR COPYRIGHTS**

The bidder agrees to protect the Agency from claims involving infringement of patents or copyrights.

**10. BIDDER ASSIGNMENTS**

Bidder hereby assigns to the Agency any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

**11. BIDDER AFFIRMATION**

Signing this IFB with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

11.1 The bidder 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 the submitted IFB.

11.2 The bidder is not currently delinquent in the payment of any franchise tax owed the State of Texas.

11.3 Under §2155.004, Texas Government Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.

11.4 Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

- 11.5 The bidder shall defend, indemnify, and hold harmless the Agency, all of its officers, agents, contractors, and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, from any acts or omissions of vendor or any agent, employee, subcontractor, or supplier of vendor in the execution or performance of any contract with vendor resulting from this IFB. Bidder shall coordinate its defense with Texas Attorney General as requested by the Texas A&M University System, Office of the General Counsel. This section is not intended to and shall not be construed to require bidder to indemnify or hold harmless the State or Agency for any claims or liabilities resulting from the negligent acts or omissions of the Agency or its employees.
- 11.6 Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- 11.7 In accordance with §2155.4441, Government Code, bidder 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.
- 11.8 Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the vendor or any other entity or person directly under this contract or indirectly through a subcontract under this 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, the vendor or other 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. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.
- 11.9 Bidder certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State Agency. If section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:

**Name of Former Executive:** \_\_\_\_\_

**Name of State Agency:** \_\_\_\_\_

**Date of Separation from State Agency:** \_\_\_\_\_

**Position with Bidder:** \_\_\_\_\_

**Date of Employment with Bidder:** \_\_\_\_\_

- 11.10 Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local government entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder 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 <https://www.sam.gov/portal/public/SAM/>
- 11.11 Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Texas Government Code, relating to the prohibition of using state funds for lobbying activities.

Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Texas Government Code, occurring after September 24, 2005. Under §2155.006, Texas Government Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

- 11.12 By executing this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- 11.13 To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Vendor/Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Vendor/Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate
- 11.14 Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is inaccurate.
- 11.15 Under Section 2155.0061, Government Code, the vendor 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.
- 11.16 RESPONDENT will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- 11.17 RESPONDENT is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of any resultant agreement.

## **12. NOTE TO BIDDERS**

If bidder takes any exceptions to any provisions of the IFB, these exceptions must be specifically and clearly identified by section in bidder's bid in response to the IFB and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire IFB. If any bidder takes a 'blanket exception' to the entire IFB or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration.

## **13. PUBLIC INFORMATION**

- A. PROVIDER acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. PROVIDER acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid and resultant agreement and the PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

## **TEXAS FAMILY CODE SECTION 231.006**

Pursuant to §231.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Texas Government Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

**14. NON-APPROPRIATION OF FUNDS**

Any contract resulting from this IFB is subject to termination or cancellation, without penalty to the Agency, either in whole or in part, subject to the availability of federal or state funds. The Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render the Agency's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. Additionally, any federally funded purchases may also be terminated for same reasons. In the event of a termination or cancellation under this Section, the Agency will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and the Agency will not be required to give prior notice.

**15. FORCE MAJEURE**

Neither bidder nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force Majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such Force Majeure, or otherwise waive this right as a defense.

**16. CONFLICT OF INTEREST**

An Agency employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the Agency must be mindful of these restrictions when interacting with public purchasers of the Agency.

**17. INDEPENDENT CONTRACTOR**

Bidder or bidder's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this IFB. Bidder and bidder's employees, representatives, agents and any subcontractors shall not be employees of the Agency. Should bidder subcontract any of the services required in this IFB, bidder expressly understands and acknowledges that in entering into such subcontract(s), the Agency is in not manner liable to any subcontractor(s) of bidder. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this IFB.

**19. DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used as further described herein, by the Agency, and the bidder to attempt to resolve any claim for breach of contract made by vendor:

(1) The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by East Texas A&M University and the contractor to attempt to resolve any claim for breach of contract made by the contractor:

(A) A contractor's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, sub-chapter B, of the Government Code. To initiate the process, the contractor shall submit written notice, as required by sub-chapter B, to the President. Said notice shall specifically state that the provisions of Chapter 2260, sub-chapter B, are being invoked. A copy of the notice shall also be given to all other representatives of East Texas A&M University and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with sub-chapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, sub-chapter C, of the Government Code.

(B) The contested case process provided in Chapter 2260, sub-chapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by East Texas A&M University if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(C) Compliance with the contested case process provided in sub-chapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by East Texas A&M University nor any other conduct of any representative of East Texas A&M University relating to the contract shall be considered a waiver of sovereign immunity to suit.

(2) The submission, processing and resolution of the contractor's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at the Texas

Register, Volume 25, Number 21, issued May 26, 2000.

## **20. BUSINESS ETHICS EXPECTATIONS**

During the course of pursuing contracts with Owner and while performing contract work in accordance with this Agreement, Architect/Engineer agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests.

Architect/Engineer shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of Architect/Engineer's employees, agents, subconsultants, subconsultants' employees and other persons under their control.

Architect/Engineer's employees, agents, subconsultants (and their representatives) shall not make or offer, or cause to be made or offered, any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Architect/Engineer's employees, agents and subconsultants (and their relatives) shall not receive or accept any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of contractors, subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

Architect/Engineer agrees to notify the Assistant Vice President for Facilities & Support Services within 48 hours of any instance where the Architect/Engineer becomes aware of a failure to comply with the provisions of this article.

Upon request by Owner, Architect/Engineer agrees to provide a certified Management Representation Letter executed by a Architect/Engineer representative selected by Owner in a form agreeable to Owner stating that the representative is not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

Architect/Engineer agrees to include provisions similar to this Article in all contracts with subconsultants receiving more than \$25,000 in funds in connection with the Project.

## **21. NON-DISCRIMINATION**

The Seller and its agents and employees are prohibited from engaging in or allowing any impermissible discrimination on the basis of race, religion, color, national origin, age, sex, disability, genetic information or veteran status in relation to (1) the Seller's employment practices; (2) the performance of the Seller's obligations under the Agreement. In performing its obligations under the Agreement, Seller shall be subject to and shall comply with all currently effective or subsequently promulgated policies regarding non-discrimination issued by either the University or The Texas A&M University System.

## **22. BIDDING ON ITEMS FOR SALE**

All persons desiring to bid must be 18 years of age or older.

Bidder shall provide a timeline, in calendar days, for the removal of the item. Texas A&M University-Commerce, herein referred to as the University or Seller, reserves the right to add to or withdraw from the auction any items listed or not listed, to group individual lots into larger lots for sale, to subdivide lots into smaller lots for sale, or to sell all lots in bulk when it is in the best interest of the Seller. Changes to or additional terms and conditions, additions or deletions may be posted by the University before the close of the auction. All sellers also retain full right of acceptance or rejection of any and all offers, including counter-offers, backup offers and final bids on this particular item. Final notice of sale will be confirmed by them after the item closes.

University neither conducts an appraisal nor has any association with any appraiser for our auctions. The University has no control over any appraisal contract, and cannot warrant, stand behind or guarantee information contained in any appraisal.

All items are sold AS IS, WHERE IS with no warranty, expressed or implied. The University shall not be responsible for the correct description, authenticity, genuineness, or defect in any lot and makes no warranty in connection therewith. No allowance, refund or set aside will be made on account of any incorrectness, error in cataloging, imperfection, defect or damage. Any descriptions or representations are for identification purposes only and are not to be construed as a warranty of any type. It is the responsibility of the Buyer to have inspected thoroughly the merchandise and to have satisfied himself or herself as to its condition and value and to bid based upon that judgment solely.

Security for purchases is the responsibility of the Buyer and begins immediately upon the sale of each lot. Removal is at the expense, liability and risk of the Buyer. The University shall not be responsible for goods not removed within the specified time period. The University shall not be responsible for non-delivery or for any other matter or thing to any purchaser of any lot, in any event. Merchandise not paid for and removed within the specified time period may be resold, relisted or returned to service without notice and with no recourse.

Upon the sale of each lot, the University may post the final sale price and successful Buyer's User ID. All questions or disputes regarding Buyer, lot identity, price or quantity must be resolved immediately upon the sale of said lot. No changes or adjustments will be made at any later time. The record of the sale kept by the University will be taken as final in the event of any dispute.

All persons attending, inspecting or removing merchandise assume all risks whatsoever of damage or loss to person and property and specifically release the University from all liability. Therefore, the University shall not be liable by reason of any defect in or condition of the sellers premises on which the preview / sale is held.

All descriptions of items for sale contained herein or provided during the time of the auction are believed to be correct, but the University makes no representation or warranty, express or implied, as to the accuracy of any such description, and hereby specifically disclaims any such warranty. The Buyer hereby agrees to rely solely on his/her own expertise to determine the value of any item purchased rather than the description of any article contained in the catalog or announced by the University.

The Buyer agrees that any item successfully bid upon will be paid for by the Buyer immediately following the closing of the auction and within the posted payment period in accordance with the payment terms. To the extent that the bidder is an individual acting on behalf of a corporation registered as the bidder, the individual bidder shall be jointly and severally liable with the corporation for payment of the purchase price. The Buyer acknowledges and agrees that no "stop payment" order shall be issued or honored. The Buyer further agrees that a stop payment order or a check



returned marked "insufficient funds" shall be considered prima-facie evidence of intent on the part of the buyer to defraud the University at the time of delivery of the check.

The Buyer agrees that the act of submitting a bid shall constitute acceptance of each and every term and condition contained herein and of any additional terms and conditions which may be posted on the website. The Buyer agrees that in any dispute between the Seller and the Buyer will be settled in accordance with the Alternative Dispute Resolution section of Texas Government Code, Chapter 2260. The Buyer further agrees to indemnify the University for all liabilities, damages, costs, and expenses incurred in connection with any such dispute or in connection with any claim, litigation, controversy, dispute or proceeding arising from any purchase of an article by the Buyer or from any subsequent sale of such article to any third party.

**23. ACCESS TO AGENCY DATA**

Pursuant to Section 2054.138, *Texas Government Code*, Vendor shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, [the security controls attached hereto as Exhibit \_\_\_\_, as may be amended from time to time] [the security controls available at \_\_\_\_, as may be amended from time to time] (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of [MEMBER's] data. [CONTRACTING PARTY] shall periodically provide ETAMU with evidence of its compliance with the Security Controls within thirty (30) days of ETAMU's request.

**24. CLOUD COMPUTING SERVICES**

As of the Effective Date, Vendor represents and warrants that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources ("RAMP"). Pursuant to Section 2054.0593, *Texas Government Code*, Vendor shall maintain RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. Vendor shall provide ETAMU with evidence of its RAMP compliance and certification within thirty (30) days of ETAMU's request and at least thirty (30) days prior to the start of any renewal term of this Agreement.