

Exhibit N

Contract Clauses and Terms and Conditions

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I. CONTRACTS

All contracts should contain certain essential clauses, and additional specific contract clauses may also be necessary depending on the subject matter of an agreement. Certain clauses may be also be included by referencing and attaching a standard addendum or attachment. Contract templates and sample clauses are discussed below.

Title of Document. Keep in mind that the title of a document does not control. If a document contains mutual promises or duties, it will be a legally binding document and must be treated like a contract regardless of the title.

c. Contracts include, but are not limited to: purchase orders, letter agreements, co-operative agreements, memorandums of understanding, inter-agency contracts, grants, loans, easements, licenses, leases, permits and restrictions on acceptances of gifts and bequests. Other parties include, but are not limited to: federal, state and local agencies, nonprofit organizations, private businesses, corporations, partnerships and individuals. See Per [TTUS Regents' Rules, 07.12.1.c.](#)

II. CONTRACT PROCESSING AND TEMPLATES

Each Institution has a **Contract Office** web-site found at the following links. These links contain contracting and contract processing procedures.

1. TTU
<http://www.depts.ttu.edu/procurement/>
2. TTUHSC
<http://www.fiscal.ttuhs.edu/contracts/>
3. TTUHSC El Paso
<http://elpaso.ttuhs.edu/fiscal/contracting/>
4. Angelo State
http://www.angelo.edu/services/contract_administration/

Each Institution also makes available **contract templates** for particular types of agreements which may be found at the following links (templates are modified periodically, so check the website for current forms rather than using templates from previous contracts):

1. TTU
<http://www.depts.ttu.edu/procurement/contracting/templates/index.asp>
2. TTUHSC
<https://www.fiscal.ttuhs.edu/ContractSubmission/Contract/Template/>
3. TTUHSC El Paso
<http://elpaso.ttuhs.edu/fiscal/contracting/manuals/draft-prototype-templates.aspx>
4. Angelo State
http://www.angelo.edu/services/contract_administration/

III. PURCHASE ORDERS AND STANDARD TERMS AND CONDITIONS

For purchase orders, each Institution has developed a document – “Purchase Order Terms and Conditions” – that is incorporated into the purchase order used to obtain goods and services. The Purchase Order Terms and Conditions contain many of the same clauses that are used in contracts.

It is advisable to place a version date on the Purchase Order Terms and Conditions document to assist with confirming that the most current form is incorporated into the purchase orders. See also Purchasing Department procedures for processing purchase orders at each Institution.

1. TTU
<http://www.depts.ttu.edu/afism/AFISMFormRepository/ProcurementDept/PurchasingAndContracting/Purchase%20Order%20terms%20and%20conditions.pdf>
2. TTUHSC
<https://www.fiscal.ttuhs.edu/ContractSubmission/Contract/Template/>
3. TTUHSC El Paso
<http://elpaso.ttuhs.edu/fiscal/businessaffairs/purchasing/PurchasingForms.aspx>
4. Angelo State
<https://www.angelo.edu/content/files/22026-terms-and-conditions>

IV. ESSENTIAL CONTRACT CLAUSES

When drafting a contract for goods or services, it is helpful to first check whether there is an Institution approved template contract available that would fit the situation and use it as a starting point.

If a template document is not available, following are basic clauses to be included in contracts. If assistance is needed to draft a contract, it is helpful for an originating department to send along with the procurement request descriptive information about the contract, using the clauses below as a guide, so that the Contracting Office or the Office of General Counsel can better assist with drafting or reviewing agreement contract. Please note all contracts should be reviewed by the Procurement/Purchasing offices first for compliance with procurement policies. *Sample language for these clauses is found in a separate section below, as well as in the links set forth above.*

Opening paragraph	Identify the name of the contract, and the legal name and legal status of each party.
Background information	Describe how this contract arose or why it is needed.
Subject Matter	Define the intent of the parties and the specific goods or services in sufficient detail so it is clear what is the work or action that each party is responsible to do and expected to fulfill in its performance under the contract, and where is the location of providing the goods or services. Review carefully whether the obligations for the Institution are realistic and feasible.
Term	Identify the start date (or effective date) and end date of the contract, and details concerning whether the contract term may be renewed or extended. Keep in mind Regents' Rules, Chapter 07 , which requires Board of Regents approval for any contract exceeding 4 years, including the initial term and any options to renew or extend the contract, unless the contract permits Institution to terminate the contract, without cause, with notice of 120 days or less.
Termination	Describe various events that may allow or trigger termination of the contract by the parties. <u>Funding Out Clause.</u> This is one way a contract may be terminated since Institutions are not bound by the terms of a contract if the legislature does not appropriate funds.
Financial (compensation)	Clarify what is to be exchanged between the parties; i.e., the amount a performing party will be paid and by when and how the other party is expected to make payment.
Dispute Resolution	If an Institution is “paying for” or “purchasing” goods or services, the Texas Legislature requires that the Texas Government Code, Chapter 2260 be followed. <u>Arbitration</u> – as a Texas state agency, Institutions are unable to agree to <i>binding</i> arbitration. The alternative is <u>Mediation</u> .
Amendment	State that this contract can only be changed if all parties agree to do so in writing.
Controlling Document	If a contract refers to other documents, attaches other documents, or amends to add new provisions or documents, this clause identifies which document controls in the event of a duplication or inconsistency.
Assignment	Clarify that the work or actions to be accomplished by the contractor cannot be handed over to someone else to perform unless the Institution agrees in advance, in writing.
Independent Contractor	State that the contracting party is an independent contractor and nothing in the contract is intended to create any other type of relationship between the contracting parties, such as employer/employee, partnership, joint venture, or agency.

Entire Agreement	This clause confirms the contract is the legally binding whole agreement of the parties, and, unless otherwise expressly provided in the contract, supersedes prior discussions or other writings, if any.
Severability	This clause allows a contract to potentially continue even if one or more clauses are found to be invalid or unenforceable, unless the problem clause is material to the purpose of the agreement.
Governing Law	As Texas state agencies, Institutions do not agree to governing law outside Texas since this may eliminate or reduce protections for state agencies available under Texas law, would result in the Institutions subjecting themselves to laws they are unfamiliar with and that may conflict with Texas law. (Generally combined with Venue.)
Venue	This is the location of a court where a dispute may be filed and should be in the Texas county where the Institution is located.
Signature Block	This will show the name legal name of each party to the contract (as set forth in the opening paragraph), and identify the person authorized to sign for each party. The TTUS Regents' Rules identify the positions of persons authorized to sign on behalf of each Institution. Generally, the Chancellor, a President, or an Executive Vice President or person specifically designated in writing to have signature authority. <i>(An individual who signs a contract without authority to do so could be held personally liable for damages if a dispute arises about the contract.)</i>

For uncommon types of contracts, certain specialty clauses will be needed such as in contracts relating to health care services and goods, leases of real property, construction contracts, research agreements, purchase software, use of facilities, and others.

For unique contracts or for questions related to the applicability of contract clauses, consult with the Office of General Counsel or Institution's Contract or Procurement Office.

V. SAMPLE CLAUSE LANGUAGE (in alphabetical order, with some explanatory notes)

There are numerous other clauses that may be need to be included in particular contracts depending on the subject matter. Each Institution has developed language that can be found in approved template contracts, standard addendums, or terms and conditions. Also, consult with the Office of General Counsel or Institution's Contract or Procurement Office. Some general sample clauses are found below. For the sample clauses, "institution" refers to TTUS or the component Institution that is party to the contract.

Access to Documents

<Other party> will maintain records generated pursuant to this Agreement for a period of at least two years after expiration or termination of this Agreement. <Other party> will allow <institution> access to documents for audit and other purposes of this Agreement.

Affirmation – See Certifications

Amendment

Option:

This Agreement and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended or altered except by in writing signed by the Parties.

Option:

No modification or amendment to this Agreement will become valid unless agreed to by <institution> in writing and signed by both parties. All correspondence regarding modifications or amendments to this Agreement must be forwarded to the <institution's procurement office> for prior review and approval. Only the <institution's chief procurement officer> or his/her designee will be authorized to process changes or amendments. All amendments must be signed by the same person who signed this original Agreement or their successor(s).

Arbitration / Mediation - See also Dispute Resolution.

Explanation:

Institutions do not agree to *binding* arbitration, but may agree to *non-binding* arbitration or mediation.

Clause:

Option:

In the event that the Parties are unable to agree with respect to any matter covered by this Agreement, the issue in dispute shall be submitted to non-binding arbitration or to mediation, conducted pursuant to <Chapter 154, Alternate Dispute Resolution Procedures, Texas Civil Practice & Remedies Code>, each Party to be responsible for its own costs. This clause will survive the expiration or termination of the Agreement, whether for cause or without cause.

Option:

If a dispute concerning this Agreement arises between the Parties and the Parties are unable to resolve the dispute in the ordinary course of business, the Parties agree to mediate the issue in <institution's county>, Texas, using the guidelines and model rules of the Texas Attorney General's Office established pursuant to Tex. Gov't Code §2260.052(c). If an agreement is reached, the Parties will be bound by the terms and conditions set forth in the settlement agreement that will be executed by the Parties. <Both Parties shall share the cost of the mediation equally><each Party to be responsible for its own costs related to the mediation, although attorneys and witnesses or specialists are the direct responsibility of each Party and their fees and expenses are the responsibility of the individual Party>. The Parties agree to jointly select a mediator.

Assignment – See also Subcontracting

Option:

Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party.

Option:

<Other party> may not assign this Agreement, in whole or in part, without the prior written consent of <institution>.

Option:

Neither this Agreement, nor any rights or obligations of monies due under this Agreement are assignable or transferable (as security for advances or otherwise) unless <institution> agrees in writing. <Other party> will not assign or subcontract any portion of services encompassed by a Contract without <institution>'s prior written approval. <Institution> will not recognize any assignment or subcontract made without <institution>'s prior written approval, and any such assignment by the <Other party> will be wholly void and ineffective for all purposes unless made in conformity with this section.

Attorney Fees

Explanation:

TTUS and component institutions do not agree to pay another party's attorney fees. The Texas Attorney General, or outside counsel approved by the Attorney General, represents TTUS and institutions in all actions in which TTUS or an institution is named as a party. TTUS and component institutions may require the other party to pay TTUS attorney fees, for example, under an indemnification clause.

Audit

<Other party> understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. <Other party> further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records necessary and appropriate to conduct the investigation.

<Institution> has the right, at its sole cost, to audit <other party>'s financial records pertaining to the Agreement either using <institution> personnel or an independent third party. <Institution> will complete such audit at <other party>'s office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals <other party> owes <institution> money, <other party> will pay the amount due within 30 days of the date <institution> notifies <other party> of the audit results. If the audit reveals <institution> owes <other party> money, <institution> will pay <other party> within 30 days of the date the audit is complete.

<Other party> agrees this clause concerning the authority to audit funds includes funds received indirectly by subcontractors through <other party> and will ensure the requirement to cooperate is included in any subcontractor agreements.

Certifications -- see Standard Addendum or Purchase Order Terms and Conditions

Compensation – see Financial

Confidentiality – See Texas Public Information Act

Explanation:

TTUS and its component institutions are limited in agreeing to confidentiality of the agreement and actions thereunder. Generally, avoid including confidentiality provisions and do include the Texas Public Information Act clause found below. Consult with the Office of General Counsel regarding exceptions or interpretations.

Consideration – see Financial.

Controlling Document -- see Order of Precedence, Governing Document

Defaults, No Waiver of

<Institution>'s failure at any time to enforce or require the strict keeping and performance of any of the terms and conditions of this Agreement will not constitute a waiver of such terms, conditions, or rights, and will not affect or impair <institution>'s right at any time to avail itself of the terms, conditions or rights under this Agreement.

Dispute Resolution

Explanation:

If an Institution is purchasing or paying for goods or services, Texas law requires that information about Texas Government Code Chapter 2260 be included in the contract. *Do not add this clause if the other party is a governmental unit:*

Clause:

<Other party> 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 <Other party> to initiate the process by providing written notice of a claim and negotiating with <institution>, conditions precedent to the contested case process. Governed by rules adopted by the Texas Attorney General's Office, the contested case process is <Other party>'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 <Other party> to sue under Chapter 107 of the Civil Practices and Remedies Code. An event or claim for breach of contract is not grounds for <Other party> to suspend performance under this Agreement. <Institution> DOES NOT WAIVE SOVEREIGN IMMUNITY BY ITS EXECUTION OF OR BY ANY CONDUCT OF ITS REPRESENTATIVES UNDER THIS AGREEMENT.

Entire Agreement

Option:

This Agreement contains the entire agreement of the Parties concerning the subject matter described herein and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter described herein. This Agreement supersedes any prior written or oral agreements between the Parties concerning the subject matter described herein.

Option for Purchasing:

Entire Agreement. This Agreement contains the entire agreement of the Parties concerning the subject matter of this Agreement and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement supersedes any prior written or oral agreements between the Parties concerning the subject matter described, and/or the terms and conditions incorporated with or attached to a Request for Proposal or other bid documents.

Option for non-medical services (includes Controlling Document language):

Provided, however, the terms and conditions of any purchase order or bid request for proposal document associated with this Agreement and issued by < institution> authorized representative(s) are incorporated herein by reference and shall apply to the extent they supplement the provisions of this Agreement. In the event there is a conflict between the documents constituting the agreement between the Parties, the documents and provisions shall prevail in the following order: (a) this Agreement, (b) exhibits or attachment to this Agreement, and (c) the terms and conditions of any purchase order or bid request for proposal document issued by <institution>.

Financial – Consideration (price / fee / revenue), payment terms (compensation)

Option:

So long as <other party> has provided <institution> with its current and accurate Federal Tax Identification Number in writing, <institution> will pay <other party> for goods or services on or before 30 days from <institution>'s receipt of an invoice in accordance with Chapter 2251, Texas Government Code. Payment will only be made upon issuance of an authorized purchase order and receipt of a complete and accurate invoice from <other party>.

Option:

An Institution may agree to alternate payment terms for certain items. See Texas Comptroller's Procurement Manual Section 2.38 – Prepayment and Advance Payments, and Section 2.39 – Discounts for Prompt or Early Payments. <http://comptroller.texas.gov/procurement/pub/manual/2-38.pdf>

Option for medical goods and services:

<Other party> agrees to pay <institution> <\$ per hour, day, month, etc.,> <if a cap: not to exceed \$ _____> <according to a specified and attached schedule>.

<Institution> will invoice < when/how often?> Payment shall be remitted within 30 days of invoice date. Each Party represents and warrants that all decisions regarding the medical care of patients shall be based solely upon the professional medical judgment of a patient's attending physician(s) and shall be made in the best interests of patients, that the aggregate benefit given or received under this Agreement, whether in cash or in kind, has been determined in advance through a process of arms-length negotiations that were intended to achieve an exchange of goods and/or services consistent with fair market value in the circumstances, and that any benefit given or received under this Agreement is not intended to induce, does not require, and is not contingent upon, the admission, recommendation or referral of any patient, directly or indirectly, to the other Party.

Funding Out – See Termination

Governing Document – See Controlling Document

Governing Law and Venue

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflicts of laws principles. Venue for any action to enforce the terms and conditions of this agreement shall be in the state or federal courts of <institution’s county>, Texas.

Indemnification

Explanation:

These clauses attempt to place or transfer liability between the parties and need to be reviewed by the Contract or Procurement Office or Office of General Counsel. As a Texas state agency, TTUS and its component institutions have no authority to agree to indemnify another party.

However, Institutions generally require that the other party agree to indemnify the Institutions.

Clause:

<Other party> will defend, indemnify and hold harmless TTUS, its component institutions, its board of Regents, officers, employees, agents, and representatives (collectively “Indemnitees”) from any and all liability caused in whole or in part by <other party’s> actions or omission, including negligence, gross negligence, willful misconduct or legal wrongdoing in any way connected with the performance of any work, direct or indirect, under this Agreement which results in claims, actions, demands or suits of any kind including, but not limited to, liabilities, penalties, costs or expenses, including attorneys’ fees.

Clause:

<Other party> WILL INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS TEXAS TECH UNIVERSITY SYSTEM, ITS COMPONENT INSTITUTIONS, 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 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 <OTHER PARTY>’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION, INCLUDING ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF <OTHER PARTY>, ANYONE DIRECTLY EMPLOYED BY <OTHER PARTY> OR ANYONE FOR WHOSE ACTS <OTHER PARTY> 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.

Clause for infringement (to address concerns, for example, that an Institution’s use of third party software infringes on the intellectual property rights of a third party):

<Other party> agrees to defend, indemnify, and hold harmless the Texas Tech University System, the <institution>, and the State of Texas from claims involving <other party>'s infringement of patents, copyrights, or other proprietary rights.

Note:

If the Agreement does not contain a "Survival" clause, add at the end of the indemnification clause "The obligations of <other party> contained in this Section survive the termination or expiration of this Agreement and continue on indefinitely."

Independent Contractor/Relationship of the Parties

<Other party> is an independent contractor. Nothing in this Agreement, whether express or implied, is intended nor shall be construed to create a partnership, joint venture, employment, or agency relationship between <institution> and <other party>. As an independent contractor, <other party> is solely responsible for its conduct of business operation, including employee salaries, travel expenses, etc., and for all taxes, withholdings, and other statutory or contractual obligations of any sort including worker's compensation insurance.

Insurance -- *consult with Procurement / Purchasing / Contracting Office and Director of Risk Management for appropriate clause(s) and schedule setting out minimum types and levels of insurance coverage the other party is required to maintain.*

Explanation:

As state agencies, Institutions do **not** purchase comprehensive or general liability insurance, but do participate in the State of Texas Worker's Compensation Insurance program. However, Institutions should require the other party maintain and confirm certain minimum types and levels of insurance coverage. These required coverages may be set out in solicitation documents. *The potential risk of a contract may far outweigh the dollar value of the contract (e.g., contracts that may involve inherently dangerous activities or products or hazardous materials, or environmental or cyber liability issues).* For contracts that may involve unique or high risk, consult with the TTU System Director of Risk Management before the solicitation is made about whether non-standard types of insurance coverage and/or higher than usual coverage limits should be required.

Option related to insurance for Institutions:

<institution>, as a state agency, has sovereign immunity except to the extent sovereign immunity is waived by the Texas Civil Practice and Remedies Code, Governmental Liability, Chapter 101, Tort Claims, with liability limits as set forth in §101.023.

Option related to insurance for TTUS and component Institutions:

Under Texas Civil Practice and Remedies Code, Chapter 104, State Liability for Conduct of Public Servants, state employees acting in the course and scope of their employment are entitled to protection from the state with limits as set forth in §104.003.

Option related to insurance required to be maintained by other party:

By requiring such minimum insurance, Texas Tech University shall not be deemed or construed to have assessed the risk that may be applicable to <other party> under this agreement. <Other Party> shall assess its own risks and, if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. <Other party> is not relieved of any liability or other obligations assumed or pursuant to the contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

The <other party> shall carry the following minimum limits of insurance listed below:

Commercial General Liability

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Abuse & Molestation each occurrence (if required)	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Medical Payments (Any One Person)	\$5,000

Automobile Liability

Bodily Injury/Property Damage (Each Accident)	\$1,000,000
Personal Injury Protection, if applicable	Statutory

Workers' Compensation

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers' Liability)	\$1,000,000
	\$1,000,000

Umbrella Liability

Each Occurrence Limit	\$5,000,000
General Aggregate Limit	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000

Commercial General Liability (CGL)

<Other party> shall name TTUS and its Board of Regents, officers, employees, agents, and volunteers as Additional Insureds on ISO endorsement CG 20 11 Additional Insured – Managers or Lessors of Premises or its equivalent. ISO endorsement CG 20 01 04 13 – Primary and Noncontributory Other Insurance Condition must also be attached.

All Policies

- Must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by TTUS.
- Must include a Waiver of Subrogation Clause.

Notice of Cancellation: Each insurance policy required by the insurance provisions of this contract shall provide the required coverage and shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice has been given to the TTUS, except when cancellation is for non-payment of premium; then ten (10) days' prior notice may be given. Such notice shall be sent directly to TTUS Representative's Name and Address. If any insurance company refuses to provide the required notice, the <Other party> or its insurance broker shall notify TTUS of any cancellation, suspension, or non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

Certificate of Insurance: An original (Acord 25) certificate of insurance shall be submitted by the insurer or agent to TTUS showing evidence of each of the required coverage types prior to approval of this contract. Insurers should have an A.M. Best rating of B+ VII or better.

Location of Services

Explanation:

If another party will provide services on TTUS or component institutions' property, or use TTUS equipment and facilities, then other clauses must be added. *Check template agreements and consult with Procurement / Purchasing / Contracting Office for appropriate clause.*

Mediation – see Arbitration

Notice

Option:

All notices, requests and communications required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery or delivery by overnight courier or, if mailed, upon the first to occur of actual receipt or four (4) business days after being placed in the United States mail, postage prepaid, registered or certified mail, receipt requested, addressed to the parties at the addresses set forth below:

<OTHER PARTY>:

<name>
Attn: <contact title>
<address>
<city>, Texas <zip>
T. <telephone>
F. <fax>
Email

With Copy to: (if needed)

<institution>:

<institution>
<institution's procurement office>
Attn: <contact title>
<address>
<city>, Texas <zip>
T. <telephone>
F. <fax>
Email

With Copy to: (if needed)

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above, but shall be effective only upon actual receipt.

Option:

Any notice under this Contract must be written and delivered to the party to be notified (1) by hand delivery, (2) by United States mail, or (3) by email. Notice will be effective upon physical delivery of the notice by messenger service; or, four (4) business days after the date of mailing by certified mail, return receipt requested; or upon acknowledgement of notice by the email recipient, either by return receipt or reply email. If no email receipt or

reply has been received by the sender within one business day from emailing the notice, the notice is deemed incomplete and sender must send notice by messenger or certified mail.

<OTHER PARTY>:

<name>
Attn: <contact title>
<address>
<city>, Texas <zip>
T. <telephone>
F. <fax>
Email

With Copy to: (if needed)

<institution>:

<institution>
<institution's procurement office>
Attn: <contact title>
<address>
<city>, Texas <zip>
T. <telephone>
F. <fax>
Email

With Copy to: (if needed)

Opening Paragraph

Option:

This <name of> Agreement ("Agreement") is made and entered into by and between <**Texas Tech University System or name of component institution**> ("_____"), a Texas public institution of higher education <, on behalf of its <School or College> of _____, Department of _____> and <**insert proper legal name of other party <dba _____>**> ("_____"), <describe legal status of other party- type of entity and state of organization>.

Both <institution> and <other party> are also referred to herein as "Party" or, collectively "Parties."

Option:

This Agreement is entered into between <other party>, with its principal place of business located at _____, referred to as "<_____>," and <institution>, a Texas public institution of higher education, located in _____, Texas and referred to as "<_____>."

Order of Precedence -- see Controlling Document

Parties – see Opening Paragraph

Payment — see Financial

Publicity – see Use of Name

Severability

If any term or provision of this Agreement is held to be invalid for any reason, the invalidity of that section shall not affect the validity of any other section of this Agreement provided that any invalid provisions are not material to the overall purpose and operation of this Agreement. The remaining provisions of this Agreement shall remain in full force and shall in no way be affected, impaired, or invalidated.

Subcontracting / Subcontractors – see also Assignment

<Other party> will not assign any of its duties or responsibilities under this Agreement to any subcontractor, except as expressly provided for in this Contract or approved by <institution>. Subcontractors providing goods or services under the Contract will meet the same requirements and level of experience required of <other party>. No subcontractor under the Agreement will relieve <other party> of the responsibility for providing the goods or services <other party> has agreed to provide.

Survival

The obligations of the Parties contained in this Agreement which by their nature survive after the term of the Agreement, such as indemnity, warranties, confidentiality, and audit provisions, shall survive the termination or expiration of this Agreement and continue on indefinitely or as otherwise provided by this Agreement.

Term

Explanation: The term of the contract, including the initial term and any renewal or extension terms may not exceed 4 years without approval of the Board of Regents unless the contract permits the Institution to terminate the contract, without cause, with notice of 120 days or less.

Option:

The term of this Agreement shall begin on <date> and terminate on <date>.

Option: (If using this option be certain each party dates the contract in the signature block)

This Agreement will begin on the date of the last signature and will continue for <number> years.

May also add:

Option:

The Agreement may be renewed for up to <number> one-year terms if the parties agree in writing prior to the end of the then current term<add if (i) no provision permitting institution to terminate, without cause, on notice of 120 days or less; or (ii) no Board of Regents approval: , not to exceed a total of 4 years, including the initial term>.

Termination – options:

Option:

Either Party may terminate this Agreement at any time, with or without cause, by giving the other Party <number> days written notice.

Option: (For revenue contracts)

This Agreement may be terminated immediately by <institution> for nonpayment as agreed upon written notice to <other party>.

Option: (for breach)

This Agreement may be terminated by either party on <number> days' written notice to the other, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions of this Agreement, and such failure is not cured during such <number>-day period.

Funding Out:

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

Termination, Effect of

Upon expiration or termination of this Agreement, neither Party shall have any further obligation under this Agreement except for obligations due and owing which arose prior to the date of termination, and obligations, promises or covenants contained in this Agreement which expressly extend beyond the term of this Agreement.

Or

In no event shall such termination by <institution> as provided for under this section give rise to any liability on <institution>'s part including, but not limited to, <other party>'s claims for compensation for anticipated profits, unabsorbed overhead (including cost for equipment acquired by <other party> to perform the Services), or interest on borrowing. <Institution>'s sole obligation hereunder is to pay <other party> for goods or services received by <institution> prior to the date of termination.

Texas Public Information Act

Option:

<Other party> acknowledges that <institution> is a public institution of higher education in the state of Texas and is subject to requests for information under the Texas Public Information Act (Texas Government Code, Chapter 552). Under this Act, there are exceptions to requests for disclosure, which include but are not limited to, information confidential by law and certain commercial information and trade secrets. The Texas Attorney General's office makes the final determination whether or not requested information is to be disclosed on a case by case basis after reviewing the materials and assertions against disclosure. If proprietary information is requested, the Act requires <institution> to provide written notice to the party whose proprietary information

may be subject to the request, and that party may also submit information to the Texas Attorney General to establish that disclosure of the information would cause substantial competitive harm.

Option for contracts resulting from an RFP:

All information, documentation and other material submitted under the RFP and for this Agreement are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552). The Contractor is hereby notified that <institution> strictly adheres to this statute and the interpretations thereof rendered by the Courts and the Texas Attorney General. <Institution> will use its best efforts to maintain the confidentiality of all information submitted by <other party> except where <institution> is required to disclose it under the Act. The Texas Attorney General will ultimately decide whether <other party>'s proprietary information (such as financial information, client lists, etc.) is released to the public, however <institution> will give <other party> notice of all requests for its proprietary information in accordance with the Act. <institution> cannot represent <other party> interests to the Texas Attorney General and <other party> seeking to protect their proprietary information will be required to submit a letter, brief, or memorandum to the Attorney General with reasons in support of withholding their information. In general, pricing information must be disclosed under the Public Information Act. If <other party> has questions regarding the Public Information Act, it should seek appropriate legal counsel.

Use of Institution Name and Indicia or Marks

Option:

Neither Party to this Agreement shall use the name or indicia of the other Party, nor of any of a Party's employees, in any manner of publicity, advertising, or news releases without prior written approval of the other Party.

Option:

<Other party> agrees that it will not publicize the Agreement or disclose, confirm, or deny any details thereof to third parties and will not use <institution>'s name or protected marks without the prior express written approval of <institution>.

Venue – See Governing Law

Venue for any action to enforce the terms and conditions of this Agreement shall be in the state or federal courts of <institution's county>, Texas.