1. PROCUREMENT REQUIREMENTS

1.1 "University" shall mean either Angelo State University or Texas Tech University System. Both agencies are agencies of the State of Texas.

1.2 Vendor acknowledges, by signing any agreement documents and/or supplying the requested commodities and/or fulfilling the requested services that the Vendor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptives material contained herein and any additional written and signed agreement or purchase order and all associated documents and amendments. The University disclaims any terms and conditions provided by the Vendor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Vendor, the terms and conditions provided herein shall prevail.

1.3 This Purchase Order supersedes all prior agreements, written or oral, between Vendor and the University and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, amended, altered, or otherwise in effect, written, signed by the University’s Director of Purchasing or to the undersigned or the Vendor. Waiver of a provision in one instance shall not preclude enforcement thereof upon future occasions.

1.4 Vendor agrees that it will comply with federal, state, or local laws or regulations applicable to Vendor’s performance under the purchase order or agreement. Vendor further agrees that it will comply with any and all rules or regulations of the University applicable to Vendor’s performance under the purchase order or agreement.

1.5 Purchases made for University use are exempt from the Texas State Sales tax and Federal Excise tax. Tax exemption certificates are available upon request. The University’s Texas tax identification number is 7375137057. If the University is billed for any exempt taxes, it will be deducted from the invoice payment.

1.6 Vendor shall not assign, delegate, or subcontract any purchase order or agreement or any rights resulting from a bid or proposal without the prior written consent of the University and any attempt to the contrary shall be void and of no legal effect.

1.7 Headings are for reference purposes only and have no substantive effect.

1.8 All communications relating to this Purchase Order shall be directed to the Purchasing Department. When contacting the University’s Purchasing Department, the vendor/proposer shall provide the purchase order number and reference document purposes. All notices, consents, approvals, demands, requests, or other communications relating to this Purchase Order shall be in writing and shall be delivered to Angelo State University, Purchasing Department, ASU Station #11010, San Angelo, Texas 76909 or hand delivered to Angelo State University, Administration Bldg, Room 110, 2601 W Ave N, San Angelo, Texas. All such correspondence must reference the purchase order number.

2. SPECIFICATIONS

2.1 Unless otherwise specified, items shall be new and of current production.

2.2 Vendor shall notify the University in writing of every article ordered or supplied under this Purchase Order or stored or used by Vendor on the University property that contains Hazardous Substances or substances for which the law requires a Material Safety Data Sheet (MSDS).

2.3 Purchases made for University use are exempt from the Texas State Sales tax and Federal Excise tax. Tax exemption certificates are available upon request. The University’s Texas tax identification number is 7375137057. If the University is billed for any exempt taxes, it will be deducted from the invoice payment.

3. DELIVERY, INSPECTIONS AND TESTS

3.1 All prices must be FOB destination, freight prepaid, unless agreed upon on the purchase order document.

3.2 Incurred costs or expenses related to a reasonable amount from the price thereof to compensate University for the nonconformity. Any acceptance by University, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

3.3 All specifications shall be met or exceeded by the goods tendered. Should the University reject any item that is not in substantial conformity, the University shall, at its option, either (i) correct such items and charge Vendor all reasonable costs of cover incurred by the University, or (ii) terminate this Order for default as provided in Termination Section.

3.4 Vendor shall be entitled to deduct a reasonable amount from the price thereof to compensate University for the nonconformity. Any acceptance by University, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

3.5 The University’s payment terms are thirty (30) days for undisputed invoices. The late payment rate established annually by the State of Texas shall be applicable after thirty (30) days.

3.6 Unless otherwise specified, items shall be new and of current production.

3.7 Delivery shall be made during normal working hours only, unless prior written approval has been obtained from University. No collect shipments will be accepted.

3.8 Unless otherwise specified, items shall be new and of current production.

4. WARRANTIES

4.1 "Hazardous Substance" means any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof; or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

4.2 "Environmental Law" means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources and/or the environment.

4.3 Vendor shall comply with all federal and state environmental laws.

4.4 Vendor shall notify the University in writing of every article ordered or supplied under this Purchase Order or stored or used by Vendor on the University property that contains Hazardous Substances or substances for which the law requires a Material Safety Data Sheet (MSDS).

4.5 Such notification shall be given upon purchase or prior to introduction of such substances onto University property and shall include, at a minimum, information regarding the substance including but not limited to Material Safety Data Sheets and product labeling as required by Texas Health and Safety Code, Chapter 502.

4.6 The University shall be at all times, inspect any Hazardous Substances into or intended to be introduced onto University property by the Vendor.

4.7 The Vendor shall comply with 6 CFR Part 27, Chemical Facility Anti-terrorism Standards. Notifications shall be presented to the University when required.

5. WARRANTIES

5.1 Warranty that items furnished hereunder will: (i) be free from material defects in design, material and workmanship; (ii) be suitable for any particular purposes made known to Vendor in advance; (iii) function together as a unit if the University notified Vendor that it was relying on Vendor’s skill or judgment to select items that will function as such; (iv) be materially accurate to specification and process data-related data; (v) substantially conform with any related sample, model, documentation, description, labeling or literature supplied by Vendor; and (vi) substantially conform to all specific requirements of any purchase order or agreement.

5.2 Unless otherwise agreed in writing, all hardware and items are transferred to the University free and clear of all liens and encumbrances.

5.3 Unless designated as "reconditioned" or "used," all hardware and replacement parts are warranted to be new.

5.4 Services are warranted by Vendor to be performed in a professional and workmanlike manner in substantial compliance with applicable specifications.

5.5 If items are found within twelve (12) months after acceptance (or such longer period specified by Vendor) not to be as warranted, the University may require the work to be corrected or may return all items to Vendor for the purchase price and any funds (including funds furnished thereby to Vendor, at Vendor’s expense, for replacement or credit as the University may direct.

5.6 Replacements are warranted for the latter of the remaining original warranty period or ninety (90) days.

5.7 Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

5.8 Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

5.9 Vendor shall ensure that the services of auditors, accountants and other subsidiary businesses are accepted by the University and shall, at its option, either (i) correct such items and charge Vendor all reasonable costs of cover incurred by the University, or (ii) terminate this Order for default as provided in Termination Section.

5.10 No inspection, tests, approval (including design approval), or acceptance of items shall relieve Vendor from responsibility for latent defects, material misrepresentations or omissions, or Vendor’s failure to comply with any of the terms or conditions of this Purchase Order.

5.11 Manufacturer or production of items subject to the University’s approval of a prototype, sample, or design shall not proceed until such approval is given.

5.12 "Environmental Law" means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources and/or the environment.

5.13 No substitutions are permitted without written approval of the University’s Purchasing Department.

5.14 Delivery shall be made during normal working hours only, unless prior written approval has been obtained from University. No collect shipments will be accepted.

5.15 All prices must be FOB destination, freight prepaid, unless agreed upon on the purchase order document.
8. PATENTS OR COPYRIGHTS
8.1 The Vendor agrees to protect the University and the State of Texas from claims involving infringement of patents or copyrights.

9. AFFIRMATION
9.1 Vendor affirms that it is an independent contractor of the University and is not an employee, partner, joint venture, or franchisee. Vendor is not entitled to participate in any employee benefit plan of the University.
9.2 Vendor represents that it has other substantial sources of revenue, will file tax returns and pay tax as an independent contractor, and will defend and indemnify and hold the University harmless from any claim to the contrary.
9.3 Vendor agrees to inform the University, if any violation under this Purchase Order, and of any conduct of which it becomes aware during the performance of the Vendor’s obligations. This shall include any conduct by the company or any of its employees, agents, or contractors, or by University or any of its agents, employees, or subcontractor, which a reasonable person would conclude, may violate any of the requirements herein.
9.4 Officers, faculty, and staff (“employees”), of the University, including Board of Regents members, may not have direct or indirect interests, including financial and other interests, engage in business transactions or professional activities, or incur any obligation of any nature that in substance with the proper discharge of the employees’ duties, including any function in which such employee has any delegated authority to conduct or approve the transaction.
9.5 The Vendor has not, 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 associated order.
9.6 Pursuant to Section 231.006 (d) of the Texas Family Code, regarding child support, the Vendor certifies that the individual or business entity named in this order is not ineligible to receive the specified payment and acknowledges that this order or contract may be terminated and payment may be withheld if this certification is inaccurate.
9.7 Under Section 2155.004 of the Texas Government Code, the Vendor certifies that the individual or business entity named in this order or contract is not ineligible to receive the specified order or contract and acknowledges that this order or contract may be terminated and payment withheld if this certification is incorrect.
9.8 By accepting this Purchaser Order, the Vendor is certifying that neither the owner nor any employees are in dual employment positions as a University employee. In addition, the Vendor is certifying that the owner and any employee are not related in any manner with any University employee. If such relationship exists, then that relationship shall be disclosed prior to acceptance of the 9.8 Order to the Purchasing and Contracting Office. If the status of any owner or employee of the Vendor changes during the course of the contract or purchase order, then that relationship shall be disclosed immediately to the managing director of Procurement Services. Any violation of this policy shall result in immediate cancellation of any resulting contract or purchase order in addition to a potential debarment.
9.9 Vendor warrants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations, Vendor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

10. CONTRACT VENUE
10.1 The agreement shall be governed, construed and interpreted under the laws of the State of Texas and the Texas Uniform Commercial Code. Any legal actions must be filed in Tom Green County, Texas.

11. DISPUTE RESOLUTION
The dispute resolution process provided for in this Texas Government Code, Chapter 2260 shall be used, as further described herein, by the University and the Vendor in an attempt to resolve any unresolved claims for breach of contract arising under this Agreement and made by the Vendor.

A Vendor’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 Government Code, Chapter 2260, Subchapter B. To initiate the process, the Vendor shall submit a written notice, as required by Subchapter B, to the Director of Purchasing. Said notice specifically states that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the University and the Vendor that are otherwise entitled to notice under the Agreement. Compliance by the Vendor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.

The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Vendor’s sole and exclusive process for seeking a remedy for any alleged breach of contract by the University if the Parties are unable to resolve their disputes in the ordinary course of business or under Chapter 2260, Subchapter B. A UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Vendor consent to sue under Chapter 107 of the Civil Practice and Remedies Code.

NEITHER THE EXECUTION OF THIS CONTRACT BY THE UNIVERSITY NOR ANY OTHER CONDUCT OF ANY REPRESENTATIVE OF THE UNIVERSITY RELATING TO THE CONTRACT SHALL BE CONSIDERED A WAIVER OF THE UNIVERSITY’S SOVEREIGN IMMUNITY TO SUIT. The rights of the University, as provided for in Government Code Chapter 2260 at any time, will not affect the University’s right or ability to bring suit against the Vendor for disputes arising under this Agreement, nor will it affect the University’s ability to assert all claims and defenses in a lawsuit.

Pursuant to Chapter 2260, the submission, processing and resolution of the Vendor’s claim is governed by the published rules adopted by the Texas Attorney General’s Office, as currently effective, hereafter enacted or subsequently amended.

An event of claim for breach of contract is not grounds for the Vendor to suspend performance under this Agreement.

12. PREFERENCE IN PURCHASE
12.1 Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act).

13. AFFIRMATIVE ACTION
13.1 The Vendor shall not maintain or provide racially segregated facilities for employees at any establishment under its control. Vendor agrees to adhere to the principles set forth in Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973, and USC 2012 (Disabled Veterans and Veterans of the Vietnam Era), and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all levels in the Vendor’s organization; and to maintain full compliance with the Public Information Act.

14. FUNDING OUT CLAUSE
14.1 The Texas Constitution prohibits obligations beyond the current fiscal year appropriations. This Purchase Order may be canceled at any time without penalty if legislative and/or University funds are not appropriated for goods or services obligated on the Purchase Order beyond the current fiscal year (September 1 through August 31 of any given year).

15. TERMINATION
15.1 The University may at any time by written notice suspend or cancel any purchase order or agreement or any part thereof without cause.

15.2 The University shall pay Vendor a reasonable cancellation charge, determined by the University in good faith, for work-in-progress (not exceeding the price for cancelled items) to the extent effective, hereafter enacted or subsequently amended.

15.3 Off-the-shelf items that are readily marketable and any rented facilities that can be readily rebooked shall not be subject to a cancellation charge.

16. FEDERAL REQUIREMENTS
16.1 The University is recipient of federal funds from various federal agencies. The University shall require Vendors to comply with all federal regulations relating to the use of federal funds. In addition, Vendor agrees to flow down all applicable clauses from OMB Circular A-110 to lower-tier subcontractors.
16.2.1 Pyramid Prohibitions on Non-Segregated Facilities FAR 222.221
16.2.1.2 Equal Opportunity FAR 52.222.26 and Executive Order 11246 as amended by Executive Order 11375 and supplemented by 41CFR part 60
16.2.1.3 Contract Work Hours and Safety Standards Act 40 USC 327-333
16.2.1.4 Buy American Act – Supplies FAR 52.225-1
16.2.1.5 Anti-kickback procedures FAR 52.203-7
16.2.1.6 Restrictions on Subcontractor Sales to the Government FAR 52.203-6
16.2.1.7 Contract Work Hours and Safety Standards Act FAR 52.222.4
16.2.1.8 Rights to Inventions Made under a Contract or Agreement - 37 CFR part 401
16.2.1.9 Preference for Privately Owned U.S.-Flag Commercial Vessels - FAR 52.247-64
16.2.1.10 Preference for US Flag Carriers FAR 52.247-63
16.2.1.11 Hazardous Material Identification and Material Safety Data policy (when applicable) FAR 522.223-3
16.2.1.12 Filing of Patent Applications FAR 52.227-10
16.2.1.13 Patents Rights – Retention by the Contractor Short and Long Form FAR 52.227-11, FAR 52.227-12 and FAR 52.227-13
16.2.1.14 Validation of Restrictive Markings on Technical Data SFAR 252.227-7037
16.2.1.15 Buy American Act – Supplies FAR 52.225-1
16.2.1.16 FEDERAL REQUIREMENTS ON PURCHASES GREATHER THAN $2,500
16.2.1.17 Affirmative Action for Workers with Disabilities - 29 USC 302
16.2.1.18 Occupational Safety and Health 29 USC 51 et seq.
16.2.1.19 Service Contracts Act
16.2.1.20 Contract Work Hours and Safety Standards Act 40 USC 327-333
16.2.1.21 Federal Requirements on Purchases Greater than $10,000
16.2.1.22 Examination of Records by Comptroller General (if document was entered by negotiation FAR 52.215-1
16.2.1.23 Audit Negotiations (if document was entered by negotiation) FAR 52.215-2
16.3.3 Walsh-Healy Public Contracts Act FAR 52.222-20
16.3.4 Affirmative Action for Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-35
16.3.5 Employment Reports on Special Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-37

16.4 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN $25,000
16.4.1 Restrictions on Certain Foreign Purchases FAR 52.223-13
16.4.2 Responsibility for Supplies FAR 52.246-16
16.4.3 Debarment and Suspension, Executive Orders 12540 and 12689, FAR 52.209-5

16.5 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN $100,000
16.5.1 Clean Air Act - 42 USC 7401, et seq and Executive Order 11738
16.5.2 Federal Water Pollution Control Act 33 USC 1251, et seq
16.5.3 Byrd Anti-Lobbying Amendment - 31 USC 1352
16.5.4 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions FAR 52.203-11
16.5.5 Limitations on Payments to Influence Certain Federal Transactions FAR 52.203-12
16.5.6 Audit and Records – Negotiation (Applies only if this was entered into by negotiation) FAR 52.211-5
16.5.7 Utilization of Small Business Concerns FAR 52.219-8
16.5.8 Notice and Assistance Regarding Patent and Copyright Infringements FAR 52.227.2
16.5.9 Authorization and Consent Patents and Copyrights 52.227-1
16.5.10 Subcontractor Cost or Pricing Data Modifications FAR 52.227-10-13)

16.6 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN $500,000
16.6.1 Small Business Subcontracting Plan FAR 52.219-9

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

18. LIABILITY FOR INJURY
18.1 Vendor shall defend, indemnify and hold the University harmless against liability for personal injury and property damage caused by items or services furnished hereunder by Vendor, its subcontractors and agents.
18.2 If the purchase order or agreement involves any provision of service to the University, Vendor shall procure and maintain the following insurance during the term of the purchase order or agreement (in addition to any additional policies required on a specific bid/proposal): (i) Commercial General Liability insurance including coverage for premises-operations, products-completed operations and personal injury in the amount of $1,000,000 per occurrence and $1,000,000 annual aggregate, (ii) Automobile Liability Insurance in the amount of $1,000,000 combined single limit, and (iii) Workers Compensation insurance.
18.3 The Vendor shall provide the University's Purchasing department with certificates of insurance evidencing the required insurance prior to the effective date of any purchase order or agreement.

19. ADVANCED TECHNOLOGY CLAUSE
19.1 The Vendor expressly acknowledges that a state agency cannot expend funds in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility for persons with visual impairments. Accordingly, the Vendor represents and warrants to University that the technology provided to University for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: a. providing equivalent access for effective use by both visual and non-visual means; b. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and c. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase 'equivalent access' means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

20. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY POLICY
20.1 As authorized by Chapter 204, Subchapter M of the Texas Government Code, the Texas Department of Information Resources (“DIR”) has adopted rules (the “DIR Accessibility Rules”) governing how Texas institutions of higher education are to develop, procure, maintain, and use “electronic and information resources” (or “EIRs”) so that the EIRs may be accessed by individuals with disabilities. Such DIR Accessibility Rules are set forth in Title 1, Chapter 206, Rule 206.70 of the Texas Administrative Code and in Title 1, Chapter 215 of the Texas Administrative Code.
20.2 Vendors will be required to provide required documentation to evidence the accessibility of Electronic and Information Resources.