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 descriptive 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 a 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, modified, amended, or altered except in writing, signed by the University’s Director of Purchasing or their designee and the Vendor. Waivers of a provision in one instance shall not precede enforcement thereof on 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 applicable University Operating Policies and Procedures located at https://www.angelo.edu/opmanual/.

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 taxpayer identification number is 3737737737. If the University is billed for any exempt taxes, they 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 Heirlooms are for reference purposes only and have no substantive effect.

1.8 All communication 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 for reference 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 #11001, San Angelo, Texas 76909 or hand delivered to Angelo State University, Administration Bldg, Room 110, 2601 W Ave N, San Angelo, Texas 76901. All such correspondence must reference the purchase order number.

2. SPECIFICATIONS

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

2.2 All electrical items must be in accordance with all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

2.3 Samples, when requested, must be furnished free of expense to the University. If not destroyable in examination, they will be returned to the Vendor, on request, at Vendor’s expense. Each sample should be marked with Vendor’s name and address.

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 University shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. University at its option may reject all or any portion of such goods or services which do not conform in substantial respects to the drawings, samples, or specifications furnished by the University. University is not required to effect the rejection of the entire goods and services tendered even if only a portion thereof is nonconforming. If University elects to accept nonconforming goods or services, University, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate University for the nonconformity. Any acceptance by University, even if nonconformal, shall not be deemed a waiver or settlement of any defect in such goods and services.

3.3 Tests shall be performed on samples submitted with the bid/proposal or on samples taken from regular shipment. All costs shall be borne by the Vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the University's option, be returned to the Vendor or held for disposition at Vendor’s expense. Late defects may result in revocation of acceptance. If replacements are requested and Vendor fails to deliver such replacements promptly, the University may: (i) replace or 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 Notice of nonconformity shall be given to Vendor within 45 days. Items shall relieve Vendor from responsibility for any latent defects or omissions, or Vendor’s warranty obligations.

3.5 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.

3.6 Delivery must be made to the “Ship To” address located on the Purchase Order. Failure to deliver to the appropriate address will not be grounds for reimbursement for shipping costs and will result in delay of payment.

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 If delivery is foreseen, Vendor shall give written notice to University advising of all items of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes University to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor.

3.9 No other terms are permitted without written approval of the University’s Purchasing Department.

3.10 Vendor shall bear all risk of loss on items covered by any resulting purchase order until final acceptance at the destination specified.

3.11 Vendor shall bear all risk of loss on items covered by any resulting purchase order until final acceptance at the destination specified on the face of the purchase order, except for loss occasioned solely by the negligence of the University. Any “F.O.B.” designation does not vary the foregoing risk of loss provisions. Vendor shall replace any lost or damaged media containing licensed software or data upon request at a price not exceeding the reasonable cost of media duplication, packaging and shipping.

4. HAZARDOUS SUBSTANCE

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 now or hereafter in effect including, without limitation, any and all claims or causes of action based upon such governmental statute, regulation, law or ordinance.

4.3 Vendor shall notify the University in writing of every article ordered or supplied under this Purchase Order or stored or transported or with or in conjunction with which a hazardous substance, or substances for which the law requires a Material Safety Data Sheet (MSDS).

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 vendor’s 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 introduced or intended to be introduced into 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 Vendor warrants 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 writing. Failure to do so will delay payment.

5.2 Invoices must reference the Purchase Order number or they will be returned unpaid.

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

5.4 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 vendor’s property that contains Hazardous Substances or substances for which the law requires a Material Safety Data Sheet (MSDS).

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 defective items and items supplied by Vendor that are materially diminished 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 rembursement period or ninety (90) days.

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

6. PAYMENT TO VENDORS

6.1 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.

6.2 Invoices must reference the Purchase Order number or they will be returned unpaid.

6.3 The due date for payment is ten (10) days subsequent to the later of the University’s receipt of all goods and services or receipt of invoice. Payment may be made in accordance with Texas Government Code Chapter 2251.

6.4 Your invoice must be addressed and mailed to Angelo State University, Accounts Payable Department, ASU Station #11034, San Angelo, Texas 76909 unless specifically instructed otherwise in writing by the University. Failure to do so will delay payment.

6.5 If Vendor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), Vendor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that the payment of such taxes is exempt from the payment of these taxes, or that Vendor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

6.6 Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Vendor agrees that any payments owing to Vendor under this Order may be applied directly toward any debt or delinquency that Vendor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
7. AUDIT

7.1 Vendor understands that acceptance of funds under this agreement acts as acceptance of the authority of the State Auditor's Office, Texas Tech University System Office of Audit Services, or any successor agencies, to conduct an audit or investigation in connection with those funds. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract awards.

8. PATENTS OR COPYRIGHTS

8.1 The University and the State of Texas from claims involving infringement of patents or copyrights.

9. AFFIRMATION

9.1 Vendor represents that it is an independent contractor of the University and is not an employer, 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 for this relationship and will defend, indemnify and hold the University harmless from any claim to the contrary.

9.3 Vendor agrees to inform the University, of 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 conflict with their duties, including any function in which such employee has any delegated authority to conduct or approve the transaction.

9.5 The Vendor has not given, offered, or given, or agreed 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 the 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 inaccurate.

9.8 By accepting this Purchase Order, the Vendor is certifying that neither the owners 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 Purchase 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 covenants 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

11.1 The dispute resolution process provided for in the 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 claim for breach of contract arising under this Agreement and made by the Vendor.

11.2 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 written notice, as required by Subchapter B, to the Director of Purchasing. Said notice specifically state 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 this Agreement.

11.3 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 an 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, the Vendor may file a complaint in the caught case process provided in Chapter 2260, Subchapter C. The contest case process provided in Government Code Chapter 2260, Subchapter C, shall be the Vendor’s sole and exclusive process for seeking a remedy for an 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, the Vendor may file a complaint in the court of competent jurisdiction to seek a remedy for the Vendor's claim.

12. PUBLIC INFORMATION

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 University shall not provide or provide racially segregated facilities for employees at any establishment under his 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: to maintain employment opportunities for otherwise qualified handicapped persons; to administer affirmative action programs that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative action to ensure that minority group persons and women are not subjected to discrimination because of their race, color, religion, sex, or national origin; and to communicate this policy in both English and Spanish to all persons concerned.

14. FUNDING OUT CLAUSE

14.1 The Texas Constitution prohibits obligations beyond the current fiscal year appropriations. This Purchase Order may be cancelled 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 performed in-process (not exceeding the price for cancelled items) to the extent Vendor’s costs for such items cannot be mitigated.

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 FUNDS

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 The University shall pay Vendor a reasonable cancellation charge, determined by the University in good faith, for work performed in-process (not exceeding the price for cancelled items) to the extent Vendor’s costs for such items cannot be mitigated.

16.3 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.
16.1.14 Buy American Act – Supplies FAR 52.215-1
16.2 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN $2,500
16.2.1 Affirmative Action for Workers with Disabilities – 29 CFR 32.336 and Executive Order 11775
16.2.2 Occupational Safety and Health 29 USC 651
16.2.3 Service Contracts Act
16.2.4 Contract Work Hours and Safety Standards Act 40 USC 327-333
16.3 FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN $10,000
16.3.1 Examination of Records by Comptroller General (if document was entered by negotiation) FAR52.215-1
16.3.2 Audit Negotiations (if document was entered by negotiation) FAR52.215.2
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 52.225-13
16.4.2 Responsibility for Supplies FAR 52.246-16
16.4.3 Deduction and Suspension. Executive Orders 12594 and 12699, 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 (Appplies only if the purchase was entered into by negotiation) FAR 52.215-2
16.5.7 Walsh-Healy Act – (if document was entered by negotiation) FAR 52.215-8
16.5.8 Notice and Assistance Regarding Patent and Copyright Infringements FAR 52.227.2
16.5.9 Authorization and Consent Patents and Copyrights FAR 52.227-1
16.5.10 Subcontractor Cost or Pricing Data Modifications FAR 52.215-10 (d-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 to the effective date of any purchase order or agreement.

19. ADVANCE 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 by persons with visual impairments. Accordingly, the Vendor represents and warrants to the 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 accessibility for 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 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, that result in a substantially similar means of navigating, accessing, and utilizing the technology, including the 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 a certain limitation of higher education is 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 213 of the Texas Administrative Code.
20.2 Vendors will be required to provide required documentation to evidence the accessibility of Electronic and Information Resources.

21. IRON OR STEEL PROJECTS
21.1 To the extent this purchase relates to a project as defined Tex. Gov’t Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project)), any iron or steel product produced through a manufacturing process and used in the project that is the subject of this purchase must be produced in the United States (as defined in Tex. Gov’t Code §2252.201(4)).

22. ISRAEL BOYCOTT
22.1 Pursuant to Texas Gov’t Code Section 2271.001, Vendor affirmatively states that it does not boycott Israel. Additionally, Vendor shall not engage in a boycott of Israel during the term of this Agreement.

23. VENDOR CERTIFICATION
23.1 Vendors certifying this purchase is not prohibited under Tex. Gov’t Code §2261.252(b) agrees that if Contractor's certification is or becomes untrue, this purchase order or related contract is void, and Vendor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this purchase order or related contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.

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