

## **GENERAL TERMS AND CONDITIONS OF PURCHASE ORDERS**

### **1.0 Entire Agreement**

The Purchase Order and its accompanying attachments, exhibits, and any other documents incorporated by reference therein, and these General Terms and Conditions (individually and collectively referred to as the "Purchase Order Documents") contain the entire understanding of the parties regarding the services or materials and subject matter contained in the Purchase Order and supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter. The Purchase Order shall not be amended or modified, except by mutual written agreement between and signed by the parties to the Purchase Order.

### **2.0 Purchase Order Term**

The Purchase Order term and any renewals or extensions thereof shall be as set forth in the Purchase Order Documents. All Purchase Order renewal and extensions may be subject to approval by the Board of Trustees. Renewal may be exercised upon the same terms and conditions at the sole discretion of HCC and shall be evidenced in writing as a modification to the Purchase Order executed and signed by HCC. In addition to any Renewal Period(s) set forth in the solicitation documents, HCC reserves the right to exercise the following option to extend any non-expired purchase order. The Chief Procurement Officer may extend a non-expired Purchase Order for a maximum period of ninety (90) calendar days for one time only.

### **3.0 Interpretation, Jurisdiction and Venue**

The Purchase Order shall be construed and interpreted solely in accordance with the laws of the State of Texas, without regard to its choice of law provisions. Venue of any suit, right or cause of action arising under or in connection with the Purchase Order shall be exclusively in a court of competent jurisdiction located in Harris County, Texas.

### **4.0 Compliance with Laws**

The Seller shall give all notices and comply with all Federal, State of Texas and local laws rules, regulations and ordinances. Upon request, the Seller shall furnish to HCC certificates of compliance with all such laws, rules, regulations and ordinances.

### **5.0 Taxes**

HCC is tax exempt as a governmental subdivision of the State of Texas under Section 501C (3) of the Internal Revenue Code. Limited Sales Tax Number: 1-74-1709152-1. HCC shall not be required to pay under this Purchase Order sales or other taxes from which it is exempt under applicable law.

### **6.0 Termination for Convenience**

HCC may, at its option and discretion, terminate the resulting Purchase Order for convenience and, at its option and discretion, may reduce the statement of work or other requirements of the Purchase Order at any time, without any default on the part of HCC or the Seller, by giving thirty (30) calendar days written notice thereof to the Seller. Such right of termination is in addition to, and not in lieu of, rights of HCC set forth in Paragraph 7, below. In the event of such termination, HCC's sole obligation to Seller is to pay for only those products and/or services authorized by any Purchase Order or Purchase Order issued by HCC and received and accepted by HCC prior to the date of Termination.

## **7.0 Termination for Default**

HCC may terminate the Purchase Order immediately for default, by giving written notice thereof to the Seller, if the Seller fails to execute the work properly; performs in a manner that is unsatisfactory to HCC, breaches any terms, conditions, covenants, or provisions of the Purchase Order or otherwise fails to meet its obligations under the Purchase Order. In the event of termination for default, HCC shall have against the Seller, all remedies provided by law and equity. HCC, in its discretion, may include a provision granting the Seller a reasonable opportunity to cure Seller's default depending on the nature of the breach or default.

## **8.0 Third Party Rights**

Nothing in this Purchase Order, whether express or implied, will be construed to give any person or entity (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy, or claim under or in respect of any terms or provisions contained in this Purchase Order or any standing or authority to enforce the terms and provisions of this Purchase Order. Nothing contained herein shall be construed to or operate to create any rights in any person, party, or entity who is not a party to this Purchase Order including, but not limited to, any rights in the nature of a third-party beneficiary.

## **9.0 Ethics Conduct**

Any breach of any HCC ethics policies, rules or regulations; any violation of any ethics laws or prohibitions; and any direct or indirect actions taken to unduly influence competitive processes, to circumvent equal consideration for competitive proposers, or to disregard ethical and legal trade practices will disqualify and/or debar vendors and sellers from current and future consideration for participation in HCC solicitations, proposal awards, orders and contracts.

## **10.0 Conflict of Interest**

Seller shall comply with all state and local laws relating to conflicts interests, including but not limited to Chapter 176 of the Texas Local Government Code, and that failure to comply is grounds for termination of the Purchase Order.

## **11.1 Small Business Development Program (SBDP) and Small Business Compliance**

Seller agrees to attain the small business participation goal to the extent required by and set forth in the Purchase Order documents. When required by the Purchase Order, the Seller further agrees to enter into agreements with subcontractors for the Work identified in the document, entitled "Contractor and Subcontractor/Supplier Participation." HCC requires all sellers with small business participation goals, to monthly report all subcontractor payments using the HCC Contract Compliance and Small Business Program online contract management system, located at [www.hccs.sbcompliance.com](http://www.hccs.sbcompliance.com) You may use your current vendor registration username and password to access the system and report payments to your subcontractors. The subcontracting goal applies to all vendors regardless of their status. The Seller's failure to comply with the aforementioned small business participation provisions may result in:

- Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by HCC
- Revocation of any benefits and incentives provided under the program or suspension or termination of the Purchase Order in whole or in part.

## 12.0 Prime Contractor/Purchase Order for Services

If this Purchase Order is for services, Seller shall perform a minimum of 30% of the work with its labor force or demonstrate management of the work to the satisfaction of HCC.

## 13.0 Changes; Modifications

HCC shall have the right, at any time, to make changes within the scope of the Purchase Order. If such change causes a material increase in the Seller's cost and/or the time for performance, the Seller shall so notify HCC in writing within ten (10) calendar days from the date of the Seller's receipt of the notice of change, and an equitable adjustment in the price and/or the time of performance shall be mutually agreed upon between the parties. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement or explain any terms used in the solicitation or Purchase Order. No such change shall be effective in the absence of express written acceptance and direction of HCC. HCC will not be bound by any oral statement, verbal agreement, or other representation contrary to the written specifications, terms, and conditions of the solicitation or Purchase Order. Notwithstanding the foregoing, any increase in the cost or price under the Purchase Order of \$100,000 or more or any increase in cost or price that causes the total Purchase Order to exceed \$100,000 shall require approval by the HCC Board of Trustees before effective.

## 14.0 Insurance Requirements

The Seller agrees to comply with the insurance requirements set forth below:

The following insurance coverage and limits listed herein are the minimum that the Seller is required to carry during performance of the Purchase Order.

1. Commercial General Liability for Bodily Injury / Property Damage Limits:
  - A. Occurrence/Personal Injury/Advertising
  - B. Products / Completed Operations                      \$1,000,000.00      CSL
  - C. Annual Aggregate    \$2,000,000.00      CSL
  - D. Products Aggregate    \$2,000,000.00      CSL
  - E. Fire, Lightning or Explosion                                \$1,000,000.00      CSL
  - F. Medical Expense    \$5,000.00            Per person
2. Automobile Liability:

Bodily Injury/Property Damage	\$1,000,000.00	CSL
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3. Workers' Compensation

Part A - Statutory		
Part B - \$1,000,000.00	Each Accident	
\$1,000,000.00	Policy Limits	
\$1,000,000.00	Each Employee	

Note: CSL denotes "Combined Single Limit"

4. Endorsements

The following endorsements and other stated information is required on the original certificate of insurance:

- A. 90-Day Notice of Cancellation;
- B. Houston Community College (HCC) to be named as Additional Insured on all policies except Workers' Compensation;
- C. Waiver of Subrogation on all policies;
- D. The assigned project number and/or purchase order number.

5. Submission of Certificate of Insurance:

The original certificate of insurance, indicating the coverage, limits and endorsements stated herein, shall be furnished to HCC within fourteen (14) calendar days of the HCC Board of Trustees approval of the Purchase Order award. The Purchase Order will not be awarded until after receipt of the proper certificate of insurance.

Mail the original certificate of insurance to:

Houston Community College

ATTN:

Procurement Operations

PO Box 667517 (MC 1118)

Houston, TX 77266-7517

### **15.0 Indemnification**

(a) The Seller shall indemnify, defend and hold HCC, its agents, employees, trustees and other officers harmless from any and all losses, damages, harm of any type or character (including attorney's fees and costs of suit) regardless of the nature or theory of the claim, whether negligence, contractual, extra-contractual, or otherwise arising from or by reason of any act or omission of the Seller, its agents, servants, officers, directors and employees in the performance of the - Purchase Order.

(b) In addition, and to the extent applicable, Seller shall and does hereby agree to indemnify, protect, defend and hold HCC, its agents, employees, trustees and other officers (collectively "Indemnitees") harmless from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Seller pursuant to the Purchase Order, or the use by Seller, or by Indemnitees at the direction of Seller, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for such infringement, HCC shall promptly notify Seller and Seller shall be given full opportunity to negotiate a settlement. In the event of litigation, HCC agrees to cooperate reasonably with Seller and all parties shall be entitled, in connection with any such litigation, to be represented by

counsel at their own expense. Additionally, if HCC cannot use the any product as a result of infringement or misappropriation, Seller, at its sole expense will either:

- (i) Obtain a license for HCC to use the infringing item;
  - (ii) Provide a non-infringing work-around or an original replacement of product, free of any alleged misappropriation; or
  - (iii) Refund to HCC all fees paid
- (c) The indemnities contained herein shall survive the termination of the Purchase Order for any reason whatsoever.

**16.0 Independent Contractor**

It is agreed and understood that the Seller shall be deemed to be an independent contractor in all its operations and activities hereunder; that the employees furnished by the Seller to perform the services required by the Purchase Order shall be deemed to be Seller’s employees or independent subcontractors; that Seller’s employees shall be paid by the Seller; that Seller and its employees shall be responsible for all obligations and reports covering social security, unemployment insurance, income tax, and other reports and deductions required by State and Federal law. The Seller shall indemnify, defend, and hold HCC, its trustees, officers, employees, agents, and representatives harmless from any claims relating to the payment of salary, compensation, benefits, worker's compensation, or taxes to Seller's employees or agents.

**17.0 Assignment**

The Seller may not assign or transfer any of its rights, duties or obligations under this Purchase Order, in whole or in part, without the prior written consent of HCC. This Purchase Order shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

**18.0 Notices**

All notices by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid addressed as follows:

Houston Community College:	Seller:
Procurement Operations (11th Floor)	_____
3100 Main Street	_____
Houston, Texas 77002	_____
ATTN: Executive Director, Procurement Operations	ATTN: _____

**19.0 Acceptance of Products and Services**

All products furnished and all services performed hereunder shall be to the satisfaction of HCC and in accordance with the specifications, terms, and conditions of the Purchase Order documents. HCC reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services. Further, HCC may, at Seller’s expense, reject and return non-conforming goods or require re-performance of services which are not in compliance with the requirements of the Purchase Order. Defects shall not be deemed waived by HCC’s failure to notify Seller upon receipt of goods or completion of services, or by payment of invoice.

## **20.0 Invoicing and Payment**

The Seller shall submit an original invoice to the address shown below for the goods or services which have been inspected and accepted by HCC:

Houston Community College

Accounts Payable

P.O. Box 667460

Houston, Texas 77266-7460

Invoices shall, at a minimum contain the following:

- HCC's Purchase Order Number
- Seller's Name and Mailing Address
- A description of goods and services, in sufficient detail to identify the order which relates to the invoice
- Invoices must agree in all respects with the Purchase Order, (i.e., quantity, price, catalog number, etc.)
- Each invoice must have a unique invoice number

Generally, payment will be made within thirty (30) calendar days after receipt of a properly prepared invoice or acceptance of the goods or services, whichever is later. Payment shall be considered made when HCC deposits the Seller's payment in the mail or the date on which an electronic transfer of funds occurs. Notwithstanding anything contained herein, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

Any and all payments due Seller hereunder may, at the discretion of HCC, be offset or charged against any outstanding obligations of Seller to HCC under this Purchase Order or any other purchase order, contract, or agreement.

## **21.0 Appropriated Funds**

The purchase of any service or product under the Purchase Order beyond the initial Purchase Order term is contingent upon the availability of appropriated funds. HCC shall have the right to terminate the Purchase Order at the end of the current or each succeeding fiscal year if funds are not appropriated by the HCC Board of Trustees for the next fiscal year that would permit continuation of the Purchase Order. If funds are withdrawn or do not become available, HCC reserves the right to terminate the Purchase Order by giving the Seller a thirty (30) day written notice of its intention to terminate without penalty or any further obligations on the part of HCC or the Seller. Upon termination of the Purchase Order, HCC shall not be responsible for any payment of any service or product received that occurs after the end of the current Purchase Order period – or the effective date of termination, whichever comes first. HCC's fiscal year begins on September 1 and ends on August 31st.

## **22.0 Force Majeure**

Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence"). If a Force Majeure event occurs

that will delay Seller in the performance of its obligations under this Purchase Order, Seller shall promptly notify HCC in writing of such condition and cause thereof no later than ten (10) days after the event of Force Majeure. Provided, however, in the event of a Force Majeure occurrence, Seller agrees to use its best efforts to mitigate the impact of the occurrence so that HCC may continue to provide education programs during the occurrence. In the event of such delay or failure to perform, the period specified for performance hereunder may be extended by HCC for a period equal to the time lost by reasons of the delay, or the total Purchase Order may be reduced by HCC by the performance (or portions thereof) omitted during such delay. The provisions of this paragraph shall be effective notwithstanding that such circumstances shall have been operative at the date of this Purchase Order.

### **23.0 HCC'S Premises Rules**

Seller shall comply with all applicable rules of HCC's premises, including without limitation those relative to environmental quality, safety, security, fire prevention, no smoking, traffic and parking.

### **24.0 Open Records**

Seller is hereby notified that HCC strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

HCC shall consider all information, documentation, and other materials requested to be submitted, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.). Seller shall indicate if any information submitted to HCC is confidential, as described in Section 34.0 below, or propriety in nature. Seller may be advised of a request for public information that implicates their materials and may have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, Texas Government Code.

### **25.0 HCC'S Right to Audit**

At any time during the term of this Purchase Order and for a period of four (4) years thereafter HCC or a duly authorized audit representative of HCC, at its expense and at reasonable times, reserves the Right to Audit Seller's records and books relevant to all services provided under this Purchase Order. In the event such an audit by HCC reveals any errors/overpayments by HCC, Seller shall refund HCC the full amount of such overpayments within thirty (30) days of such audit findings, or HCC, at its option, reserves the right to deduct such overpayments from any amounts HCC is required to pay Seller under this Purchase Order or any Purchase Order.

### **26.0 Non Waiver of Defaults**

Any failure of HCC, at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of Purchase Order, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of HCC at any time to avail itself of same.

### **27.0 Severability**

In the event that any provision of the Purchase Order, or the application thereof to any person or circumstance, is determined by a competent Court of Law to be invalid, unlawful, or unenforceable to any extent, the remainder of the Purchase Order, and the application of such provision to persons or circumstances other than those to which it is determined to be unlawful, invalid, or unenforceable to any extent, shall continue to be valid and may be enforced to the fullest extent permitted by law.

## **28.0 Publicity**

Seller agrees that it shall not publicize this Purchase Order or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of HCC's employees or students or use HCC's name in connection with any sales promotion or publicity event without the prior express written approval of HCC.

## **29.0 Warranties, Affirmations and Certifications**

29.1 In addition to all warranties established by law, Seller hereby represents, warrants and covenants to HCC that:

- (a) All goods and services covered by the Purchase Order shall conform to the specifications, drawings, samples or other descriptions set forth herein or otherwise furnished or adopted by HCC, and shall be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects and that the Seller will perform reasonably and in good faith. The Seller expressly warrants that all the material covered by an order, which is either the product of the Seller or provided by the Seller, is in accordance with its specifications and will be fit and sufficient for the purposes intended by HCC.
- (b) All goods delivered pursuant to the Purchase Order shall conform to standards established for such goods in accordance with any applicable Federal, State or local laws and regulations, unless otherwise indicated herein
- (c) It has all necessary intellectual property rights and other use rights necessary to perform its obligations hereunder and that the drawings or specifications produced for HCC, do not infringe on any patent, trademark, service mark, copyright, or other third party intellectual property right

## **29.2 Affirmations and Certifications**

By acceptance of this Purchase Order and/or furnishing any of the products or services specified herein, Seller affirms the following (A false certification shall be deemed a material breach of Purchase Order and, at the HCC's option, may result in cancellation of this Purchase Order):

- a. It is in compliance with and will comply with all material laws with respect to its rights, duties, and obligations under this Purchase Order;
- b. It shall comply with all material terms of the Purchase Order documents
- c. It has good, marketable, and clear title to the goods, and that the goods are subject to no liens, charges or encumbrances whatsoever
- d. It is a business entity duly organized and authorized to do business in the state of Texas;
- e. It has the power and authority to enter into this Purchase Order and to fully perform its obligations hereunder;
- f. It has obtained, and shall maintain in full force during the term hereof, such international, federal, state and local authorizations as are material and necessary to operate the business it is conducting in connection with its rights and obligations under this Purchase Order;
- g. Its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Work described herein, in a competent and professional manner.
- h. Its Work does not and shall not: (i) violate any applicable law, regulation, judgment, injunction, order, decree or third party right, or (ii) violate the organizational documents of Seller; or (iii) require any notice or consent or other action by any person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Seller, or to a loss of any benefit to which Seller is entitled under, any Purchase Order or other instrument binding upon Seller or any license, franchise, permit or other similar authorization held by Seller; and

- i. It has no (and it covenants that it shall not enter into directly or indirectly, allow or otherwise permit any) contracts, whether written or oral, granting to licensees and/or any other third party, person or entity any form or type of exclusive or non-exclusive license, rights to use or other rights that would limit or restrict in any way HCC's and/or its affiliates', successors' and assigns' rights to use the Work in accordance with the terms of this Purchase Order.
- j. That it has not given or offered to give, nor does Seller intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an HCC employee or HCC trustee in connection with this Purchase Order
- k. By entering into this Purchase Order, Seller certifies as follows: "Under Section 231.006, Texas Family Code, that the individual or business entity named in this Purchase Order, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate."
- l. By entering into this Purchase Order, Seller certifies as follows: "Under Section 2155.004, Texas Government Code, the individual or business entity named in this Purchase Order is not ineligible to receive the specified Purchase Order and acknowledges that this Purchase Order may be terminated and payment withheld if this certification is inaccurate."
- m. Seller hereby certifies that neither Seller nor any firm, corporation, partnership or institution represented by Seller, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- n. Seller certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Seller that is a sole proprietorship, the officers or directors of any Seller that is a corporation, the partners of any Seller that is a partnership, the joint venturers of any Seller that is a joint venture or the members or managers of any Seller that is a limited liability company, on one hand, and an employee of any component of The Houston Community College System, on the other hand, other than the relationships which have been previously disclosed to HCC in writing and (ii) Seller has not been an employee of any component institution of The Houston Community College System within the immediate twelve (12) months prior to the Submittal Deadline.
- o. That in accordance with Section 2155.004, Government Code, no compensation has been received for its participation in the preparation of the requirements or specifications for this Purchase Order. In addition, Seller certifies that an award of a Purchase Order to Seller will not violate Section 2155.006, Government Code, prohibiting HCC from entering into a Purchase Order that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a Purchase Order awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, Government Code, Seller certifies that Seller is not ineligible to receive the award of or payments under the Purchase Order and acknowledges that the Purchase Order may be terminated and payment withheld if these certifications are inaccurate.
- p. That neither Seller nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from State of Texas or United States ("U.S.") federal government procurement or non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Seller will provide immediate written notification to HCC if, at any time prior to

award, Seller learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when HCC issues this Purchase Order. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to the other remedies available to HCC, HCC may terminate this Purchase Order for default by Seller.

### **30.0 Survival of Representations and Warranties**

All representations and warranties contained herein or made by Seller in connection herewith shall survive termination of this Purchase Order.

### **31.1 Breach of Contract Claims**

a. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Purchase Order and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by HCC and Seller to attempt to resolve any claim for breach of Purchase Order made by Seller:

(1) Seller's claims for breach of this Purchase Order that the parties cannot resolve pursuant to other provisions of this Purchase Order or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Seller shall submit written notice, as required by subchapter B of Chapter 2260, to HCC in accordance with the notice provisions in this Purchase Order. Seller's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Purchase Order provision that HCC allegedly breached, the amount of damages Seller seeks, and the method used to calculate the damages. Compliance by Seller with subchapter B of Chapter 2260 is a required prerequisite to Seller's filing of a contested case proceeding under subchapter C of Chapter 2260. The Office of General Counsel, or such other officer of HCC as may be designated from time to time by HCC by written notice thereof to Seller, shall examine Seller's claim and any counterclaim and negotiate with Seller in an effort to resolve such claims.

(2) If the parties are unable to resolve their disputes under subparagraph (1) of this section, the contested case process provided in subchapter C of Chapter 2260 is Seller's sole and exclusive process for seeking a remedy for any and all of Seller's claims for breach of this Purchase Order by HCC.

(3) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Purchase Order by HCC nor any other conduct, action or inaction of any representative of HCC relating to this Purchase Order constitutes or is intended to constitute a waiver of HCC's or the state's sovereign immunity to suit and (ii) HCC has not waived its right to seek redress in the courts.

b. The submission, processing and resolution of Seller's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

### **32.0 Subcontracting**

Any and all subcontractors to be utilized by the Seller in the completion of work for this Purchase Order shall be identified to and approved by HCC. The Seller shall not change or substitute subcontractors or suppliers from those listed in the Seller's Response. Such approval shall not be unreasonably withheld.

If the Seller will cause any part of this Purchase Order to be performed by a Subcontractor, the provisions of this Purchase Order will apply to such subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Seller; and the Seller will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the subcontractor, its officers, agents, and employees, as if they were employees of the Seller. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Seller.

### **33.0 Confidentiality.**

As used herein, Confidential Information shall mean all information that is disclosed by either Party ("disclosing Party") to the other Party ("receiving Party"), including without limitation, trade secrets; know how; business and product plans; student information; marketing information and other confidential or proprietary business information, including without limitation all such information relating to either Party's governing board, and their respective clients, customers, and employees. Confidential Information shall not include information which: (a) is information already known by or in the possession of the receiving Party and which was acquired in a lawful manner other than subject to any ongoing obligation of confidentiality already in the recipient Party's possession at the time of disclosure thereof; (b) is information which is now or hereafter becomes a part of the public domain through no wrongful act or omission of the receiving Party or those acting in concert with the receiving Party or later becomes part of the public domain through no fault of the recipient Party; (c) is information lawfully received, without ongoing obligation of confidentiality, from a third party who is free to disclose it received from a third party having no obligations of confidentiality to the disclosing Party; (d) is information which the receiving Party can show predates disclosure thereof by the disclosing Party or had been independently developed entirely without reference to confidential information received from the disclosing Party and was independently developed by the recipient Party; or (e) is disclosed pursuant to any judicial or governmental order, required by law or regulation to be disclosed, including, but not limited to, the PIA, provided that, to the extent permitted by law, the receiving Party gives the disclosing Party sufficient prior notice to contest such order.

Each Party will use reasonable efforts to prevent the disclosure of any of the other Party's Confidential Information to third parties, but in no event shall those efforts be less than those employed by that Party to protect its own confidential information of like kind. Except as may be required by law, the recipient Party's obligation shall be for a period of three (3) years from receipt of the Confidential Information.

Termination of this Purchase Order shall not eliminate the Seller's obligation to continue to maintain confidentiality under this section.

### **34.0 Proprietary Rights**

The Seller hereby acknowledges and agrees that HCC retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by HCC to the Seller hereunder or furnished by the Seller to HCC and/or created by the Seller for delivery to HCC ("Developed Works"), even if unfinished or in process, as a result of the work the Seller performs in connection with this Purchase Order, including all copyright and other proprietary rights therein, which the Seller as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Work under this Purchase Order. The Seller shall not, without the prior written consent of HCC, use such documentation on any other project in which the Seller or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Seller to meet official

regulatory requirements or for other purposes in connection with the performance of Work under this Purchase Order shall not be construed as publication in derogation of HCC's copyrights or other proprietary rights. Except as otherwise stated herein, the Seller and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in this Purchase Order.

Accordingly, the Seller, its employees, agents, subcontractors, or its suppliers shall not have any proprietary interest in such Developed Works. .

### **35.0 Drafting Party**

This Purchase Order shall not be construed against the party preparing it. It shall be construed as if all parties hereto jointly prepared the Purchase Order.

### **36.0 Rights, Remedies and Obligations**

The rights, remedies and obligations contained in this Purchase Order shall pertain solely to the parties executing the Purchase Order. This Purchase Order shall not be construed or deemed to create any rights or remedies for any third parties or any other person who is not a party thereto.

### **37.0 Section Headings**

The section headings hereof are for the convenience of the parties only and shall not be given any legal effect or otherwise affect the interpretation of this Purchase Order.

### **38.0 Business Application and Forms**

The Seller shall be a registered vendor with HCC – Procurement Operations Department, for the duration of this Purchase Order. It is the responsibility of the Seller to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Purchase Order, including any option years.

### **39.0 Delivery and Shipping**

All packages and packing lists must reference HCC's Purchase Order Number. Failure to do so may result in the shipment being rejected and/or delay in payment. Time is of the essence and if delivery of conforming goods or performance of services is not completed by the time(s) promised, HCC reserves the right, in addition to its other rights and remedies, to cancel this Purchase Order or any Purchase Order or work authorization issued thereunder, to reject non-conforming goods or services in whole or in part on reasonable notice to Seller, and/or purchase substitute goods or services elsewhere and charge Seller with any loss incurred. If delay in promised delivery is foreseen, Seller shall give written notice to HCC, and the delivery date may be extended by HCC for valid reasons. No substitutions or cancellations will be permitted without the prior written approval of HCC Procurement Operations Department. Delivery shall be made only on weekdays from 8:00 a.m. to 5:00 p.m., unless prior approval for other delivery times has been obtained. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligation of Seller severable. All freight, transportation and handling charges must be prepaid by Seller. Third party freight bills will not be accepted. **C.O.D. shipments will not be accepted.**

### **40.0 Title Risk and Loss**

The title and risk of loss of the goods shall not pass to HCC until HCC actually receives and takes possession of the goods at the point or points of delivery.

#### **41.0 Suspension**

HCC may at any time and for any reason direct Seller to suspend its performance under the Purchase Order, in whole or in part, by giving written notice to Seller specifying the portion of the work to be suspended. If HCC suspends Seller's performance hereunder, the scheduled dates for Seller's performance set forth in the Purchase Order shall be adjusted to reflect the impact of any delays resulting from the suspension. Adjustments to the scheduled dates for performance shall constitute the Seller's sole and exclusive remedy for any suspension directed by HCC.

#### **42.0 Mediation**

The parties agree that any and all claims, controversies or disputes between the parties which arise out of or relate in any way to this Agreement or a breach hereof and which the parties are unable to resolve informally shall be submitted to non-binding mediation. Further, the parties agree that (i) neither the execution of this Agreement by the College/HCC nor any other conduct, action or inaction of any representative of the College/HCC relating to this Agreement constitutes or is intended to constitute a waiver of the College's/HCC's of sovereign immunity to suit; and (ii) the College/HCC has not waived its right to seek redress in the courts.

#### **43.0 Electronic Counterparts:**

This Agreement may be executed in multiple counterparties, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. A signed counterpart of this Agreement transmitted by telecopier, facsimile, or as a .pdf, .jpeg, .TIFF or other electronic format as an attachment to an electronic transmission shall also be deemed an original and effective for all purposes.

#### **44.0 New Certifications:**

##### Certifications Regarding Terrorist Organizations and Boycott of Israel

Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. (Tex. Gov't Code §§ 2252.151-.154)

Contractor hereby certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. (Tex. Gov't Code §§ 2270.001-.002, 808.001-.006, .051-.057, .101-.102)

#### **45.0 Accessibility:**

The COLLEGE affords equal opportunity to individuals in its employment, services, programs and activities in accordance with federal and state laws. This includes effective communication and access to electronic and information communication technology resources for individuals with disabilities.

All digital information and digital services (including websites, web applications, mobile applications, and other digital content delivered electronically) to be used by COLLEGE faculty/staff, program participants, students or other COLLEGE constituencies shall be compliant with the "Web Content Accessibility Guidelines (WCAG) 2.0 Level AA.

To this end, supplier shall: (1) deliver all applicable services and products in reasonable compliance with standards for accessibility as set forth in Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194), and/or Web Content Accessibility Guidelines (WCAG) 2.0 (minimum of Level AA conformance) as applicable; (2) upon request, provide the COLLEGE with its accessibility testing results and written documentation verifying accessibility; (3) promptly respond to and resolve accessibility complaints; (4) indemnify and hold the COLLEGE harmless in the event of claims arising from inaccessibility; and (5) COLLEGE does NOT provide accessibility training to suppliers.

If supplier is unable to meet the WCAG 2.0 Level AA guidelines, supplier shall exhibit to COLLEGE the efforts that the supplier is undertaking to meet the standard and shall provide a timeline towards compliance.