COLLEGE OF THE MAINLAND PURCHASE ORDER TERMS AND CONDITIONS

1. This Purchase Order ("PO") and its terms and conditions constitute a binding contract between the entity listed on the face of the PO ("Vendor") and College of the Mainland ("COM"), to furnish the goods and/or services specified on the face of the PO. Vendor's commencement of performance or acceptance of this PO in any manner shall conclusively evidence agreement to this PO's terms and conditions as written. COM's acceptance of Vendor's goods and/or services does not constitute acceptance of any terms and conditions stated in Vendor's terms and conditions included in any Vendor documentation, agreements, or online materials.
   1.1 Under no circumstances is the amount of this PO to be exceeded without prior written approval of the Director of Purchasing or designee.
   1.2 No substitution of materials of any kind or change in, cancellation of, waiver of, or exception to any of the terms or specifications of any PO, contract, or service agreement will be recognized without the prior written authorization of a COM designee.
   1.3 COM's PO number must appear on all of Vendor's invoices, delivery memoranda, bills of lading, packages, and correspondence.
   1.4 Vendor shall address all communications (excluding invoices) concerning this PO to Purchasing, at the address on the front of the PO or by phone or e-mail.
2. ***Agreement***. The following documents contain the entire agreement of COM and Vendor relative to the purpose(s) of this PO, and in the event of a conflict between or among the documents that form the entire agreement, the following hierarchy shall prevail: (1) Vendor's completed COM Vendor Packet/bid attributes, including COM's Data Protection Agreement, incorporated by reference herein ("DPA"), and/or applicable data privacy or data protection law, the requirement that affords the most protection to COM Data (as that term is defined in the DPA) will supersede and prevail; (2) the terms and conditions of COM Contracted Services Agreement (if any); (3) addenda, exhibits, attachments, and documents/forms attached to COM Contracted Services Agreement (if any); (4) these PO terms and conditions; (5) applicable procurement document(s) (COM's procurement solicitation, including the General Terms and Conditions, the cooperative contract used by COM, the CTPA or governmental entity contract used by COM, or the quote/open market used by COM) (each a "Procurement Document"); and (5) the portion(s) of Vendor's response to the Procurement Document accepted by COM. This Agreement supersedes any conflicting terms and conditions on any Vendor purchase or work orders, invoices, checks, order acknowledgements, forms, contracts, terms of use, online or website source terms, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Agreement.
3. ***Applicable Law & Venue.*** The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern all Purchase Orders. The exclusive jurisdiction for any dispute under this Purchase Order is the state and federal courts located in Galveston County, Texas. Vendor represents that the merchandise covered by the Contract was not manufactured and is not being sold in violation of any federal, state, or local law. Vendor represents that the merchandise covered by the Contract was not manufactured and is not being sold in violation of any federal, state, or local law.
4. ***Purchase Order.*** COM requires a PO before order fulfillment. The PO number must appear on all invoices, delivery memoranda, bills of lading, packages, and correspondence. A PO is valid only when the following two conditions have been met: (a) a PO number appears in the space provided; and (b) a written or stamped signature of COM's Purchasing Director or designee appears in the space provided.
5. ***Termination and Purchase Order Changes.***
   5.1 Termination. The Parties may mutually agree in writing to terminate this PO for any reason, with or without cause, effective as of the date agreed. In the event of such early termination, COM will be responsible for payment for only those goods or services that have been accepted by COM up to the termination date. COM is entitled to a pro-rata refund for any Services for which COM has paid but which have not yet been accepted by COM. Upon breach of this PO by COM, Vendor shall provide written notice to COM and an opportunity to cure of no less than thirty (30) days; if COM has failed to undertake reasonable measures to cure its breach upon the expiration of thirty (30) days of COM having received written notice from Vendor, Vendor has the right to terminate this Agreement. COM may, by written notice, immediately terminate this PO if Vendor has defaulted in whole or in part (including, but not limited to, failure to provide goods or services under this PO in a satisfactory and proper manner, in the sole discretion of COM), refuses or fails to comply with the provisions of this PO, fails to make progress, does not cure such failure after written notice within a reasonable period of time, or fails to perform within the same time period specified or any written extension thereof. In such event, COM may obtain comparable services elsewhere and either deduct the costs of obtaining such goods and/or services from any amount owed to the Vendor or Vendor shall reimburse COM for such costs incurred by COM. Such costs shall not exceed the cost of the Vendor's remaining performance owed pursuant to this PO. COM may further terminate this PO for any reason, with or without cause, by giving thirty (30) days' written notice to Vendor. Upon receipt of a Notice of Termination by COM, the Vendor shall promptly cease all further work pursuant to this PO,

with such exceptions, if any, specified in the Notice of Termination.

5.2 ***Changes***. COM reserves the right to make changes to this PO (e.g., increase/decrease quantities, change delivery address, etc.). Any changes to the PO shall be communicated to Vendor by the issuance of a written Change Order.

6. ***Appropriated Funds.*** Renewal of this PO or continuation beyond the current fiscal year, if any, is contingent upon the availability of appropriated funds. COM shall have the right to cancel the resulting contract or any part of the contract at the end of each fiscal year during the term of the contract if funds are not allocated to continue the contract or any part of the contract for the next fiscal year. If funds are withdrawn or do not become available, COM reserves the right to cancel the contract by giving the Vendor a thirty (30) day written notice of its intention to cancel without penalty. Upon cancellation of the contract, COM shall not be responsible for any payment of any service that was performed and/or received after the effective date of termination. COM's fiscal year begins on September 1 and ends on August 31.

7. ***No Assignment/Delegation.*** Neither this PO nor any duties or obligations under it shall be assignable by Vendor without the prior written acknowledgement and authorization of COM.

8. ***Relationship of Parties/ Independent Contractor Status.*** Vendor is an independent contractor and is not an employee, agent, joint venturer, or partner of COM. Nothing in this PO shall be interpreted or construed as creating or establishing the relationship of employer and employee between COM and either Vendor or any employee, volunteer, or agent of Vendor, nor shall anything in this PO be construed as creating or establishing a joint venture or business partnership between COM and either Vendor or any employee, volunteer, subcontractor, or agent of Vendor.

9. ***Warranties and Remedies.*** In addition to the warranties provided by law, Vendor expressly warrants that it has the right to sell the goods and/or services provided under this PO and that such services and/or goods provided by Vendor shall, for a period of one (1) year upon the later of COM's acceptance of the good and/or service or payment of the applicable invoice: (a) be in full conformity with the specifications, plans and samples approved by COM and will be new, of good quality, material and workmanship, merchantable, fit for the use and purpose for which they were intended, and free from defects; (b) be manufactured, sold, delivered, and installed in compliance with the provisions of all applicable federal, state, and local laws, ordinances rules, and regulations; and (c) not infringe on any valid patent, trade mark, trade name, or copyright. Any and all warranties made by the manufacturer or supplier of goods delivered by Vendor are hereby assigned to COM and nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of COM. Vendor will bear the cost of inspecting, testing and/or replacement of rejected goods and/or services. Warranties granted herein shall survive inspection, testing, acceptance and payment and shall accrue to COM.

10. ***No Substitution.*** By acceptance of this PO, Vendor agrees to deliver the goods and/or render the services in conformance with the specifications and descriptions identified on the face of the PO, the RFP and/or any contract entered into between COM and Vendor. Unless otherwise specified, Vendor shall not deliver substitutes or inferior materials without prior, written authorization from COM.

10.1 ***Quality of Goods.*** In the event no quality is specified on the face of the PO, in the RFP, or in any contract entered into between COM and Vendor, the goods delivered hereunder shall be of the best quality. Vendor shall ensure that all goods delivered to COM be new (i.e., previously unused and in their original packaging) and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged.

10.2 ***Transfer of Manufacturer's Warranty.*** If the Vendor is not the manufacturer, and the goods are covered by a separate manufacturer's warranty, the Vendor shall transfer and assign such manufacturer's warranty to the College . If for any reason the manufacturer's warranty cannot be fully transferred to the College, the Vendor shall assist and cooperate with the College to the fullest extent to enforce such manufacturer's warranty for the benefit of the College.

10.3 ***Services.*** The Vendor warrants and represents that all services to be provided the College under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

10.4 ***Quantities.*** The quantities specified for delivery in the PO are the only quantities required by the College. Therefore, if Vendor delivers quantities in excess of those specified on the face of the PO, the College is not required to make any payment for the excess goods and, at the College's election, may keep or return the excess goods. All risk and expense for the return of the quantities of goods in excess of those specified on the face of the PO shall be borne by Vendor unless prior written authorization is issued by the College.

11. ***Delivery.***

11.1 All deliveries shall be to the site(s) specified on the PO, be freight prepaid, Free On Board (F.O.B.) Destination (College of the Mainland), and pricing shall include all shipping, handling, freight, and/or delivery charges. Unless specified otherwise on this order, deliveries shall be made to the Buyer's central receiving dock or shipments MUST include "inside delivery."

11.2 The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth in the PO is of the essence of this PO. If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, then Vendor must immediately notify the College's Purchasing department in writing of the probable length of any anticipated delay and the reasons for it. In the event of such notification or of an actual failure by Vendor to comply with the delivery or completion schedules, the College may, in addition to all other remedies, require Vendor, at Vendor's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay.

11.3 When a delivery is to be made to COM central receiving dock, such delivery shall be made between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays.

11.4 All unshipped items on this Purchase Order may be cancelled ninety (90) days after date of order unless otherwise agreed to by approval with COM Purchasing. Shipments initiated after such date may not be accepted.

12. ***Inspection and Acceptance.*** Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after COM's first use of the goods and/or services COM reserves the absolute right to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor, to ensure that they comply with this PO, the RFP, and/or any contract entered into between COM and Vendor. This right shall exist even if payment has already been made to Vendor. Goods or services which, in the sole opinion of COM, fail to conform to the required specification(s) or standard(s) may be considered non-conforming. COM reserves the right to inspect the goods and/or services provided under this PO at all reasonable times and places during the Term. If any of the goods/services do not conform to the requirements set forth in this PO or the RFP, COM reserves the absolute right to, in the College's sole discretion: (i) require Vendor to perform the services again / provide goods in conformity with such requirements, with no additional charge to COM; (ii) to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor; or (iii) equitably reduce payment due Vendor to reflect the reduced value of the services performed / goods provided. These remedies do not limit other remedies available to COM in this PO or otherwise available by law.

13. ***Product Recall.*** Vendor shall notify the College's Procurement Services Department immediately if a product recall is instituted on any good Vendor has delivered or if Vendor discovers or becomes aware of any quality or other deficiency in the delivered good. This requirement shall survive payment and acceptance of the good(s).

14. ***Notice***. Any notice provided under this PO by either party to the other shall be in writing and may be affected by hand-delivery, by certified mail, return receipt requested, or electronic message. Notice to Vendor shall be sufficient if made or addressed to the physical or electronic addresses provided on the face of the PO. Notice to the College shall be sufficient if made or addressed to the following physical and electronic address:

College of the Mainland
Attn: Purchasing Director
1200 Amburn Road
Texas City, Texas 77591

15. ***Indemnification.*** COM shall not be required to indemnify and/or hold harmless the Vendor and/or its agents and employees. **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY AND HOLD HARMLESS COM, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE, EXPENSE (INCLUDING REASONABLE LITIGATION COSTS AND ATTORNEY'S FEES), AND CLAIMS FOR INJURY TO OR DEATH OF ANY PERSON, OR INJURY OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, PERFORMANCE UNDER THIS PO (COLLECTIVELY, "CLAIM"), WHETHER OR NOT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY VENDOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS, EXCEPT FOR CLAIMS ARISING ENTIRELY FROM THE NEGLIGENCE OF COM.**

16. ***Price.*** COM accepts Vendor's price(s) as recorded on Vendor's quote/proposal and on the PO but reserves the right to cancel the PO if the prices are to be increased prior to the delivery of goods or the completion of services. The price(s) specified on the face of the PO shall remain firm until COM has processed Vendor's invoice, or until the goods and/or services have been accepted by the College, whichever is later. Vendor is directed not to fill this PO at increased prices without authorization from Purchasing. No separate charges, except those clearly recorded on Vendor's quote/proposal and on this PO will be allowed. Prices may be negotiated during the renewal period of any contract entered into between the College and Vendor.

17. ***Invoices and Payment.***

17.1 Any invoices submitted to the College shall be itemized and must include the following: the PO number, contract name and number; the specific services performed or goods provided (including the quantity, description and unit cost of each good), date of performance, Vendor's complete mailing address and telephone number; transportation charges, if any, listed separately; and when applicable, a copy of the bill of lading and the freight waybill attached to the invoice. Vendor shall submit all invoices, in duplicate via mail to the following address:

College of the Mainland

Attn: Accounts Payable
1200 Amburn Road
Texas City, Texas 77591

17.2 Invoices that (a) do not reference this purchase order number; (b) are for a higher cost than shown on this order, (c) list goods or services other than those shown on this order; or (d) are otherwise incomplete will be returned to Vendor.

COM is tax-exempt. Vendor shall not include taxes on the invoice. COM's Tax Identification Number is 74-1555808

17.1 Within thirty (30) days from receipt of a property executed and undisputed invoice, or date of receipt of goods or services, whichever is most current, payment will be processed for goods or services provided hereunder. Any discounts will be calculated from the date of receipt of the invoice or receipt of the goods or services, whichever is most current. Payment for any goods or services does not constitute final acceptance.

17.2 All inquiries concerning payment should be directed to Accounts Payable, 409-933-8667. All inquiries concerning purchase orders should be directed to the Purchasing Department, 409-933-8308.

18. ***Title and Risk of Loss.*** The title to any and all goods, products, merchandise, materials, and/or services that are provided to COM shall pass to COM upon acceptance of the good or payment of the applicable invoice, whichever is later.

19. ***No Waiver.*** No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term of this PO shall be taken or held to be a waiver of any other term hereof or the breach thereof. No failure or delay by COM in exercising any right or power accruing upon the non-compliance or failure of performance by Vendor under the provisions of this PO shall be construed to be a waiver of such non-compliance or failure of performance or subsequent rights accruing to COM. No waiver of any of the provisions of this PO shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

20. ***Severability.*** In the event that any one or more of the provisions contained in this PO shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and this PO shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

21. ***Compliance with Laws.*** Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Vendor understands that Vendor is ineligible to receive a contract award with COM if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689). For the entire duration of this Purchase Order, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this PO.

22. ***Material Safety Data Sheets (MSDS).*** COM is required to obtain current and accurate Material Safety Data Sheets for each product which may contain hazardous substances, create hazardous substances as a by-product, cause harmful physical effects, or otherwise be considered hazardous. If applicable, Vendor shall deliver Material Safety Data Sheets (MSDS) with the requested goods. Vendor shall comply with OSHA safety rules and any other safety guidelines and standards as required by COM. Vendor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.