



# **Department of Information Resources**

## **DIR-CPO-5775 Appendix A**

### **Standard Contract Terms and Conditions**

### **Cooperative Contracts**

# Contents

- 1 Contract Scope ..... 5
- 2 No Quantity Guarantees ..... 5
- 3 Definitions ..... 5
  - 3.1 Compliance Check ..... 5
  - 3.2 Contract ..... 5
  - 3.3 CPA ..... 5
  - 3.4 Customer ..... 5
  - 3.5 Business day ..... 6
  - 3.6 DIR ..... 6
  - 3.7 Effective Date ..... 6
  - 3.8 Invoice ..... 6
  - 3.9 Purchase Order ..... 6
  - 3.10 State ..... 6
  - 3.11 Statement of Work (SOW) ..... 6
  - 3.12 Subcontracting Plan ..... 6
  - 3.13 Successful Respondent ..... 6
  - 3.14 Third-Party Provider ..... 7
- 4 General Provisions ..... 7
  - 4.1 Entire Agreement ..... 7
  - 4.2 Modification of Contract Terms and/or Amendments ..... 7
  - 4.3 Invalid Term or Condition ..... 7
  - 4.4 Assignment ..... 8
  - 4.5 Survival ..... 8
  - 4.6 Choice of Law ..... 8
  - 4.7 Limitation of Authority ..... 8
  - 4.8 Proof of Financial Stability ..... 9
  - 4.9 Data Location ..... 9
  - 4.10 Independent Contractor ..... 9
- 5 Intellectual Property Matters ..... 9
  - 5.1 Intellectual Property Matters Definitions ..... 9
    - 5.1.1 “Work Product” ..... 9
    - 5.1.2 “Intellectual Property Rights” ..... 10
    - 5.1.3 “Third Party IP” ..... 10
    - 5.1.4 “Successful Respondent IP” ..... 10
  - 5.2 Ownership ..... 11
  - 5.3 Further Actions ..... 11
  - 5.4 Waiver of Moral Rights ..... 12
  - 5.5 Confidentiality ..... 12
  - 5.6 Injunctive Relief ..... 12
  - 5.7 Return of Materials Pertaining to Work Product ..... 12
  - 5.8 Successful Respondent License to Use ..... 13

5.9	Third-Party Underlying and Derivative Works .....	13
5.10	Agreement with Third Party Providers.....	13
5.11	License to Customer .....	13
5.12	Successful Respondent Development Rights .....	14
6	Terms and Conditions Applicable to State Agency Purchases Only .....	14
7	Contract Fulfillment and Promotion .....	15
7.1	Service, Sales and Support of the Contract .....	15
7.2	Internet Access to Contract and Pricing Information .....	15
7.3	Accurate and Timely Contract Information .....	16
7.4	Webpage Compliance Checks.....	16
7.5	Webpage Changes .....	16
7.6	Use of Access Data Prohibited.....	17
7.7	Responsibility for Content.....	17
7.8	Services Warranty and Return Policies .....	17
7.9	DIR and Customer Logos.....	17
7.10	Successful Respondent Logo.....	17
7.11	Trade Show Participation .....	17
7.12	Orientation Meeting .....	18
7.13	Performance Review Meetings.....	18
7.14	DIR Cost Avoidance .....	18
8	Purchase Orders, Invoices, and Payments.....	18
8.1	Purchase Orders.....	18
8.2	Invoices .....	18
8.3	Payments .....	19
8.4	Tax-Exempt.....	19
8.5	Travel Expense Reimbursement.....	19
9	Contract Administration.....	19
9.1	Contract Managers .....	19
9.1.1	DIR Contract Manager.....	19
9.1.2	Successful Respondent Contract Manager .....	19
9.2	Reporting and Administrative Fees .....	20
9.2.1	Reporting Responsibility.....	20
9.2.2	Detailed Monthly Report.....	20
9.2.3	Historically Underutilized Businesses Subcontract Reports .....	20
9.2.4	DIR Administrative Fee .....	21
9.2.5	Accurate and Timely Submission of Reports.....	21
9.3	Records and Audit .....	22
9.4	Contract Administration Notification.....	23
10	Successful Respondent Responsibilities .....	23
10.1	Indemnification .....	23

10.1.1	Indemnities by Successful Respondent.....	23
10.1.2	Infringements .....	24
10.2	Property Damage.....	24
10.3	Taxes/Worker’s Compensation/Unemployment Insurance.....	24
10.4	Successful Respondent Certifications .....	25
10.5	Ability to Conduct Business in Texas .....	27
10.6	Equal Opportunity Compliance.....	28
10.7	Use of Subcontractors .....	28
10.8	Responsibility for Actions.....	28
10.9	Confidentiality.....	28
10.10	Security of Premises, Equipment, Data and Personnel .....	29
10.11	Background and/or Criminal History Investigation .....	29
10.12	Limitation of Liability.....	29
10.13	Overcharges.....	30
10.14	Prohibited Conduct.....	30
10.15	Required Insurance Coverage .....	30
10.15.1	Commercial General Liability.....	31
10.15.2	Workers’ Compensation Insurance .....	31
10.15.3	Business Automobile Liability Insurance.....	31
10.16	Use of State Property.....	31
10.17	Immigration .....	31
10.18	Public Disclosure.....	32
10.19	Product and/or Services Substitutions .....	32
10.20	Secure Erasure of Hard Disk Managed Services Products and/or Services .....	32
10.21	Deceptive Trade Practices; Unfair Business Practices .....	32
10.22	Drug Free Workplace Policy .....	32
10.23	Public Information.....	33
10.24	Successful Respondent Reporting Requirements .....	33
10.25	Cybersecurity Training.....	33
11	Contract Enforcement .....	33
11.1	Enforcement of Contract and Dispute Resolution.....	33
11.2	Termination .....	34
11.2.1	Termination for Non-Appropriation.....	34
11.2.2	Absolute Right .....	34
11.2.3	Termination for Convenience.....	34
11.2.4	Termination for Cause.....	35
11.2.5	Immediate Termination or Suspension .....	35
11.2.6	Customer Rights Under Termination .....	36
11.2.7	Successful Respondent Rights Under Termination.....	36
11.3	Force Majeure.....	36
12	Non-Solicitation of State Employees .....	36
13	Warranty.....	36

14	Notification .....	37
	14.1 Notices.....	37
	14.2 Handling of Written Complaints .....	37
15	Captions .....	37

The following terms and conditions shall govern the conduct of DIR and Successful Respondent during the term of the Contract.

## **1 CONTRACT SCOPE**

Successful Respondent shall provide the products and/or services specified in the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section [3 Definitions](#).

## **2 NO QUANTITY GUARANTEES**

The Contract is not exclusive to Successful Respondent. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and/or services will be procured through the Contract.

## **3 DEFINITIONS**

### **3.1 Compliance Check**

An audit of Successful Respondent's compliance with the Contract which may be performed by a third-party auditor, DIR Internal Audit department, DIR contract management staff, or their designees.

### **3.2 Contract**

The DIR Contract between DIR and Successful Respondent into which this Appendix A is incorporated.

### **3.3 CPA**

Refers to the Texas Comptroller of Public Accounts.

### **3.4 Customer**

Any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001:

- A. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- B. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- C. Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;

- D. A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency’s clients;
- E. A local workforce development board created under Section 2308.253, Texas Government Code;
- F. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- G. The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation’s successor entity under Section 74.1011, Texas Agriculture Code;
- H. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- I. A nonprofit organization that provides affordable housing.

### 3.5 **Business day**

Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

### 3.6 **DIR**

Refers to the Texas Department of Information Resources.

### 3.7 **Effective Date**

Refers to the effective date of the Contract as set forth therein.

### 3.8 **Invoice**

Refers to a Customer approved instrument submitted by Successful Respondent for payment of services.

### 3.9 **Purchase Order**

Refers to Customer’s fiscal form or format, contract with Successful Respondent, or other document used by Customer to authorize the purchase of products or services from Successful Respondent under the Contract, including but not limited to a formal written purchase order, procurement card, electronic purchase order, or another authorized instrument.

### 3.10 **State**

Refers to the State of Texas.

### 3.11 **Statement of Work (SOW)**

Means a document entered into between Customer and Successful Respondent describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Successful Respondent is to provide Customer, issued pursuant to the Contract.

### 3.12 **Subcontracting Plan**

Refers to **Appendix B**, Successful Respondent’s Historically Underutilized Business Subcontracting Plan.

### 3.13 **Successful Respondent**

Refers to the party identified as either “Successful Respondent” or “Vendor” in Section 1.1 of the Contract.

### 3.14 **Third-Party Provider**

Refers to an agent, affiliate, subcontractor, vendor, reseller, manufacturer, publisher, distributor, order fulfiller or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Order issued under the Contract.

## 4 **GENERAL PROVISIONS**

### 4.1 **Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and Successful Respondent. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

### 4.2 **Modification of Contract Terms and/or Amendments**

- A. The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Successful Respondent.
- B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent without the need for Successful Respondent's written consent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- C. Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Successful Respondent may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- D. Customer(s) and Successful Respondent will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract.

### 4.3 **Invalid Term or Condition**

- A. To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
- B. If one (1) or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent

jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

#### 4.4 Assignment

- A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- B. A Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- C. Successful Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the DIR. Any attempted assignment in violation of this provision is void and without effect.

#### 4.5 Survival

All applicable Statements of Work that were entered into between Successful Respondent and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Successful Respondent shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than three (3) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect.

#### 4.6 Choice of Law

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. In any litigation where any state agency is a party, and subject to the requirements of Chapter 2260, Texas Government Code, the exclusive venue of any such suit arising under the Contract is fixed in the state courts of Travis County, Texas. If litigation does not involve any state agency, then venue is fixed in the state courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. Regardless of any provision anywhere in the Contract, no state agency or other Customer in any manner waives any defense or immunity whatsoever.

#### 4.7 Limitation of Authority

Successful Respondent shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in the Contract; no other authority,

power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

#### 4.8 Proof of Financial Stability

Either DIR or Customer may require Successful Respondent to provide proof of financial stability prior to or at any time during the Contract term.

#### 4.9 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all of the data for State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise; however, Successful Respondent shall notify DIR promptly after such request is made. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

#### 4.10 Independent Contractor

**SUCCESSFUL RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT SUCCESSFUL RESPONDENT IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR, OR THE STATE OF TEXAS.**

### 5 INTELLECTUAL PROPERTY MATTERS

#### 5.1 Intellectual Property Matters Definitions

##### 5.1.1 "Work Product"

Means any and all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date, including but not limited to any:

- (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),
- (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin,
- (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how,
- (iv) domain names,
- (v) any copies, and similar or derivative works to any of the foregoing,

- (vi) all documentation and materials related to any of the foregoing,
- (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and
- (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:
  - a. by any Successful Respondent personnel or Customer personnel, or
  - b. any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

#### 5.1.2 "Intellectual Property Rights"

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

- i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
- ii) any work of authorship, including any copyrights, moral rights or neighboring rights;
- iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
- iv) domain name registrations; and
- v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

#### 5.1.3 "Third Party IP"

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order or Statement of Work issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Order or Statement of Work issued under the Contract.

#### 5.1.4 "Successful Respondent IP"

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- i) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Work Product, or

- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent's provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

## 5.2 Ownership

As between Successful Respondent and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Successful Respondent.

## 5.3 Further Actions

Successful Respondent, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Successful Respondent hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Successful Respondent, provided however that no such grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Successful Respondent shall

cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

#### **5.4 Waiver of Moral Rights**

Successful Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

#### **5.5 Confidentiality**

All documents, information and materials forwarded to Successful Respondent by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Successful Respondent under Section [5.8 Successful Respondent License to Use](#). Hereunder, Successful Respondent shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

#### **5.6 Injunctive Relief**

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

#### **5.7 Return of Materials Pertaining to Work Product**

Upon the request of Customer, but in any event upon termination or expiration of the Contract, or a Statement of Work, Successful Respondent shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Successful Respondent or furnished by Customer to Successful Respondent, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Successful Respondent by Customer or by anyone else that pertain to the Work Product.

## 5.8 Successful Respondent License to Use

Customer hereby grants to Successful Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Successful Respondent nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

## 5.9 Third-Party Underlying and Derivative Works

- A. To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to
  - i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Successful Respondent IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and
  - ii) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party IP.
- B. On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third Party IP that may be embodied or reflected in the Work Product.

## 5.10 Agreement with Third Party Providers

Successful Respondent agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing such services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain such written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Copies of such agreements shall be provided to the Customer promptly upon request.

## 5.11 License to Customer

Successful Respondent grants to Customer, at no additional charge, a world-wide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Successful Respondent IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Successful Respondent IP remain in Successful Respondent.

## 5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Successful Respondent wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

## 6 TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY

- A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Successful Respondent hereby represents, certifies, and warrants that it and its products and services comply with all relevant accessibility laws and standards.
- i) Upon request, and prior to a DIR Customer purchase, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such competed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
  - ii) If Successful Respondent claims that a proposed product or family of products is exempt from accessibility requirements, it must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
  - iii) Upon request, and prior to a DIR customer purchase for IT development services, Successful Respondent must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.
  - iv) Additionally, Successful Respondent must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to

planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.
- vi) Also upon request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

**B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

- i) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- ii) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.
- iii) Successful Respondent agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Section.

## **7 CONTRACT FULFILLMENT AND PROMOTION**

### **7.1 Service, Sales and Support of the Contract**

Successful Respondent shall provide service, sales, and support resources to serve all Customers. It is the responsibility of Successful Respondent to sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that potential Customers are made aware of the existence of the Contract. All contracts for and sales to Customers for products and services available under the Contract shall be in accordance with the Contract.

### **7.2 Internet Access to Contract and Pricing Information**

**A. Successful Respondent Webpage**

Within thirty (30) calendar days from the Effective Date, Successful Respondent will establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's website. Successful Respondent must use a web hosting service that provides a dedicated internet protocol (IP) address. Successful Respondent's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Successful Respondent's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The webpage must include:

- i) a list with description of products and/or services awarded;
- ii) Successful Respondent contact information (name, telephone number and email address);
- iii) instructions for obtaining quotes and placing Purchase Orders;
- iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- v) a link to the DIR "Cooperative Contracts" webpage;
- vi) the DIR logo in accordance with the requirements of Section 7.9; and
- vii) any other information that the Contract indicates is required to be included on the webpage.

B. If Successful Respondent does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.

### **7.3 Accurate and Timely Contract Information**

Successful Respondent warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained, and displayed in an objective and timely manner. Successful Respondent, at its own expense, shall correct any non-conforming or inaccurate information posted at Successful Respondent's website within ten (10) business days after written notification by DIR.

### **7.4 Webpage Compliance Checks**

Periodic Compliance Checks of the information posted for the Contract on Successful Respondent's website will be conducted by DIR. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

### **7.5 Webpage Changes**

Successful Respondent hereby consents to a link from the DIR website to Successful Respondent's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Successful Respondent with subsequent notice of link suspension, termination or removal. Successful Respondent shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

## 7.6 Use of Access Data Prohibited

If Successful Respondent stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Successful Respondent for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Successful Respondent shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

## 7.7 Responsibility for Content

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials at Successful Respondent's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

## 7.8 Services Warranty and Return Policies

Successful Respondent will adhere to Successful Respondent's then-currently published policies concerning product and service warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated customers for like products and services.

## 7.9 DIR and Customer Logos

Successful Respondent may use a Customer's logo only upon prior written approval of such Customer. Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

- A. the logo may not be modified in any way,
- B. when displayed, the size of the DIR logo must be equal to or smaller than Successful Respondent's logo,
- C. the DIR logo is only used to communicate the availability of services under the Contract to Customers, and
- D. any other use of the DIR logo requires prior written permission from DIR.

## 7.10 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logo may be on the DIR website or on printed materials. Any use of Successful Respondent's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

## 7.11 Trade Show Participation

At DIR's discretion, Successful Respondent may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation, at Successful Respondent's expense, includes providing a manned booth display or similar presence. DIR will provide four (4) months advance notice of any required participation. Successful Respondent must display the DIR logo at all trade shows that potential Customers will attend. DIR

reserves the right to approve or disapprove of the location or the use of the DIR logo in or on Successful Respondent's booth.

### **7.12 Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Successful Respondent will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

### **7.13 Performance Review Meetings**

Successful Respondent shall attend periodic meetings to review Successful Respondent's performance under the Contract at DIR's request. The meetings will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

### **7.14 DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR Customers can procure the products or services.

## **8 PURCHASE ORDERS, INVOICES, AND PAYMENTS**

### **8.1 Purchase Orders**

All Customer Purchase Orders will be placed directly with Successful Respondent. Accurate Purchase Orders shall be effective and binding upon Successful Respondent when accepted by Successful Respondent.

### **8.2 Invoices**

- A. Invoices shall be submitted by Successful Respondent directly to Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to Successful Respondent. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.
- B. Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the products and services by the Customer.
- C. The DIR Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

### 8.3 Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Successful Respondent. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later.

Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.

### 8.4 Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Successful Respondent upon request.

### 8.5 Travel Expense Reimbursement

Pricing for services provided under the Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under the Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

## 9 CONTRACT ADMINISTRATION

### 9.1 Contract Managers

DIR and Successful Respondent will each provide a contract manager (“Contract Manager”) to support the Contract (respectively, the “DIR Contract Manager” and “Successful Respondent Contract Manager”). Information regarding each Contract Manager will be posted on the internet website designated for the Contract. DIR reserves the right to require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

#### 9.1.1 DIR Contract Manager

The DIR Contract Manager’s duties include but are not limited to:

- A. monitoring compliance and management of the Contract,
- B. advising DIR of Successful Respondent’s performance under the Contract, and
- C. periodic verification of pricing and monthly reports submitted by Successful Respondent.

#### 9.1.2 Successful Respondent Contract Manager

Successful Respondent Contract Manager’s duties shall include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. facilitating dispute resolution between Successful Respondent and Customers, and
- C. advising DIR of Successful Respondent's performance under the Contract.

## 9.2 Reporting and Administrative Fees

### 9.2.1 Reporting Responsibility

- A. Each month, Successful Respondent shall report all products and services purchased under the Contract. Successful Respondent shall file monthly reports to include monthly sales reports, subcontract reports, and pay the DIR Administrative Fees in accordance with the due dates specified in this Section.
- B. DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, Compliance Checks of Successful Respondent's applicable Contract books. Successful Respondent will provide all required documentation at no cost.

### 9.2.2 Detailed Monthly Report

- A. Using the Vendor Sales Report (VSR) portal, Successful Respondent shall provide DIR with a monthly report in the format required by DIR detailing sales activity under the Contract for the previous month period. This included months in which there are no sales. Reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. Per transaction, the monthly report shall include, at a minimum, the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction in accordance with this Section.
- B. Successful Respondent shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in Contract termination.

### 9.2.3 Historically Underutilized Businesses Subcontract Reports

- A. Successful Respondent shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- B. Reports shall be due in accordance with the CPA rules.

#### 9.2.4 DIR Administrative Fee

- A. The DIR Administrative Fee shall be paid by Successful Respondent to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review monthly sales reports, close the sales period, and notify Successful Respondent of the amount of the DIR Administrative Fee no later than the fourteenth (14th) calendar day of the month following the date of the reported sale. Successful Respondent shall pay the amount of the DIR Administrative Fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Successful Respondent reports January sales no later than February 15th; DIR closes January sales and notifies Successful Respondent of the amount of the DIR Administrative Fee by March 14th; Successful Respondent submits payment of the DIR Administrative Fee for January sales by March 25th.
- B. DIR may change the amount of the DIR Administrative Fee upon thirty (30) calendar days written notice to Successful Respondent without the need for an amendment to the Contract.
- C. To preserve the DIR Administrative Fee in place at the time of the sale of product or service, the calculation of the DIR Administrative Fee is based on the Purchase Order date for each sale.
- D. Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

#### 9.2.5 Accurate and Timely Submission of Reports

- A. Successful Respondent shall submit reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) business days upon written notification by DIR. Successful Respondent shall deliver any late reports or late DIR Administrative Fee payments within three (3) business days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate reports or DIR Administrative Fee payments or deliver late reports and DIR Administrative Fee payments within three (3) business days, Successful Respondent shall contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- B. Should Successful Respondent fail to correct inaccurate reports or cure the delay in timely and accurate delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right at DIR's expense to require an independent third-party audit of Successful Respondent's records as specified in Section [9.3 Records and Audit](#). DIR will select the auditor (and all payments to auditor will require DIR approval).
- C. Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Successful Respondent's Contract.

### 9.3 Records and Audit

- A. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Successful Respondent and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- B. Successful Respondent shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract, whichever is later. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- C. Successful Respondent shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the Compliance Checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking, and/or copying such books and records.
- D. Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff during the performance of Compliance Check. If Successful Respondent is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

- E. For procuring State Agencies whose payments are processed by the CPA, the volume of payments made to Successful Respondent through the CPA and the administrative fee based thereon shall be presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

#### 9.4 **Contract Administration Notification**

- A. Prior to execution of the Contract, Successful Respondent shall provide DIR with written notification of the following:
  - i) Successful Respondent Contract Manager's name and contact information,
  - ii) Successful Respondent sales representative name and contact information, and
  - iii) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.
- B. Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

### 10 **SUCCESSFUL RESPONDENT RESPONSIBILITIES**

#### 10.1 **Indemnification**

##### 10.1.1 **Indemnities by Successful Respondent**

- A. Successful Respondent shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, resulting from, or related to:
  - i) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
  - ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
  - iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
  - iv) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.
- B. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

#### 10.1.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense: (i) procure for Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

#### 10.2 Property Damage

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF SUCCESSFUL RESPONDENT, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, SUCCESSFUL RESPONDENT SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY SUCCESSFUL RESPONDENT NINETY (90) CALENDAR DAYS AFTER THE DATE OF SUCCESSFUL RESPONDENT'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

#### 10.3 Taxes/Worker's Compensation/Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent shall be entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and/or the State shall not be liable to Successful Respondent, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee or employee of another governmental entity Customer.

#### 10.4 Successful Respondent Certifications

- A. Successful Respondent represents and warrants that, in accordance with Section 2155.005, Texas Government Code, neither Successful Respondent nor the firm, corporation, partnership, or institution represented by Successful Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Successful Respondent.
- B. Successful Respondent hereby certifies, represents, and warrants, on behalf of Successful Respondent that:
- i) it has not given, offered to give, and do not intend 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 Contract;
  - ii) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006, Texas Family Code, and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
  - iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
  - iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
  - v) under Section 2155.004, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
  - vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;
  - vii) Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.
  - viii) as of the Effective Date, it is not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
  - ix) in the performance of the Contract, Successful Respondent shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Section 2155.4441, Texas Government Code;

- x) all equipment and materials to be used in fulfilling the requirements of the Contract are of high-quality and consistent with or better than applicable industry standards, if any. All works and services performed pursuant to the Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- xi) to the extent Successful Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full;
- xii) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- xiii) the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that Successful Respondent will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Successful Respondent acknowledges the applicability of Section 2155.444 and Section 2155.4441, Texas Government Code, in fulfilling the terms of the Contract;
- xvi) Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Section 556.005 or Section 556.008, Texas Government Code;
- xvii) in accordance with Section 2271.002, Texas Government Code, by signature hereon, Successful Respondent does not boycott Israel and will not boycott Israel during the term of the Contract;
- xviii) in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xix) in accordance with Section 2252.152, Texas Government Code, it is not identified on a list prepared and maintained under Section 2270.0201 (previously 806.051) or Section 2252.153, Texas Government Code;
- xx) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract;
- xxi) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it (A) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (B) will not discriminate during the term of the contract against a firearm entity or firearm trade association;

- xxii) under Section 161.0085, Texas Health and Safety Code, Successful Respondent is not ineligible to receive the Contract;
  - xxiii) if Successful Respondent is required to make a certification pursuant to Section 2274.0101, Texas Government Code, (A) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; (B) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and (C) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;
  - xxiv) if the services to be provided under a Purchase Order include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program (“TX-RAMP”), as provided by 1 TAC §§ 202.27 and 202.77, and the TX-RAMP Program Manual (“Program Manual”). Successful Respondent shall maintain program compliance and certification throughout the term of such Purchase Order, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing such Purchase Order. Upon request from DIR or the Customer issuing such Purchase Order, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent’s compliance with TX-RAMP; and
  - xxv) all information provided by Successful Respondent is current, accurate, and complete.
- C. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.
- D. In addition, Successful Respondent understands and agrees that if Successful Respondent responds to certain Customer pricing requests, then, in order to contract with the Customer, Successful Respondent may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

### 10.5 Ability to Conduct Business in Texas

Successful Respondent shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organization Code, Title 1, Chapter 9. Upon request by DIR, Successful Respondent shall provide all

documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and the validity of Successful Respondent's existence under the laws of its state of organization.

#### **10.6 Equal Opportunity Compliance**

Successful Respondent agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State of Texas in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Successful Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **10.7 Use of Subcontractors**

If Successful Respondent uses any subcontractors in the performance of the Contract, Successful Respondent must make a good faith effort in the submission of its HUB Subcontracting Plan (HSP) in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can engage additional subcontractors in the performance of the Contract. A revised HSP approved by DIR's HUB Office shall be required before Successful Respondent can remove subcontractors currently engaged in the performance of the Contract. Successful Respondent shall remain solely responsible for the performance of its obligations under the Contract.

#### **10.8 Responsibility for Actions**

- A. Successful Respondent is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within five (5) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section [10.4, Successful Respondent Certifications](#) of this Appendix A to the Contract. Successful Respondent covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **10.9 Confidentiality**

- A. Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Section 552.003, Texas Government Code, are subject to the Texas Public Information Act. Successful Respondent also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

- B. Under the terms of the Contract, DIR may provide Successful Respondent with information related to Customers. Successful Respondent shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **10.10 Security of Premises, Equipment, Data and Personnel**

- A. Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third-Party Providers shall preserve the safety, security, and the integrity of such personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or such Third-Party Provider protects its own information. Successful Respondent shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by Successful Respondent or a Third-Party Provider. If Successful Respondent or Third-Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Order and related Service Agreement.
- B. If a Purchase Order is subject to Section 2054.138, Texas Government Code, Successful Respondent shall meet the security controls required by such Purchase Order, and shall periodically provide to the Customer evidence that Successful Respondent meets such required security controls.

#### **10.11 Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct such background checks. Should any employee or Third-Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or Third-Party Provider in question.

#### **10.12 Limitation of Liability**

- A. For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages.
- B. Successful Respondent and a Customer may include in a Purchase Order a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order.
- C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein or in a Purchase Order shall not apply to: claims of bodily

injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

### 10.13 **Overcharges**

Successful Respondent hereby assigns to DIR any and all of its claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

### 10.14 **Prohibited Conduct**

Successful Respondent represents and warrants that, to the best of its knowledge as of the date of this certification, neither Successful Respondent nor any subcontractor, firm, corporation, partnership, or institution represented by Successful Respondent, nor anyone acting for Successful Respondent or such subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the RFO directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

### 10.15 **Required Insurance Coverage**

- A. As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Successful Respondent is awarded services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to such Customer within five (5) business days following the execution of the Purchase Order. Successful Respondent may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Successful Respondent may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.
- B. All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as additional insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Successful Respondent thereunder. The minimum acceptable insurance provisions are as follows:

### 10.15.1 Commercial General Liability

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- A. Blanket contractual liability coverage for liability assumed under the Contract;
- B. Independent Contractor coverage;
- C. State of Texas, DIR, and Customer listed as an additional insured; and
- D. Waiver of Subrogation.

### 10.15.2 Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers' Liability of \$1,000,000 per accident, \$1,000,000 disease PER EMPLOYEE and \$1,000,000 per disease POLICY LIMIT.

### 10.15.3 Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- A. Waiver of subrogation;
- B. Additional insured.

### 10.16 Use of State Property

Successful Respondent is prohibited from using a Customer's equipment, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Successful Respondent using a Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Successful Respondent to such Customer immediately upon demand by such Customer. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Order, and other remedies available to DIR and Customer under the Contract and applicable law.

### 10.17 Immigration

- A. Successful Respondent shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under the Contract.
- B. Pursuant to Chapter 673, Texas Government Code, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- i) all persons 1) to whom the E-Verify system applies, and 2) who are hired by Successful Respondent during the term of the Contract to perform duties within Texas; and
  - ii) all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of the Contract and assigned by the subcontractor to perform work pursuant to the Contract.
- C. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

#### **10.18 Public Disclosure**

No public disclosures or news releases pertaining to the Contract shall be made by Successful Respondent without prior written approval of DIR.

#### **10.19 Product and/or Services Substitutions**

Substitutions are not permitted without the prior written consent of DIR or Customer.

#### **10.20 Secure Erasure of Hard Disk Managed Services Products and/or Services**

Successful Respondent agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Purchase Order for such products and/or services, in accordance with 1 TAC 202 or NIST 800-88.

#### **10.21 Deceptive Trade Practices; Unfair Business Practices**

- A. Successful Respondent represents and warrants that neither Successful Respondent nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- B. Successful Respondent certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

#### **10.22 Drug Free Workplace Policy**

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

### 10.23 Public Information

- A. Pursuant to Section 2252.907, Texas Government Code, Successful Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- B. Each State government entity should supplement the provision set forth in Section A, above, with the additional terms agreed upon by the parties regarding the specific format by which Successful Respondent is required to make the information accessible by the public.
- C. Successful Respondent represents and warrants that it will comply with the requirements of Section 552.372(a), Texas Government Code, where applicable. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subsection J, Chapter 552, Texas Government Code, may apply to the Contract or certain Purchase Orders, and Successful Respondent agrees that the Contract or such Purchase Orders can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

### 10.24 Successful Respondent Reporting Requirements

Successful Respondent shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109, requiring computer technicians to report images of child pornography.

### 10.25 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency or institution of higher education. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

## 11 CONTRACT ENFORCEMENT

### 11.1 Enforcement of Contract and Dispute Resolution

- A. Successful Respondent and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, (iii) except as provided in Sec. 2251.051 Texas Government Code, Successful Respondent shall continue performance while the dispute is being resolved, and (iv) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- B. Disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with the above. DIR shall not be a party to any such dispute unless DIR, Customer, and Successful Respondent agree in writing.

- C. State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.00.

## 11.2 Termination

### 11.2.1 Termination for Non-Appropriation

#### 11.2.1.1 Termination for Non-Appropriation by Customer

Customers may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided ten (10) calendar days written notice of intent to terminate. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

#### 11.2.1.2 Termination for Non-Appropriation by DIR

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Successful Respondent will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

### 11.2.2 Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Successful Respondent is found by DIR to be ineligible to hold the Contract under Subsection (b) of Section 2155.006, Texas Government Code. Successful Respondent shall be provided written notice in accordance with Section 14.1, Notices, of intent to terminate.

### 11.2.3 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice.

## 11.2.4 Termination for Cause

### 11.2.4.1 Contract

Either DIR or Successful Respondent may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

### 11.2.4.2 Purchase Order

Customer or Successful Respondent may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

## 11.2.5 Immediate Termination or Suspension

DIR may immediately suspend or terminate the Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Successful Respondent (whether or not such potential violations directly impact the provision of goods or services under the Contract). In such case, Successful Respondent may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) business days after the suspension or termination. Successful Respondent may provide a response and request an opportunity to present its position. DIR or Customer will review Successful Respondent's presentation but is under no obligation to provide formal response.

### 11.2.6 Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract in accordance with Section [4.5](#).

### 11.2.7 Successful Respondent Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted.

### 11.3 Force Majeure

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an “Event of Force Majeure”), provided that the party experiencing such Event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party’s control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this Section, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by such Customer that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of such Customer.

## 12 NON-SOLICITATION OF STATE EMPLOYEES

Successful Respondent shall not solicit, directly or indirectly, any employee of DIR who is associated with the Contract for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any employee of a Customer who is associated with a Purchase Order for a period of ninety (90) calendar days following the expiration or termination of such Purchase Order.

## 13 WARRANTY

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Order within thirty (30) calendar days or receipt of an invoice for such products or services. Successful Respondent shall correct such error, inaccuracy, or other deficiency at no additional cost to Customer.

## **14 NOTIFICATION**

### **14.1 Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three (3) business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in the Contract or to such other address as such party shall have notified the other party in writing.

### **14.2 Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

## **15 CAPTIONS**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**<END OF APPENDIX A>**