

# STANDARD TERMS AND CONDITIONS

Department of Public Safety of the State of Texas

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## **Article 1, Introduction**

Any contract resulting from this solicitation will include the following Standard Terms and Conditions. Subcontractors must also comply with these provisions.

### **1.1 GLOBAL DRAFTING CONVENTIONS**

- 1.1.1** “Includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration. Use of the terms does not create a presumption that components not expressed are excluded.
- 1.1.2** Any references to laws, rules, regulations, and guidance in this Contract are references as they exist at the time of execution and as they may be amended, modified, or supplemented during the life of the Contract.

### **1.2 HEADINGS**

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for reference and convenience only and do not alter the interpretation of this Contract.

### **1.3 AUTHORIZED REPRESENTATIVES**

- A. Contractor must designate its authorized representative in writing to DPS no later than the effective date of this Contract. Contractor’s authorized representative may designate other people (such as a contract manager or project manager) to assist in the performance of certain obligations required by this Contract.
- B. DPS’s authorized representative is the only person authorized to make or approve changes in any Contract requirements. If Contractor makes any change at the direction of any person other than the Director or his legally designated representatives (his Deputy Directors), DPS will consider the change to have been made without authority and no adjustment will be made in this Contract price to cover any increase in cost incurred as a result.

### **1.4 SEVERABILITY**

The parties acknowledge that if a dispute between the parties arises out of this Contract or the subject matter of this Contract, including a dispute over possibly ambiguous language, they would want the court to interpret this Contract as follows:

- A. With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;
- B. If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Contract will remain in effect as written;

- C. By holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and
- D. If modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Contract, by holding the entire Contract unenforceable.

**1.5 APPLICABLE LAW; VENUE**

This Contract will be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas.

**Article 2, Remedies and Disputes**

**2.1 TERMINATION**

This Contract may be terminated or cancelled in any of the following circumstances.

**2.1.1 Termination with Notification and Opportunity to Cure**

DPS will notify Contractor in writing of any failure, cause, or default if Contractor fails to carry out or comply with any requirements of this Contract (including any statement, affirmation, disclosure, certification, representation, or warranty in this Contract that is false, misleading, or erroneous in any material respect). DPS's notification will demand that the failure, cause, or default be remedied within ten days. DPS will have the right to cancel this Contract upon ten days from written notice if Contractor fails to remedy such failure, cause, or default within the ten days' period.

**2.1.2 Termination for Unavailability of Funds**

1. The parties understand and agree that the obligations of DPS and its liabilities under this Contract are subject to the availability of funds given to DPS: (1) through appropriations from the Texas Legislature, (2) through federal funds, or (3) both.
2. If DPS is unable to perform its obligations under this Contract as a result of the suspension, termination, or withdrawal of funding to DPS, the failure to fund DPS, or lack of sufficient funding of DPS for any activities or functions contained within the scope of this Contract, DPS may immediately terminate this Contract without prior notice and without penalty to or any liability whatsoever on the part of DPS, the State of Texas, and the United States, if these funds become unavailable to DPS. Contractor will have no right of action against DPS.
3. DPS will make its best efforts to provide reasonable written advance notice to Contractor. In the event of a termination under this section, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately

upon the effective date of termination, either on the particular order if an order is being terminated, or this Contract if this Contract is being terminated. DPS will be liable for payments limited only to the portion of work DPS authorized in writing and which Contractor has completed, delivered to DPS, and which has been accepted by DPS in writing in accordance with all requirements of this Contract. All such work must have been completed, tested, and accepted in writing, per the requirements of this Contract, prior to the effective date of termination.

### **2.1.3 Termination for Convenience**

DPS reserves the right to terminate this Contract any time, in whole, or in part, without cost or penalty, by providing 30 days' advance written notice of such termination to Contractor, if DPS determines that such termination is in the best interest of the State.

### **2.1.4 Termination by Mutual Agreement**

This Contract may be terminated upon mutual written agreement.

### **2.1.5 Termination for Failure to Perform**

This Contract may be terminated by DPS if Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section entitled "Termination with Notification and Opportunity to Cure." DPS will provide Contractor with written notice to terminate this Contract, which termination will become effective immediately upon Contractor's receipt of the notice.

If Contractor fails to provide the deliverables or other performance in accordance with the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, DPS may, upon written notice of default to Contractor, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

DPS may exercise any other right, remedy, or privilege which may be available to it under applicable law of the State and any other applicable law or may proceed by appropriate court action to enforce the provisions of this Contract, or to recover damages for the breach of this Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless DPS notifies Contractor in writing prior to the exercise of such remedy. Contractor must remain liable for all covenants and indemnities under this Contract. Contractor must be liable for all costs and expenses, including court costs, incurred by DPS with respect to the enforcement of any of the remedies listed in this Contract.

### **2.1.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor List**

DPS will have the absolute right to terminate this Contract without recourse as follows: (a) if Contractor becomes listed on the prohibited Contractor 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 Treasury, Office of Foreign Assets Control; (b) if Contractor 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 (c) if Contractor becomes listed on the Texas Debarred Vendor List. DPS will provide Contractor with written notice to terminate this Contract, which termination will become effective immediately upon Contractor's receipt of the notice.

### **2.1.7 Termination by Change of Law**

DPS may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of DPS, the State of Texas, and the United States if DPS or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. DPS is not required to provide 30 days' written notice as termination under this section is immediate.

### **2.1.8 General Termination Provisions; All Contracts are Non-Exclusive**

The termination of this Contract, under any circumstances whatsoever, will not affect or relieve Contractor from any obligation or liability that may have been incurred under this Contract, and such cancellation by DPS will not limit any other right or remedy available to DPS at law or in equity.

This Contract does not grant Contractor a vested property right and Contractor has no guarantee of exclusivity. DPS reserves the right, in its sole discretion, to solicit or contract with other contractors for similar subject matter, services, or deliverables to those under this Contract at any time. Additionally, Contractor is not guaranteed any minimum amount of compensation.

DPS will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of DPS whether such claims of Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination.

Contractor must, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. DPS will be liable for payments limited only to the portion of the work DPS authorized in writing and which Contractor has completed, delivered to DPS, and which have been accepted by DPS. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.

Contractor must deliver to DPS all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first day after the termination of this Contract, or at DPS's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of DPS.

DPS reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to DPS under this Contract or under applicable law, including, attorneys' fees and court costs, if termination is at Contractor's request or if termination is for cause. This right is in addition to any other remedies available to DPS under this Contract or applicable law. DPS reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and DPS expressly waives no such rights or remedies.

DPS reserves the right to cancel this Contract without notice and either re-solicit or re-award this Contract to the next best responsive and responsible contractor if Contractor defaults on this Contract. DPS will not consider the defaulting Contractor in the re-solicitation and DPS may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. DPS will determine the period of suspension based on the seriousness of the default.

DPS and the State of Texas will not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, Contractor may be entitled to the remedies provided in Tex. Gov't Code Chapter 2260.

The Transition duties of Contractor survive the termination of this Contract, regardless of the reason for the termination.

## **2.2 CURE; DISPUTE RESOLUTION**

### **2.2.1 FURTHER OPPORTUNITY TO CURE**

- A. If an Event of Default of the type specified in section entitled "Termination with Notification and Opportunity to Cure" occurs and if Contractor reasonably believes that such Event of Default cannot be cured within the ten business days allowed in the section entitled "Inspection of Services" but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of Contractor, within a reasonable period not to exceed three months, then Contractor may, within the ten-day cure period, submit a detailed plan for curing the Event of Default to DPS.
- B. DPS will promptly review Contractor's plan for curing an Event of Default and may, at its discretion, allow Contractor to pursue such plan of cure.

- C. DPS will communicate its decision in writing to Contractor.
- D. DPS may not exercise its remedies hereunder with respect to such Event of Default while Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. The ten-day time period will be tolled during the time the request was pending, if DPS does not allow Contractor an extension of the cure period.

### **2.2.2 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between DPS and Contractor will be resolved as follows:
  - 1. The dispute resolution process provided for in Tex. Gov't Code Chapter 2260 must be used, as further described in this section, by Contractor to attempt to resolve all disputes or contract claims arising under this Contract.
  - 2. Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov't Code Chapter 2260, Subchapter B.
  - 3. Contractor must initiate the process by submitting written notice, as required by Subchapter B, to the Procurement and Contract Services Director or designee, at 5805 North Lamar Blvd, Bldg. A, Austin, Texas 78752.
  - 4. Said notice will specifically state that the provisions of the Tex. Gov't Code Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of DPS and Contractor otherwise entitled to notice under this Contract.
  - 5. Compliance by Contractor with the Tex. Gov't Code Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.
  - 6. The contested case process provided in Tex. Gov't Code Chapter 2260, Subchapter C, is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by DPS if the parties are unable to resolve a dispute under this subparagraph (A).
  - 7. Compliance with the contested case process provided in the Tex. Gov't Code Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107.
  - 8. Neither the execution of this Contract by DPS nor any other conduct of any representative of DPS related to this Contract will be considered a waiver of sovereign immunity to suit.

- B. In addition to complying with Tex. Gov't Code Chapter 2260, Contractor must comply with DPS administrative rules published in 37 Tex. Admin. Code Chapter 34, Subchapter C, Mediation of Certain Contract Disputes.
- C. Contractor must continue providing the deliverables as directed, in a diligent manner and without delay, and must conform to DPS directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by DPS at all times during the course of the dispute resolution process. Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Tex. Gov't Code § 2251.051 and such suspension of performance is expressly applicable and authorized under that law.

### **2.3 ROLLING ESTOPPEL**

- A. DPS will be conclusively deemed to have fulfilled its obligations under this Contract, unless DPS receives a deficiency report from Contractor within five business days of the occurrence of the alleged deficiencies and Contractor identifies specific deficiencies in DPS's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of Contractor. Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to DPS's Contract Monitor.
- B. In the event Contractor identifies a situation in which DPS is impairing Contractor's ability to perform for any reason, Contractor's deficiency report will contain Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the DPS Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

### **2.4 SURVIVAL OF OBLIGATIONS**

Termination of this Contract for any reason will not release Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and any other provisions of this Contract that impose continuing obligations on either of the parties or that govern the rights and limitations of either of the parties after the expiration or termination of this Contract.



## **2.5 NO WAIVER OF DEFENSES**

Nothing in this Contract will be construed as a waiver of the state's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or to be considered as a basis for estoppel. DPS does not waive any privileges, rights, defenses, or immunities available to DPS by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

## **2.6 FORCE MAJEURE**

Neither Contractor nor DPS will be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force Majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as a defense.

## **2.7 FORESEEABLE DELAY**

If a delay in delivery of a deadline or other performance under this Contract is foreseeable and the delay is not caused by a Force Majeure event, Contractor must give written notice to DPS. DPS has the right, in its sole discretion, to extend the delivery date if DPS determines the reasons for the delay are acceptable to DPS. Contractor must keep DPS advised at all times of the status of the delay.

Contractor's failure to perform under this Contract and failure to meet the requirements of this Contract, including Contractor delays not accepted by DPS, may result in DPS issuing a new solicitation or entering into another contract for the subject matter of this Contract.

Contractor must pay all costs to DPS due to a re-solicitation or contracting under this section.

## **2.8 NOTICES**

Any notice required or permitted under this Contract will be directed to Contractor's Project Manager and DPS's Contract Administrator and will be deemed received:

- A. When delivered in hand and a receipt granted;
- B. Three days after it is deposited in the United States mail by certified mail, return receipt requested; or
- C. When received if sent by confirmed facsimile or confirmed electronic mail.

Either of the parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address or individual and the date upon which it will become effective.

## **2.9 STATE EXCULPATION**

DPS will not be liable to Contractor for any increased costs or expenses that may be incurred by Contractor, or for any other damages that may be suffered by Contractor as a result of any act or omission of any other contractor to the State of Texas or DPS.

## **Article 3, Amendments and Contractor Changes**

### **3.1 AMENDMENTS; NO AMOUNTS PAID FOR UNAUTHORIZED PERFORMANCE; NO CONFLICT WITH LAWS OF THE STATE OF TEXAS**

DPS and Contractor may amend this Contract through a written amendment signed by an authorized signatory on behalf of the respective party. Contractor will not receive compensation or any other amounts for performance not authorized under this Contract, including without limitation, for any such performance by Contractor prior to the effective date of a written amendment signed by both parties. Any such performance is at the sole risk of Contractor.

Any amendment of this Contract that conflicts with the laws of the State of Texas is void.

### **3.2 OPTION TO EXTEND THE TERM OF THE CONTRACT**

- A. DPS may, at its sole discretion, extend the term of this Contract by written Contract amendment to Contractor prior to this Contract's expiration.
- B. The preliminary notice does not commit DPS to an extension.
- C. If DPS exercises this option, the extended Contract will be considered to include this option provision.

### **3.3 OPTION TO EXTEND SERVICES**

- A. DPS may require continued performance of any services within the scope and at the rates specified in this Contract.
- B. DPS reserves the right to extend this Contract for a 90-day period at the end of this

Contract or extension period for the purpose of re-advertising the commodity or service, awarding a new Contract, or transitioning into a new Contract.

- C. This option provision may be exercised more than once, but the total extension of performance may not exceed six months.
- D. DPS may exercise this option by written notice to Contractor.

**3.4 CONTRACTOR CHANGES (INCLUDES SUCCESSORS AND ASSIGNEES)**

Contractor may not assign or transfer any interest in or duty under this Contract without the express, prior written consent of DPS, with DPS providing such consent at its sole discretion. An attempted assignment in violation of this provision is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under this Contract.

Contractor must submit timely written notification to DPS of any changes in Contractor status, including changes in Contractor’s name, organizational structure, ownership, affiliated entities, principals, mergers, acquisitions, address, telephone number, facsimile number, or email address with an effective date of such change. Contractor must submit to DPS a copy of any “DBA” registration and any legal corporate name change filed with the Secretary of State.

Contractor must provide written notification to DPS of any contractor changes prior to the change; however, assignment of this Contract and performance under this Contract are limited as provided under this Contract.

Contractor must provide detailed information requested by DPS, including without limitation the tax identification number of the proposed new contractor. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

Notwithstanding DPS’s receipt of written notification by Contractor under this section, DPS may, in its sole discretion, terminate this Contract due to any change that DPS believes materially alters Contractor’s ability to perform under this Contract in accordance with all terms and conditions.

DPS may require a novation agreement dependent upon the change, but especially in the event of a merger or acquisition. DPS may have to amend the Contract dependent upon the change.

**Article 4, Indemnification**

**4.1 INDEMNIFICATION (GENERAL)**

**CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND DPS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR**

**SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. CONTRACTOR AND DPS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**4.2 INDEMNIFICATION (INTELLECTUAL PROPERTY)**

**CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS DPS AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR OTHER INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR UNDER THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, OR OTHER SERVICE PROVIDED UNDER THIS CONTRACT; OR DPS'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO DPS BY CONTRACTOR OR OTHERWISE TO WHICH DPS HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND DPS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY CONTRACTOR WITH OAG WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE DPS AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF DPS DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF DPS IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, DPS WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF DPS'S COUNSEL.**

**Article 5, Contract Performance**

**5.1 MOST FAVORED CUSTOMER**

Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to DPS under this Contract are comparable to, or more favorable to, DPS than the price, charges, benefits, warranties, and terms that Contractor has previously offered to any person or entity for the products or services covered under any other agreement. If at any time during the term of this Contract, Contractor will contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity,

Contractor must notify DPS of such more favorable terms and DPS, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to DPS under this Contract, and be retroactive to the effective date of this Contract.

### **5.2 NO SUBSTITUTIONS AND DELIVERY TIMES**

No substitutes or cancellations are permitted without the prior written approval of an authorized representative of DPS. Delivery will be made during normal business hours only, unless prior written approval for late delivery has been obtained from DPS's authorized representative.

### **5.3 TITLE AND RISK OF LOSS**

Title and risk of loss for deliverables will not pass to DPS until DPS actually receives, takes possession, and accepts the deliverables at the point or points of delivery.

### **5.4 RECALL NOTICE**

Contractor must immediately upon discovery of same, advise DPS of any or all required replacements or modifications to any equipment or hardware provided under this Contract or the withdrawal of any such equipment or hardware by reason of safety hazard or recall regardless of the nature of same. Verbal notification will be confirmed in writing within 24 hours of such verbal notification. Contractor must submit all such formal notices to the DPS Contract Monitor.

### **5.5 TESTING; ACCEPTANCE; RETURN; REVOCATION**

All samples will be subject to inspection and testing by DPS or the State of Texas. DPS reserves the right to test items/samples upon request and all costs of such testing will be paid by Contractor. After award and prior to payment, DPS may conduct acceptance testing on the requested items delivered under this Contract. If the delivered and installed items fail to meet the acceptance criteria or any other requirements, DPS may refuse to accept such items. Upon DPS's acceptance of deliverable(s) that meet or exceed all requirements, DPS will notify Contractor in writing that Contractor may submit an invoice to DPS's Accounts Payable Division for such deliverables. DPS reserves the right to revoke prior acceptance for, among other things, latent defects.

If relevant to the type of services provided under this Contract, Contractor must have a separate Production, Quality Assurance (QA), and User Acceptance (UAT) testing environment. Updates must be tested and approved by DPS prior to deployment to production. If incorporated, reference the exhibit entitled DPS Testing Entry/Exit Criteria.

### **5.6 INSPECTION OF SERVICES**

A. Acceptance criteria for all deliverables under this Contract may be found in the

solicitation.

- B. DPS has the right to inspect and validate all products, services, and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. DPS will perform inspections in a manner that will not unduly interfere with Contractor's performance of this Contract. Contractor must furnish, and must require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.
- C. If any deliverables do not conform to this Contract's requirements, DPS will require Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.
- D. DPS will, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by Contractor and its subcontractors in connection with performance of this Contract.
- E. If subject to the outcome of an audit, it is determined that Contractor is in non-compliance with any provisions of this Contract or that money is owed to DPS by Contractor, then DPS will exercise its rights of recovery of money owed as authorized by this Contract.
- F. If any services are non-compliant with this Contract's requirements, Contractor will be notified describing specific areas of non-compliance. Contractor will have a ten-day period to file a written response detailing corrective action taken to address all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by DPS, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between Contractor and DPS, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between Contractor and DPS, and such item remains uncorrected for a period of ten days or longer after written notification to Contractor, then such item will be declared to be an "event of default."

### 5.7 INSPECTION BY STATE EMPLOYEES

- A. Contractor must provide and maintain all documentation pertaining to quality testing, acceptance of deliverables, maintenance and warranty records, inventories of equipment per location, and all reports necessary under the terms of this Contract, in a manner acceptable to DPS for the deliverables provided under this Contract. Complete records of all inspection work performed by Contractor must be maintained and made

available to DPS during this Contract's performance and for a period of seven years after the termination of this Contract.

- B. Contractor must provide entry at all times to DPS, the Public Safety Commission, or any authorized employee or agent for inspections and other official purposes. The Governor, members of the Legislature, and all other members of the Executive and Judicial Departments of the State of Texas, as well as any other persons designated by DPS, including the Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

### 5.8 APPROVAL OF EMPLOYEES

- A. Contractor must retain no upper level management personnel for administration of the contracted services without prior approval of each selection by DPS's authorized representative or his designee. DPS will not unreasonably withhold approval.
- B. Contractor must provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by DPS.

### 5.9 PERSONNEL

#### 5.9.1 Qualifications of Personnel

- A. Contractor warrants that all persons assigned to this Contract are employees or subcontractors of Contractor and meet all qualifications as defined within this Contract to perform the work required.
- B. Replacement of personnel, if approved by DPS, must be with personnel of equal or greater ability and qualifications. DPS will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.
- C. Contractor must assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract. DPS will have the right to approve the assignment and replacement by Contractor of all personnel assigned to provide deliverables or to provide on-site representation of Contractor.
- D. Contractor must notify DPS before assigning a replacement individual for any of the personnel commitments identified in this Contract. Contractor must notify DPS of the proposed assignment, must introduce the individual to the appropriate representatives of DPS, must provide a transfer of knowledge validation, and must provide to DPS a résumé and any other information about the individual reasonably requested by DPS. DPS reserves the right to interview the individual before granting approval. Contractor must obtain prior written approval for any replacement personnel before beginning any

work assignments.

**5.9.2 Replacement of Personnel at DPS's Request**

- A. DPS reserves the right to require Contractor to replace Contractor's personnel whom DPS judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of DPS or the State of Texas. Before a written request is issued, representatives of DPS and Contractor will discuss the circumstances of the proposed personnel replacement. Upon receipt of a written request from DPS's Contract Administrator, Contractor will be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. Contractor must use its best efforts to effect the replacement in a manner that does not degrade performance of deliverable quality. Contractor must also provide DPS with evidence of a sufficient transfer of knowledge to the proposed replacement.
- B. This provision will not give DPS the right to require Contractor to terminate any Contractor employee's employment. Rather, this provision gives DPS the right to require Contractor to discontinue using particular personnel in the performance of deliverables for DPS.

**5.9.3 Unauthorized Removal of Personnel**

It is critical to the overall success of the project that Contractor not remove or reassign, without DPS's prior written approval, any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of Contractor's obligations under this Contract. Without prior written approval from DPS, personnel must only be changed in the event of death, personal injury, debilitating illness, or termination of employment with Contractor. DPS will consider the unauthorized removal of personnel by Contractor as a material breach of this Contract and grounds for termination.

**5.10 WARRANTIES**

**5.10.1 Third Party Warranties**

If, under this Contract, Contractor procures any materials or products for DPS, Contractor must assign or otherwise transfer to DPS, or afford DPS the benefits of, any manufacturer's warranty for such materials or products.

**5.10.2 Contractor Warranties**

Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:



- A. Contractor/subcontractor(s) must create and deliver all services and deliverables in accordance with applicable professional standards of a contractor providing the deliverables required under this Contract. Contractor represents and warrants it has the requisite qualifications, experience, personnel, and other resources to perform in the manner required by this Contract.
- B. Contractor/subcontractor(s) must assign only qualified personnel to this Contract.
- C. Contractor/subcontractor(s) must efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.
- D. Contractor/subcontractor(s) must use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.
- E. Contractor/subcontractor(s) must create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.
- F. Contractor/subcontractor(s) must create and deliver the deliverables in a manner that complies with all applicable laws and regulations.
- G. Contractor has duly authorized the execution, delivery, and performance of this Contract.
- H. Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of DPS.
- I. Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

### 5.11 SUSPENSION OF WORK

- A. DPS may order Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Contract Monitor determines appropriate for the convenience of DPS.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted:
  - 1. By an act of the Contract Monitor in the administration of this Contract, or
  - 2. By the Contract Monitor's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily

caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.

- C. A claim under this provision will not be allowed:
  - 1. For any costs incurred more than 20 days before Contractor will have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order); and
  - 2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

**5.12 STOP-WORK ORDER**

- A. The Contract Administrator may at the request of DPS, at any time, by written order to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the order is delivered to Contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this provision. Upon receipt of the order, Contractor must, at DPS's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of up to 90 days after a stop-work order is delivered to Contractor, or within any extension of that period to which the parties must have agreed, the Contract Administrator may either:
  - 1. Cancel the stop-work order; or
  - 2. Terminate the work covered by the order as provided in the stop-work order of this Contract.
- B. If a stop-work order issued under this provision is canceled or the period of the order or any extension thereof expires, Contractor must resume work. DPS will make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and this Contract will be modified, in writing accordingly, if:
  - 1. The stop-work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
  - 2. Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and approve the claim submitted at any time before final payment under this Contract.

- C. If a stop-work order is not canceled and the work covered by the order is terminated, the Contract Administrator may allow reasonable cost resulting from the stop-work order in arriving at the termination settlement.
- D. An appropriate equitable adjustment may be made in any related contract of Contractor that provides for adjustment and is affected by any stop-work order under this provision. DPS will not be liable to Contractor for damages or loss of profits because of a stop-work order issued under this provision.

### 5.13 MONITORING CRITERIA

- A. DPS will devise its own procedures for monitoring the quality of Contractor's performance under this Contract, and DPS's Policies.
- B. Contractor must cooperate fully with DPS in obtaining the requisite information needed to complete such audits and to assess the quality of Contractor's performance.
- C. Monitoring may include document reviews and on-site audits conducted by DPS. Such monitoring by DPS will not relieve Contractor of any of its obligations under this Contract.
- D. The Contract Monitor and other DPS staff will provide written findings regarding non-compliant conditions, processes, procedures, and observations that could, if not addressed by Contractor, become an item of non-compliance.

### 5.14 SUBCONTRACTS

- A. Contractor must assume full responsibility for all deliverables and performance under this Contract. DPS will consider Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of this Contract is planned to be subcontracted, Contractor must include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables or other work to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.
- B. Contractor may not delegate any duties under this Contract to a subcontractor unless DPS has given prior, written consent to the delegation. DPS will approve all subcontractors and will require Contractor to replace any subcontractor found, i, either initially or based on performance, to be unacceptable in DPS's opinion.
- C. The management of any subcontractor will be the sole responsibility of Contractor, and failure by a subcontractor to perform will be deemed to be failure of Contractor. Contractor must make all payments to subcontractors and suppliers. DPS will not direct payments for deliverables acquired in connection with this Contract other than to

Contractor, nor will DPS release Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by Contractor to perform those obligations.

- D. Contractor will furnish to DPS copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.
- E. Contractor is solely responsible and accountable for the completion of all work which Contractor has subcontracted.

**5.15 WORK MADE FOR HIRE**

For the purposes of this Contract, the term “Work” is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All Work performed under this Contract is made the exclusive property of DPS. All rights, title, and interest in and to said property will vest in DPS upon creation and will be deemed to be a Work for Hire and made in the course of the services rendered under this Contract. To the extent that title to any such Work may not, by operation of law, vest in DPS, or such Work may not be considered a Work Made for Hire, all rights, title and interest are irrevocably assigned to DPS. DPS will have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give DPS or the State of Texas, as well as any person designated by DPS or the State of Texas, all assistance required to perfect the rights defined in this Contract without any charge or expense beyond those amounts payable to Contractor for services rendered under this Contract.

**5.16 DPS OWNERSHIP**

**5.16.1 RIGHTS TO DATA, DOCUMENTS, AND COMPUTER SOFTWARE (State Ownership)**

- A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to DPS by Contractor upon completion, termination, or cancellation of this Contract.
- B. Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of Contractor’s obligations under this Contract without the prior written consent of DPS.
- C. The ownership rights described within this section will include the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

- D. If DPS is not purchasing a license under the terms of this Contract, Contractor must provide, at no additional charge, appropriate licenses for DPS to use and access Contractor's deliverables and Contractor's pre-existing software or other intellectual or proprietary property that Contractor determines is necessary to facilitate the performance of Contractor's obligations under this Contract.

### **5.16.2 OWNERSHIP OF PROPERTY IN CONTRACTS THAT REQUIRE CONTRACTOR TO DEVELOP A REPORT**

- A. As used in this Section, the term "Contractor's Technology" means all intellectual property of Contractor created by Contractor prior to this Contract and used by Contractor, in its discretion, in performing services to DPS under this Contract. Notwithstanding anything else in this Contract to the contrary, the Final Report delivered by Contractor to DPS under this Contract will be the exclusive property of DPS and the State of Texas. DPS is not procuring and will not acquire ownership of any of Contractor's technology under this Contract, and therefore, Contractor will not deliver to DPS a Final Report that includes Contractor's technology that otherwise creates or could create issues of ownership and use for DPS or the State of Texas.
- B. Contractor will include its name and logo on the Final Report, but Contractor will not copyright the Final Report. Contractor understands that the Final Report will be subject to the Texas Public Information Act and other law applicable to a consulting report commissioned by and delivered to the State of Texas.

### **5.17 OTHER CONTRACTS**

During the course of this Contract, DPS may award additional contracts to other contractors for similar services. DPS will provide notification to Contractor regarding any additional contractors and the scope of work that the additional contractors will be performing if necessary for Contractor to perform services under the Contract. Contractor must work cooperatively with the additional contractors in order to ensure that the performance of the services or capital improvements is not unnecessarily delayed. Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractors.

### **5.18 INDEPENDENT CONTRACTOR**

Contractor and its employees, representatives, agents and any subcontractors will serve as an independent contractor in providing deliverables or otherwise in its performance under this Contract. Contractor and its employees, representatives, agents and any subcontractors will not be employees of DPS. Should Contractor subcontract any of the services provided under this Contract, Contractor expressly understands and acknowledges that in entering into such subcontracts, DPS is in no manner liable to any subcontractor of Contractor. In no event will this provision relieve Contractor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

**Article 6, Publicity and Public Information**

**6.1 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY**

- A. Contractor will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of DPS, and then only in accordance with explicit written instructions from DPS.
- B. Contractor will not use the name of the State of Texas or DPS or any state insignia in any advertisement, promotion or otherwise for any purpose regarding this Contract without the express prior written consent of DPS. DPS is not authorized to provide endorsements.
- C. Notwithstanding the foregoing, Contractor may make any disclosure required by law or regulation without the approval of DPS.

**6.2 PUBLIC INFORMATION ACT**

- A. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that DPS is subject to and will comply with the Texas Public Information Act, Tex. Gov't Code Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. DPS will notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this Contract. Contractor must cooperate with DPS in the production of documents responsive to the request. DPS will make a determination whether to submit a Public Information Act exception request to the Attorney General. Contractor must notify DPS within 24 hours of receipt of any third party requests for information that was provided by DPS for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor must maintain the confidentiality of information received from DPS during the performance of this Contract, including information which discloses confidential personal information particularly, social security numbers.
- B. Contractor must make any information created or exchanged with a state governmental entity [as defined by Tex. Gov't Code § 2252.907(d)] under this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas and DPS : portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).
- C. If Contractor must provide a Draft Report and Final Report, this section C applies. If not, this section is inapplicable to this Contract.

1. In a separate appendix to both the Draft Report and the Final Report, Contractor must include all information which DPS asserts is confidential under the Texas Public Information Act, including without limitation on the foregoing, any information which DPS asserts is confidential under Tex. Gov't Code § 552.139 related to computer network security, restricted information under Section 2059.055, or to the design, operation, or defense of a computer network. Contractor will not release any of DPS's information under this Contract without the prior written approval of DPS and Contractor must promptly refer any requests for this information to DPS for handling.
2. As provided under Tex. Gov't Code § 2254.041, DPS may, in its discretion, distribute the Final Report delivered by Contractor under this Contract and post the public portion of the Final Report on DPS's Internet website or the website of a standing committee of the Texas Legislature. This Section does not affect the application of Tex. Gov't Code Chapter 552, to the Final Report.

### **Article 7, State and Federal Law, Rules, and Regulations**

#### **7.1 DRUG-FREE WORKPLACE**

Contractor must comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. Sections 8101-8106).

#### **7.2 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS**

State agencies must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Tex. Admin. Code Chapter 213 and 1 Tex. Admin. Code Chapter 206 (derived from Tex. Gov't Code Ch. 2054 requirements) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

#### **7.3 DISCLOSURE OF INTERESTED PARTIES**

If DPS determines that Tex. Gov't Code § 2252.908 may apply to any contract awarded as a result of this solicitation, DPS will advise Vendor of its obligation to disclose interested parties to the Texas Ethics Commission (TEC) and DPS as specified in the statute. If Vendor is excepted under the limited provisions of Tex. Gov't Code § 2252.908(c), Vendor must affirmatively tell DPS and provide written documentation proving its exception.

To execute a contract with DPS, Vendor must submit the required disclosures to TEC by completing TEC Form 1295, Certificate of Interested Parties. Even if Vendor has no interested parties to disclose, Vendor must still complete the TEC Form 1295 process to affirmatively declare that it has no interested parties.

TEC Form 1295 is an online form available at TEC's website:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

Upon completion, Vendor must submit the form online to TEC and then print the completed form that includes the Certificate Number automatically assigned by TEC. Vendor's authorized agent must fill out all portions of the form, including the unsworn declaration, sign the printed form, and submit the form to DPS. The address for submission will be provided to the potential awardee(s).

For further information, see Tex. Gov't Code § 2252.908 and 1 Tex. Admin. Code Ch. 46 as well as TEC's website.

If Vendor does not timely submit a completed, declared, and signed TEC Form 1295 to DPS, DPS is prohibited by law from executing a contract with Vendor, even if Vendor is otherwise eligible for award. DPS may award the contract to the next successful potential awardee, who will then be subject to this procedure.

#### **7.4 BUY TEXAS**

Contractor must comply with Tex. Gov't Code § 2155.4441, in the performance of this Contract. In performing services under this Contract, Contractor must purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

#### **7.5 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS**

- A. Contractor must comply with all applicable state, federal and local laws and ordinances in providing deliverables to DPS under this Contract. Without limiting the generality of the foregoing, Contractor must be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. Contractor must provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. Contractor must comply with all federal and state tax laws and withholding requirements. DPS will not be liable to Contractor/subcontractor or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. Contractor may be required to demonstrate compliance with such laws at the written request of DPS.
- B. Except as stated otherwise in this Contract, Contractor must provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of Contractor will be a minimum of 17 years of age and experienced in the type of work to be performed. Absent prior, written permission from DPS, no visitors or relatives of Contractor's employees and subcontractor(s) will be allowed on State property, unless they are bona fide employees or subcontractor(s) of Contractor performing work under this



Contract.

- C. Contractor must ensure that at all times its personnel will observe and comply with all laws, regulations, and rules pertaining to state facilities, including, parking and security regulations and non-smoking policies. Additionally, Contractor and Contractor's personnel must comply with all relevant DPS policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy and Security Addendum, as they now exist and as they may be amended.
- D. DPS will have the right to require Contractor to remove any of Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations, or rules.

**7.6 APPLICABLE LAW AND CONFORMING AMENDMENTS**

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. DPS reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any necessary changes to ensure DPS's or Contractor's compliance with all applicable state and federal laws, rules, and regulations.

**7.7 TAXES; UNEMPLOYMENT; WORKERS COMPENSATION**

DPS, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes under the provisions of the Texas Limited Sales, Excise, and Use Tax Act. Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Comptroller of Public Accounts.

DPS makes no representation to Contractor that it may claim any exemptions from any taxes of any type including without limitation any federal, state, local or any other taxes based on Contractor entering into this Contract with DPS or its performance under this Contract.

DPS will not be responsible for any taxes of any type under or as a result of this Contract. DPS will not pay any taxes of any type under or as a result of this Contract. All such taxes are the sole responsibility of Contractor without any contribution by DPS.

Contractor represents and warrants that it must pay all taxes or similar amounts for Contractor and its employees. Contractor represents and warrants that it will comply with all federal, state, and local tax laws and withholding requirements.

Contractor must demonstrate on-site compliance with all applicable tax provisions, including without limitation, the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, including without limitation the issuance of Form W-2s to Contractor's employees.

Contractor must comply with all federal and state requirements regarding unemployment insurance coverage and workers compensation insurance coverage.

Contractor must comply with all laws, regulations, requirements and guidelines applicable to this section as those laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. DPS reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for DPS's or Contractor's compliance with all applicable laws, regulations, requirements, and guidelines.

### **7.8 IMMIGRATION AND E-VERIFY**

Contractor must comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments as applicable to Contractor. To the extent not prohibited by federal law or regulation and only as required under Texas Executive Order No. RP-80, Respondent certifies that it uses and will continue to use the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of those employed or subcontracted to perform contract duties under this Contract.

### **7.9 FRAUD, WASTE, OR ABUSE**

- A. In accordance with Tex. Gov't Code Chapter 321, the State Auditor's Office is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at DPS, it can be reported to the State Auditor's Office by calling 1-800-892-8348 or on that agency's website at [www.sao.texas.gov](http://www.sao.texas.gov). It can also be reported to DPS's Office of the Inspector General at (512) 424-2015, DPS Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.
- C. Contractor represents and warrants that it has read and understood and must comply with DPS's Anti-Fraud Policy, as such policy reads as stated below and as amended throughout the term of this Contract.
- D. Fraud is a serious violation of law that will not be tolerated at DPS. Fraud offenses can be found in Tex. Penal Code Chapter 32. Generally, (for purposes of this policy) it is theft of, or any means used to misappropriate state property or resources. Employees or Contractors who suspect fraud is occurring in the workplace should immediately notify their supervisors or the Contract Monitor as applicable. If for some reason the employee or Contractor is uncomfortable with notifying their supervisor or Contract Monitor, they may notify Office of Inspector General (OIG) or the State Auditor's Office.

**7.10 RIGHT TO AUDIT**

- A. Under Tex. Gov't Code § 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the State directly under this Contract or indirectly through a subcontract under this Contract.

Contractor understands that acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

The Contract may be amended unilaterally by DPS to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Tex. Gov't Code § Section 2262.154.

Contractor must ensure that this section's provisions concerning the authority to audit funds received either directly or indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract that the Contractor awards.

- B. Contractor must reimburse the state for all costs incurred by the state associated with enforcing this provision.
- C. DPS reserves the right to audit Contractor's records and documents regarding compliance with this Contract. Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that DPS and Contractor have complied with the applicable laws, procedures, policies, and best practices.
- D. In the event such an audit reveals any errors by DPS or Contractor, Contractor must refund DPS the full amount of such overpayments within 30 days of Contractor's receipt of notice of such audit findings. DPS reserves the right, in its sole discretion, to deduct such amount owing to DPS from any payments to Contractor.

**7.11 CONSTITUTIONAL AND STATUTORY LIMITATIONS**

Any provision of this Contract that conflicts with the laws of the State of Texas is void.

DPS and Contractor are aware that there may be constitutional and statutory limitations on the

authority of DPS to enter into certain terms and conditions of this Contract, including, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations of legal rights, remedies, requirements, and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively in this section, the "limitations"), and terms and conditions related to the limitations will not be binding on DPS except to the extent authorized by the laws and Constitution of the State of Texas.

### **Article 8, Certifications**

#### **8.1 REPRESENTATIONS AND CERTIFICATIONS; FALSE STATEMENTS; CONTINUING DUTY TO AMEND, SUPPLEMENT, AND CORRECT**

By signing this Contract, including all incorporated documents and exhibits, Contractor makes all the representations and certifications included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations or certifications included in this Contract, Contractor will be in default under this Contract and DPS may terminate or void this Contract for cause and pursue other remedies available to DPS under this Contract and applicable law.

Contractor has a continuing duty to amend, supplement, or correct any such representations or certifications in writing to DPS not later than ten days after discovering additional information relating to any of its representations or certifications.

#### **8.2 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED**

Under Tex. Gov't. Code § 2252.152, DPS may not enter into a contract with a company (as defined by Tex. Gov't Code § 806.001) that is identified on a list prepared and maintained by the comptroller under Tex. Gov't Code §§ 806.051, 807.051, or 2252.153. By responding to this solicitation, Vendor (if defined as a company under Tex. Gov't Code § 806.001) certifies that it is not identified on a list prepared and maintained by the comptroller under Tex. Gov't Code §§ 806.051, 807.051, or 2252.153.

#### **8.3 CONTRACTS WITH COMPANIES WHO BOYCOTT ISRAEL PROHIBITED**

Under Tex. Gov't. Code § 2270.002, DPS may not enter into a contract with a company (as defined by Tex. Gov't Code § 808.001) that boycotts Israel. By responding to this solicitation, Vendor (if defined as a company under Tex. Gov't Code § 808.001) certifies that it does not boycott Israel and will not boycott Israel during the term of any contract resulting from this solicitation.

**8.4 THIRD-PARTY CUSTODIANS OF STATE RECORDS**

As required by 13 Tex. Admin. Code § 6.94(a)(9), DPS must require a third-party custodian of state records to provide DPS with descriptions of its business continuity and disaster recovery plans regarding how the custodian will protect DPS’s vital state records. In its response, Respondent must submit descriptions of its business continuity and disaster recovery plans regarding how it will protect DPS’s vital state records throughout the life of any Contract and for any record retention period required beyond the life of the Contract. If DPS awards a contract under this solicitation, Contractor must again submit these descriptions no later than ten days after contract award and annually until the required retention period ends (even if this is after the Contract expires or is terminated).

**8.5 DISCLOSURE OF RESTRICTED EMPLOYMENT**

Under Tex. Gov’t Code § 572.069, Vendor certifies that it has not employed and will not employ a former DPS employee or state officer who participated in a procurement or contract negotiation for DPS involving Vendor before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

**8.6 NOTICE UNDER TEX. GOV’T CODE § 2261.252**

Under Tex. Gov’t Code § 2261.252, DPS may not enter into a contract for the purchase of goods or services with a private vendor if members of the Public Safety Commission or certain positions within the agency including the Executive Director, the General Counsel, the Procurement Director, or their covered family members have a financial interest in the vendor. Any contract found to violate Tex. Gov’t Code § 2261.252 is void.

**8.7 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING**

Contractor represents and warrants that DPS payments to Contractor and Contractor’s receipt of appropriated or other funds under this Contract are not prohibited by the Tex. Gov’t Code §§ 556.005 and 556.008.

**8.8 NON-DISCRIMINATION**

A. In the performance of this Contract, Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant, or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following.

- B. Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. Contractor must post notices setting forth the provisions of this non-discrimination provision in conspicuous places, available to employees and applicants for employment.
- C. Contractor must state that it is an equal opportunity employer in all solicitations or advertisements for employees or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.
- D. Contractor must include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or Contractor.
- E. Contractor must comply with all related certifications in this Contract.

### **8.9 EMPLOYEE NON-SOLICITATION**

Contractor will not, during the term of this Contract and for a period of 12 months after the term of this Contract, solicit for employment any person who is a DPS employee or was a DPS employee during the previous 12 months with whom Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

### **8.10 ANTITRUST AND ASSIGNMENT OF CLAIMS**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Bus. & Comm. Code Chapter 15 or the federal antitrust laws; or (2) communicated directly or indirectly its response to the solicitation to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

Contractor assigns to the State of Texas all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.

### **8.11 FELONY CRIMINAL CONVICTIONS**

Contractor represents that Contractor has not and Contractor's employees and subcontractors have not been convicted of a felony criminal offense. Alternatively, if such a conviction has occurred, Contractor has fully advised DPS as to the facts and circumstances surrounding the conviction and DPS has given Contractor written approval for Contractor or Contractor's employees or subcontractors to perform work under or related to this Contract (whether or not

the work involves physical or logical access).

Contractor may not allow any employee or subcontractor convicted of a felony criminal offense to perform work under or related to this Contract without such disclosure to DPS and the prior written approval of DPS for the employee or subcontractor to perform work under or related to this Contract.

Contractor must amend, supplement, or correct representations and warranties in this section in writing to DPS not later than five business days after discovering any additional information that would change Contractor's representation or warranty.

**8.12 DPS BACKGROUND CHECK AND ID CARD REQUIREMENTS**

- A. Contractor must not allow any personnel (employee or subcontractor) to work on the project that have not submitted to and successfully completed a DPS fingerprint-based Criminal History Background Investigation. DPS has the right to prevent Contractor's personnel from gaining access to DPS's buildings and computer systems if DPS determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance.
- B. Contractor certifies that Contractor and any of its employees or subcontractors will wear and make visible any DPS-issued identification cards at all times while working on this Contract.

**8.13 BOOKS AND RECORDS**

- A. Contractor must retain all financial records, supporting documents, statistical records, and any other records or books relating to the performance under this Contract. Contractor must retain these records for a period of seven years after the expiration of this Contract, or until DPS or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor must grant access to all books, records, and documents pertinent to this Contract to DPS, the SAO, and any state or federal governmental entity that has authority to review records due to state or federal funds being spent under this Contract.
- B. In the disclosure of its financial affairs, Contractor must allow DPS, SAO, or their authorized representatives access to all of its corporate books relative to this Contract and must cooperate in any audits.
- C. Notwithstanding anything else in this section or any other provision of this Contract to the contrary, Contractor must fully cooperate with state and federal representatives in audits of Contractor's performance and receipt of funds under this Contract or applicable law.

**8.14 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS**

Contractor certifies that it understands it will have no authority to act for or on behalf of DPS or the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or DPS.