



# Texas Department of Public Safety Purchase Order

Blanket Order Number  
  
**405-16-P007108**  
  
SHOW THIS NUMBER ON ALL  
PACKAGES, INVOICES AND  
SHIPPING DOCUMENTS.

**V  
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R**  
Vendor Number: 00029954  
ANSI-AQS NATIONAL ACCREDITATION BOARD  
  
PO BOX 582  
MILWAUKEE, WI 53201-0582

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Texas Department of Public Safety  
5800 Guadalupe Street  
Austin, TX 78752  
US  
Email: eprocurementshipping@dps.texas.gov  
Phone: (512) 424-2000

State Sales Tax Exemption Certificate: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

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Texas Department of Public Safety  
Finance - Accounts Payable - MSC 0130  
PO Box 4087  
Austin, TX 78773-0130  
US  
Email: apinvoices@dps.texas.gov  
Phone: (512) 424-2060

Solicitation (Bid) No.: 405-16-B001267

Payment Terms: State of Texas Prompt Pay  
Shipping Terms: F.O.B., Destination  
Delivery Calendar Day(s) A.R.O.: 0

Item # 1

This purchase order incorporates the contract fully executed by Texas Department of Public Safety and ANSI-AQS NATIONAL ACCREDITATION BOARD (ANAB) dba ASCLD/LAB dated 05/05/2016.

Order of Precedence:

The following are incorporated by reference into this PO. In case of conflicting provisions, the documents shall control in the following order of precedence to resolve the conflict.

1. Contract between Texas Department of Public Safety and ANSI-AQS NATIONAL ACCREDITATION BOARD (ANAB) dba ASCLD/LAB dated 05/05/2016.
2. TXDPS issued Purchase Order
3. TXDPS solicitation Request for Proposal 405-16-B001267 and any subsequent modifications and amendments.
4. ANSI-AQS NATIONAL ACCREDITATION BOARD (ANAB) dba ASCLD/LAB submitted proposal.

This contract will consist of a base period from date of award through 11/30/2020. The terms, conditions, and rates for all extensions will remain as stated in this Contract.

Contract Monitor:

Name: Forrest Davis  
 Phone: (512) 424-2799  
 Email: Forrest.Davis@dps.texas.gov

Purchaser Contact Information:

Name: Ashley Waffer  
 Phone: 512-424-5028  
 Email: Ashley.Waffer@dps.texas.gov

Vendor Contact Information:

Name: Pamela Bordner  
 Phone: (919)-773-2600  
 Email: PBordner@ascl-d-lab.org

Item # 2

Class-Item 961-45

Initial Assessment/Inspection for Forensic Testing per Section C.3.B

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 156,700.00	JOB	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 156,700.00

Item # 3

Class-Item 961-45

Initial Assessment/Inspection for Breath Alcohol Calibration Laboratories per Section C.3.C

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 31,000.00	JOB	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 31,000.00

Item # 4  
Class-Item 961-45

Mid-Cycle Assessment - FBI DNA QAS Audit for 9 DNA Laboratories and 1 Codis per Section C.3.J

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 43,200.00	JOB	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 43,200.00

Item # 5  
Class-Item 961-45

Expanded Surveillance Visit (Testing) at all TXDPS Laboratories during or before August 2018 (can be concurrent with Mid-Cycle Assessment - FBI DNA QAS Audit)

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 49,000.00	JOB	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 49,000.00

Item # 6  
Class-Item 961-45

Expanded Surveillance Visit (Breath Alcohol Calibration) at all TXDPS Breath Alcohol Calibration Laboratories during or before August 2019.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 31,000.00	JOB	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 31,000.00

Item # 7  
Class-Item 961-45

Annual Accreditation Fees

Year 1: December 1, 2016 through November 30, 2017  
Year 2: December 1, 2017 through November 30, 2018  
Year 3: December 1, 2018 through November 30, 2019  
Year 4: December 1, 2019 through November 30, 2020

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
4.00	\$ 40,000.00	YR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 160,000.00

Item # 8  
 Class-Item 961-45

Daily Assessors Rates

Breath Alcohol Calibration Assessor is \$645 per day to review 5 TXDPS Examiners

Biology Assessor is \$645 per day to review 7 TXDPS Examiners

Digital & Multimedia Evidence Assessor is \$645 per day to review 8 TXDPS Examiners

Drug Chemistry Assessor is \$645 per day to review 9 TXDPS Examiners

Firearms/Toolmarks Assessor is \$645 per day to review 7 TXDPS Examiners

Latent Prints Assessor is \$645 per day to review 8 TXDPS Examiners

Questioned Documents Assessor is \$645 per day to review 10 TXDPS Examiners

Toxicology Assessor is \$645 per day to review 8 TXDPS Examiners

Trace Evidence Assessor is \$645 per day to review 6 TXDPS Examiners

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 0.00	JOB	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

TAX: \$ 0.00  
 FREIGHT: \$ 0.00  
 TOTAL: \$ 470,900.00

APPROVED

By: Ashley Waffer  
 Phone#: (512) 424-5028

BUYER

### SOLICITATION, PROPOSAL, AND AWARD

1. CONTRACT NO.  405-16-P007108	2. SOLICITATION NO.  405-16-B001267	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED  February 11, 2016
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#### Reaccreditation of Department Crime Labs

5. Sealed Proposals will be received by the Department until 3:00 P.M. local time on March 3, 2016 and submitted to the issuing office:  Texas Department of Public Safety Procurement and Contract Services Bureau 5805 N Lamar Blvd, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-15-B001267	6. FOR INFORMATION CONTACT:  John Kirchner, CTPM, CTCM Purchaser  PHONE: (512) 424-7059 FAX: (512) 424-5419 E-MAIL: <a href="mailto:John.Kirchner@dps.texas.gov">John.Kirchner@dps.texas.gov</a>
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7. DISCOUNT FOR PROMPT PAYMENT: →	10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS
	%	%	%	%
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The Respondent acknowledges receipt of amendments to this Request for Proposals and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	1	02/24/2016		
9. NAME AND ADDRESS OF RESPONDENT: →	ANSI-ASQ National Accreditation Board (ANAB) dba ASCLD/LAB 139 J Technology Dr. Garner, NC 27529		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN PROPOSAL (Type or Print)  Pamela L. Bordner, Vice President	
11. TELEPHONE NO. (Include area code)	12. SIGNATURE		13. PROPOSAL DATE	
(919) 773-2600	On File		February 26, 2016	

#### TO BE COMPLETED AT TIME OF AWARD

**Document Type: S**  
**Statutory Cite: Texas Government Code, Section 2156.121**  
**NOTE: The Department reserves the right, in its sole discretion, to modify this language prior to award.**  
 This award document consummates the Contract which consists of the following documents: (a) this Proposal and Award document; (b) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Proposal, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Proposal and Award document; negotiated changes; BAFO; points of clarification; RFP as posted; and the Contractor's Proposal.

This Contract consists of a Base Period from date of award through November 30, 2020, as detailed within Section F.1, Contract Term.

<b>Contractor</b> By: <u><i>Pamela L. Bordner</i></u> Name: <u>Pamela L. Bordner</u> Title: <u>Vice President</u>  Date: <u>05/02/16</u>	<b>Texas Department of Public Safety</b> By: <u><i>R. J. Bodisch</i></u> Name: <u>Robert J. Bodisch, Sr.</u> Title: <u>Deputy Director, Homeland Security and Services</u>  Date: <u>5.5.16</u>
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The following items are mutually agreed to by the Contractor and the Department and are hereby incorporated into this Contract.

1. The Solicitation, Proposal and Award form has been revised to update the Contract Number, remove the offer preparation instructions, and to add the Contractor's name in the Contractor signature block.
2. Section A, Definitions, has been revised as follows:
  - Revise definition of "Contract" to include awarded firm;
  - Revise definition of "Contractor" to include awarded firm;
  - Added definition of "Expanded Surveillance Visit";
  - Revise definition of "Mid-Cycle Assessment"
  - Delete definition of "Respondent"; and
  - Delete definition of "RFP"
3. Section B.1.1, Services Being Acquired, has been revised to include contract language rather than solicitation language.
4. Section B.1.2, Pricing Instructions, has been revised to include contract language rather than solicitation language.
5. Section B.1.3, Modification for Additional Services, has been revised to include contract language rather than solicitation language.
6. Section B.1.4, Financial Ratings, has been revised to include contract language rather than solicitation language.
7. Section B.2.1, Price Table 1, has been revised to include pricing from the awarded Contractor.
8. Section B.2.2, Price Table 2, has been revised to include pricing from the awarded Contractor.
9. Section B.2.3, Price Table 3, has been deleted.
10. Section C, Statement of Work, has been revised throughout to include contract rather than solicitation language and reflect negotiations of the Department and the Contractor.
11. Section C.3.I and Section C.3.J has been added to include the Expanded Surveillance Visits.
12. Section C.3.R has been added to clarify the B.2.2 Table.
13. Section D, Reports, the Authority Section has been updated.
14. Section G.1.4, Contractor Point of Contact, has been revised to include the Contractor's information.

15. Section, G.3, Payments, has been revised to include updated invoicing and payment language and to incorporate the Contractor's information.
16. Section, G.3.1.B, Billing and Payment, has been revised to include Expanded Surveillance Visits.
17. Section H, Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.
18. Section H.43, Attachments, has been deleted since it is part of the RFP and does not need to be replicated.
19. Section H.63, Redacted Documentation, has been deleted since it is part of the RFP and does not need to be replicated.
20. Section H.66, Note to Contractor, has been deleted since it is part of the RFP and does not need to be replicated.
21. Section H.68, Disclosure of Restricted Employment, the header title has been changed.
22. Section I, Supplemental Terms and Conditions, has been revised to delete solicitation language under the header title for Section I.
23. Section I.3, Historically Underutilized Business (HUB) Participation, has been revised to reflect contract language rather than solicitation language.
24. Section I.13.11, FBI CJIS Security Addendum, has been revised to include contract rather than solicitation language.
25. Exhibit J.5, Verifications, has been deleted as this document is on file with the Department.
26. Exhibit J.6, Application for Texas Identification Number, has been deleted as this document is on file with the Department.
27. Exhibit J.7, Historically Underutilized Business Subcontracting Plan, is hereby incorporated into this Contract as completed by the Contractor.
28. Exhibit J.8, Direct Deposit Form, has been deleted as this document is on file with the Department.
29. Exhibit J.9, W-9 Form, has been deleted as this document is on file with the Department.
30. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by the Department has been deleted for purposes of this list of revisions; however, this Section, as completed by the Contractor, is part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.

31. Section L and M of the solicitation as issued by the Department have been deleted for purposes of this list of revisions; however, these Sections are part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.
32. Changes have been made throughout the document to correct references to the solicitation and Respondent and replace them as appropriate (e.g., "Respondent" has been replaced with "Contractor" and the article "the" has been placed before the words "Department" and "Contractor").
33. Minor conforming and clarifications changes have been made throughout the document.
34. The Table of Contents has been updated to reflect the negotiated changes.

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## SECTION A – DEFINITIONS

The following terms used in this Contract will, unless the context indicates otherwise, have the meanings set forth below:

“Accreditation Plan” means the overall proposal to certify compliance to standards for all laboratories and technical disciplines, including schedules of inspections, mid-cycle assessment plan, reviews, maintenance, and associated fees.

“Assessment” means on-site inspection or audit of laboratories to ISO and FBI Quality Assurance Standards.

“Authorized Representative” means the person designated in writing to act for and on behalf of a party to this Contract; whose designation has been furnished to the other party as described in Section G.1.

“BAFO” means Best and Final Offer.

“Base Period” means the Date of Award through November 30, 2020.

“Breath Alcohol Calibration” means the calibration of breath alcohol measuring instruments for use by customers administering evidential, quantitative breath alcohol tests for criminal justice purposes where a sanction or penalty is involved and/or the certification of reference material for the calibration of breath alcohol measuring instruments.

“Biology” means the identification, comparison or characterization of genetic information from biological materials (includes categories of testing such as DNA and body fluid identification). Screening and stain identification are considered a fundamental part of the discipline.

“Business Days” means Monday through Friday except for federal, state and legal holidays observed by the State of Texas.

“Business Hours” means 8:00 a.m. to 5:00 p.m., local time per location.

“Contract” means this written agreement entered into by the Department and ANSI-ASQ National Accreditation Board (ANAB) dba ASCLD/LAB.

“Contract Administrator” means the representative of the Department’s Procurement & Contract Services Bureau responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications of this Contract as referenced in Section G.1.2.

“Contract Monitor” means the employee within the Department responsible for the monitoring of this Contract as referenced in Section G.1.3.

“Contract Term” means the duration of this Contract as specified in Section F.1.

“Contractor” means ANSI-ASQ National Accreditation Board (ANAB) dba ASCLD/LAB.

“CPA” means the Texas Comptroller of Public Accounts.

"Date of Award" means the date this Contract is fully executed.

"Days" means calendar days unless otherwise specified.

"Department" means the Texas Department of Public Safety.

"Department Policies" means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission (PSC) and the Department, applicable to providing the deliverables/services specified under this Contract.

"Digital Evidence" means the analysis of evidence stored or transmitted in binary form.

"Discipline" means a major area of testing that involves forensic examination/analysis to reach conclusions concerning the nature of and/or associations of an item(s) for use in a criminal proceeding.

"Documentation" means all text material to be delivered by the Contractor.

"DNA" means Deoxyribonucleic Acid.

"Drug Chemistry" means the analysis of controlled drug substances either in pure, legal or illicit dosage forms. Categories of testing include Controlled Substances, Quantitative Analysis and General Chemical Testing.

"Entity or Entities" means an individual, collection of individuals, or an organization.

"Event of Default" means any of the events or circumstances described in Section E.1.F.

"Expanded Surveillance Visit" means an on-site visit occurring one (1) time, within 24 months of initial assessment, where conformance to accreditation requirements is reviewed for Biology, Digital & Multimedia Evidence, Drug Chemistry, Firearms/Toolmarks, Latent Prints, Questioned Documents, Toxicology, Trace Evidence, and Breath Alcohol Calibration disciplines under the scope of accreditation.

"FBI" means the Federal Bureau of Investigation.

"Firearms/Toolmarks" means the examination and/or comparison of evidence resulting from discharge and/or use of firearms; analysis and/or comparison of evidence resulting from discharge and/or use of firearms; analysis and/or comparison of marks made by various tools.

"Fiscal Year" means any of the one (1) year periods beginning September 1<sup>st</sup> and ending August 31<sup>st</sup>, which periods are used for annual budgetary purposes by the State of Texas.

"Historically Underutilized Business (HUB) means a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American, an American woman, or a Service Related Disabled Veteran, (2) is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC § 20.23, and has its principal place of business in Texas, and (3) has an owner residing in Texas who has a proportionate interest in the business and who actively participates in the control, operations and management of the entity's affairs. For

further explanation, see the Texas Comptroller of Public Accounts HUB rule definitions at 34 TAC § 20.11.

"HUB Subcontracting Plan (HSP)" means the plan required by the Texas Government Code, Chapter 2161.

"IEC" means International Electrotechnical Commission.

"Invoice" means the Contractor's monthly billing for services rendered.

"ISO" means International Organization for Standardization.

"Latent Prints" means the development and/or comparison of latent print impressions.

"Legislative Budget Board (LBB)" means a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

"LES" means the Law Enforcement Support Division.

"Mid-Cycle Assessment" means an assessment for FBI DNA QAS Audit occurring one (1) time, mid-way through the accreditation cycle between 18 months and 30 months after the initial assessment.

"Multimedia Evidence" means the analysis of analog or digital media, including but not limited to, film, tape, magnetic and optical media, and/or information contained therein.

"Payment(s)" means the amount(s) agreed to be paid by the Department to the Contractor for services rendered under this Contract.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

"Point of Contact (POC)" means the appointee, designee, or alternate designee as assigned by the Contractor as referred in Section G 1.4.

"Proposal" means the Contractor's response to RFP 405-16-P001267.

"Questioned Documents" means the examination of printed, typed or written material for the purpose of identifying the source, determining alterations or other means of gaining information about the item or the circumstances surrounding its production. Includes, but is not limited to the examination of impressions and images made by stamps and devices such as typewriters, printers and copiers and the analysis and comparison of inks and indented writing.

"Services" means the furnishing of labor, time, or effort by the Contractor, which may or may not involve the delivery of a specific end product other than reports.

"Toxicology" means the analysis of biological materials for the presence of alcohol, drugs and other substances.

"Trace Evidence" means the physical and/or chemical examination/analysis of materials, frequently found in limited or trace quantities. Many categories of testing, which are not specifically listed under other disciplines, may be included in the trace evidence discipline.

## SECTION B - SERVICES AND PRICES/COSTS

### B.1 SERVICE AND PRICING REQUIREMENTS

#### B.1.1 Services Being Acquired

The Department and ANSI-ASQ National Accreditation Board (ANAB) dba ASCLD/LAB (Contractor) enter into this Contract for the accreditation of the Department's laboratories.

#### B.1.2 Pricing Instructions

This Contract provides services for the accreditation of the Department's laboratories across the state, as identified in Exhibit J.1 and Exhibit J.2, for four (4) years. These prices are firm fixed price applicable to the services requested and received by the Department in compliance with this Contract. The Pricing Schedule in Section B.2 incorporates the established pricing. The Contractor is solely responsible for all costs associated with the performance of accreditation services and necessary equipment, staffing and support services to afford the services identified. These prices are inclusive of all costs, fees, travel expenses, licenses and expenses and represent the Contractor's sole compensation under this Contract.

- A. The pricing for each component of the accreditation services are described in Section B.2, Pricing Schedule.
  - 1. Itemized Cost
  - 2. Daily Assessor Rates per Discipline
- B. The Contractor shall be responsible for all increases in costs due to the Contractor's failure to clearly identify and include all costs associated with this Contract in the attached Price Schedules. Such additional costs will be solely at the expense of the Contractor.

#### B.1.3 Modification for Additional Services

Requests to add accreditation assessments for additional Disciplines added at any of the Department's laboratories after the initial accreditation assessment may be issued by the Department throughout this Contract term by issuing an approved Change Order Request Form as incorporated in Exhibit J.3 and stated in Section C.4, of this Contract. The Department may at its sole discretion issue Change Order Request for additional services.

**A. Labor Pricing Schedule**

1. The Contractor provided Firm Fixed Daily Assessor Rates for additional assessment(s)/inspection(s) a) to add or restore Discipline(s) at any of the Department's laboratories; or b) for significant corrective actions that require secondary/repeat inspections to the laboratory that were not anticipated by the Parties. Services provided under a) and b) above, will include, but not be limited to, related services within the scope of this Contract.
2. The Contractor provided rates for all necessary levels of staff to perform the services as required by this Contract in the Pricing Schedule located in Section B.2.2 of this Contract.

The Contractor provided a complete and detailed listing of positions by title and description of duties, and fixed rates for services performed, 365 days a year, 24 hours a day seven (7) days a week excluding State and Federal holidays. The State's holiday schedule is available at <http://www.hr.sao.state.tx.us/Compensation/holidays.html>

3. Labor: The Department will not pay for normal phone and internet-based communications between the Contractor and the Department.

**B.1.4 Financial Rating**

- A. The Contractor shall provide information required by Section G.3.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.

## B.2 PRICING SCHEDULE

## B.2.1 Price Table 1

<b>ITEMIZED COST</b>		
<b>Service Term: Date of Award through November 30, 2020</b>		
<b>Assessment and Fees</b>		<b>Cost</b>
Initial Assessment/Inspection for Forensic Testing Laboratories per Section C.3.B		\$156,700.00*
Initial Assessment/Inspection for Breath Alcohol Calibration Laboratories per Section C.3.C		\$31,000.00*
Mid-Cycle Assessment - FBI DNA QAS Audit for 9 DNA Laboratories and 1 CODIS Laboratory per Section C.3.J		\$43,200.00*
<b>Year 1 – December 1, 2016 through November 30, 2017</b>		<b>Cost</b>
Annual Accreditation Fee Year 1		\$40,000.00*
<b>Year 2 – December 1, 2017 through November 30, 2018</b>		<b>Cost</b>
Annual Accreditation Fee Year 2		\$40,000.00*
<b>Year 3 – December 1, 2018 through November 30, 2019*</b>		<b>Cost</b>
Annual Accreditation Fee Year 3		\$40,000.00*
<b>Year 4 – December 1, 2019 through November 30, 2020*</b>		<b>Cost</b>
Annual Accreditation Fee Year 4		\$40,000.00*
<b>Expanded Surveillance Visits</b>		
Expanded Surveillance Visit (Testing)	Expanded Surveillance Visit at all TXDPS Testing Laboratories during or before August 2018 (can be concurrent with Mid-Cycle Assessment – FBI DNA QAS Audit)	\$49,000.00*
Expanded Surveillance Visit (Breath Alcohol Calibration)	Expanded Surveillance Visit at all TXDPS Breath Alcohol Calibration Laboratories during or before August 2019	\$31,000.00*
<b>Firm Fixed Total of Items Designated Above with an (*)</b>		<b>\$470,900.00</b>

## B.2.2 Price Table 2

<b>Daily Assessor Rates per Discipline</b>		
<b>Discipline</b>	<b>Daily Rate Per Assessor</b>	<b>Number of Department Examiners Assessed per One (1) Assessor</b>
Breath Alcohol Calibration	\$645.00	5
Biology	\$645.00	7
Digital & Multimedia Evidence	\$645.00	8
Drug Chemistry	\$645.00	9
Firearms/Toolmarks	\$645.00	7
Latent Prints	\$645.00	8
Questioned Documents	\$645.00	10
Toxicology	\$645.00	8
Trace Evidence	\$645.00	6
<p><b>The Department will utilize these daily rates to add a Discipline to a current lab location per Exhibit J.1 and Exhibit J.2 and/or for significant corrective actions that require secondary/repeat inspections to the laboratory.</b></p>		

## SECTION C - STATEMENT OF WORK

### C.1 INTRODUCTION AND BACKGROUND

The Department provides expert forensic laboratory services to law enforcement agencies within Texas. The Department provides standard areas of analysis including Biology, Digital & Multimedia Evidence, Drug Chemistry, Firearms/Toolmarks, Latent Prints, Questioned Documents, Toxicology, Trace Evidence, and Breath Alcohol Calibration. The Department crime laboratories have been continuously accredited since 1986 through the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). Accreditation is part of the laboratory's quality assurance program which includes proficiency testing, continuing education, customer liaison, and other programs to help the laboratory provide more effective overall services.

### C.2 SCOPE

The Department is contracting with an accrediting body recognized by the Texas Forensic Science Commission (Recognized Accrediting Agencies Chart) to accredit Department labs located in Abilene, Amarillo, Austin, CODIS, Corpus Christi, El Paso, Garland, Houston, Laredo, Lubbock, Midland, Tyler, Waco, and Weslaco. The Contractor shall provide accreditation assessment to ISO 17025 and all of the following forensic Disciplines: Biology, Digital & Multimedia Evidence, Drug Chemistry, Firearms/Toolmarks, Latent Prints, Questioned Documents, Toxicology, Trace Evidence and Breath Alcohol Calibration.

### C.3 GENERAL REQUIREMENTS

- A. The Contractor shall provide accreditation assessments using the standards identified below, as applicable, in all of the following forensic Disciplines: Biology, Digital & Multimedia Evidence, Drug Chemistry, Firearms/Toolmarks, Latent Prints, Questioned Documents, Toxicology, Trace Evidence, and Breath Alcohol Calibration:
  - i. ISO/IEC 17025:2005, General requirements for the competence of testing and calibration laboratories
  - ii. The FBI Quality Assurance Standards Audit for Forensic DNA Testing Laboratories, 2011
  - iii. The FBI Quality Assurance Standards Audit for DNA Databasing Laboratories, 2011
  - iv. The Contractor's supplemental requirements and/or policies, if any, for the accreditation of forensic testing laboratories and breath alcohol calibration laboratories.

- B. The Contractor shall perform the initial assessment/inspection of forensic testing laboratory sites within a sufficient timeframe, but no later than September 1, 2016. The initial assessment/inspection must be completed within ten (10) business days, from start to finish. The initial accreditation assessment/inspection will include an evaluation of each forensic testing discipline currently recognized at the respective laboratory sites (except breath alcohol calibration laboratories as identified in Section C.3.C below). A minimum of at least two (2) forensic case files per scientist per discipline of testing will be reviewed as part of the assessment/inspection.

**See Exhibit J.1 for the locations of the Department's laboratory sites listed with disciplines, categories of testing, and number of proficiency tested scientists per discipline.**

- C. The Contractor shall perform the initial assessment/inspection of breath alcohol calibration laboratory sites within a sufficient timeframe, but no later than September 1, 2017. The initial assessment/inspection for the breath alcohol calibration must be completed within ten (10) business days, from start to finish.

**See Exhibit J.2 for the locations of the Department's breath alcohol calibration laboratory sites listed with categories of testing, and number of proficiency tested scientists.**

- D. The draft Assessment Plan submitted with the Contractor's Proposal will be converted into a finalized Assessment Plan within thirty (30) calendar days of the date of award of this Contract. The finalized Assessment Plan will be acceptable to the Department and mutually agreed upon before work begins. If corrections or adjustments are required, the Contractor shall have five (5) business days to resubmit the Assessment Plan for Department review and mutual agreement. The finalized Assessment Plan will, at a minimum, identify the specific steps to be taken during the initial assessment, inspection or expanded surveillance, including but not limited to, the number of assessors per location, the duration of the assessment, inspection or expanded surveillance, the reports that will be provided to the Department identifying any deficiencies, the process for correcting any deficiencies identified, travel plans between the sites listed in Exhibits J.1 and J.2, and any additional requirements of the laboratory to complete the inspection.
- E. The draft Accreditation Plan submitted with the Contractor's Proposal will be converted to a finalized Accreditation Plan for the four year accreditation cycle within thirty (30) calendar days after the date of award of this Contract. The finalized Accreditation Plan will be acceptable to the Department and mutually agreed upon before work begins. If corrections or adjustments are required, the Contractor shall have five (5) business days to resubmit the Accreditation Plan for Department review and mutual agreement. The finalized Accreditation Plan will address the forensic testing laboratories and the breath alcohol calibration laboratories and, at a minimum, will outline the yearly assessments, inspections or expanded surveillances, including but not limited to, the number of assessors per location, the duration of the assessments, inspections or expanded surveillances the reports that will be provided to the Department identifying any deficiencies, the process for correcting any deficiencies identified, and the process for incorporating into the Accreditation Plan any Disciplines that were added after the initial assessment, inspection or expanded surveillance.

The Department's current accreditation for the forensic testing laboratories is effective through November 30, 2016. The Department's current accreditation for the breath alcohol calibration laboratories is effective through November 30, 2017.

The finalized Accreditation Plan will include an accreditation date of forensic testing laboratories and breath alcohol calibration laboratories that will expire on the same date on November 30, 2020, so that no lapse or duplication of the Department's existing accreditations occur.

- F. The itemized cost of the accreditation fees in Section B.2.1 will include application fees, accreditation fees, and inspection/assessment fees, if any.
- G. The Contractor shall cover all transportation costs to bring the Contractor's assessors to and from Texas, and for all lodging and meals while in Texas for the assessment, inspection or expanded surveillance.
- H. The Contractor shall perform a Mid-Cycle Assessment to FBI DNA Quality Assurance Standards (QAS) Audit for testing/data basing at all Department DNA laboratories between 18 months and 30 months. This Mid-Cycle Assessment must be completed within ten (10) business days, from start to finish.
- I. The Contractor shall perform an Expanded Surveillance Visit at all Department Testing laboratories within 24 months of initial assessment and this visit can be concurrent with the scheduled Mid-Cycle Assessment to FBI DNA QAS Audit.
- J. The Contractor shall perform an Expanded Surveillance Visit at all Department Breath Alcohol Calibration Laboratories within 24 months of initial assessment.
- K. The Contractor shall provide a list of Assessors sufficient to evaluate each discipline of testing, including their qualifications within thirty (30) business days prior to any planned assessment, inspection or expanded surveillance.
- L. Each Assessor shall have prior paid work experience examining or closely supervising the categories to be assessed.
- M. Each Assessor shall be subject to a Department background check, including fingerprints.
- N. The Department reserves the right to reject or disqualify Assessors on the basis of inadequate experience, conflict of interests, or background.
- O. The Contractor shall provide a written inspection report within thirty (30) calendar days of each assessment, inspection, or expanded surveillance visit as a requirement of the services rendered. The report will either (i) indicate that there were no deficiencies and the Contractor shall issue accreditation or (ii) it will identify any deficiencies discovered. Corrective action(s) to any deficiencies will be mutually agreed upon by the Department and the Contractor. The Contractor shall submit an updated final report within five (5) business days after the Department has taken the agreed upon corrective action(s) so that the Contractor may issue accreditation.

- P. The Department recognizes that additional on-site inspections may be required to evaluate for significant corrective actions that require secondary/repeat inspections to the laboratory that were not anticipated by the Parties, in accordance with Section C.4. The costs of any additional assessments will be per "Daily Assessor Rates per Discipline" in Section B.2.2.
- Q. The Department reserves the right to add Disciplines to current locations documented in Exhibit J.1 and Exhibit J.2 at the pricing from "Daily Assessor Rates per Discipline" located in Section B.2.2.
- R. The "Number of Department Examiners Assessed per One (1) Assessor" located in Section B.2.2 will be used to determine the number of the Contractor's Assessors required to assess the Department's Examiners. One (1) Contractor Assessor shall assess the correlating number of the Department's Examiners per Discipline.
- S. The Department reserves the right to cancel this Contract at the end of any accreditation year per Section H.4 by notifying the Contractor with thirty (30) calendar days' notice.

#### **C.4 FUTURE SERVICE MODIFICATIONS**

Additional Disciplines at any of the Department's laboratories or significant corrective actions that require secondary/repeat inspections as described in this Contract may be added at the Department's sole discretion via a contract modification.

Addition of such additional Disciplines will be governed by the issuance of task-specific Change Orders (Exhibit J.3) utilizing the Daily Assessor Rate (fixed rate) in Section B.2.2. These Change Orders will be officiated by signatures of the Contractor, the Department Contract Monitor (CM), and the TXDPS Procurement & Contract Services (P&CS) Contract Administrator, and will become part of this Contract. The Department CM will initiate this process by providing the Contractor with a draft Change Order Request for update and negotiations. The Contractor shall estimate the number of days the assessment will require within the draft Change Order Request. Once the Department CM and the Contractor have determined and agreed to all deliverables and updated the draft Change Order accordingly, the draft Change Order Request will be supplied to the Department Contract Administrator for scope and pricing verification.

The Contractor shall:

- A. Complete additional assessment, inspection or expanded surveillance and accreditation at the specified Department laboratory described in the Change Order Request incorporated through the contract modification as issued by the Department.
  - 1. The Change Order Request Form is attached to this Contract (Exhibit J.3). The Department CM and the Contractor shall complete applicable deliverable language, provide pertinent project information and background necessary to explain the project tasks and scope, and update all Change Order tables as the project progresses.

2. Upon approval and signatures from the Contractor, the Change Order Request will be forwarded to the Contract Monitor, who will secure approval and issuance from the Contract Administrator. The Contract Administrator will not approve and issue the Change Order until such time as all appropriate Department signatories have reviewed and approved the Change Order request. No services will be rendered until the Contractor receives a fully executed Contract Modification and Change Order Request Form from the Contract Administrator.
  3. Ensure all services are within scope of this Contract and have been requested at the sole discretion of the Department.
  4. Abide by the terms and conditions under this Contract and will not add any contractual terms and conditions through the Change Order Request process.
  5. Any changes to the Change Order deliverable dates will be reviewed and approved by the Department CM before being placed in effect. Once changes are approved, the affected Change Order governance table(s) will be updated and provided by the Contractor to the Department Contract Monitor.
  6. The request for a revised schedule will include the impact on: related and / or dependent tasks, overall project, resolution methodology for correcting deficiencies, and change to specific and overall timeframes.
- B. The Contractor shall complete the assessment and accreditation of the referenced Department laboratory, per the Contract Modification, on the dates identified in the Change Order Request (Table #1 of each Change Order Request). If delays occur, the Contractor shall follow the stated requirements outlined in Section C.5, of this Contract.

#### **C.5 CHANGE MANAGEMENT FOR CHANGE ORDER REQUEST(S)**

- A. Any changes to the Change Order Request will be reviewed and approved by the Contract Monitor before being placed into effect.
- B. The request for a revised schedule will include the impact on: related and / or dependent tasks, overall project, resolution methodology for correcting deficiencies, and change to specific and overall timeframes.
- C. Changes to deliverable delivery dates will be documented through a Contract Modification and will be provided from the Department's Contract Monitor to the Contractor's POC and the Department's Contract Administrator.

Any administrative or substantive requirement changes to this Contract will be approved by both parties in writing and documented by a Contract Modification. The Department's Contract Monitor shall initiate the change process by notifying the other party in writing, email communication is acceptable, and providing a two party concurrence to the Department's Contract Administrator.

## SECTION D – REPORTS

### D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM CONTRACTOR

The Contractor shall submit the reports identified below during the course of this Contract. These reports may be revised or additional reports may be required at the Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Other	Upon final acceptance of the accreditation to Contract Monitor	Invoices for goods and services provisioned, tested and accepted	Contract, Section G.2 and G.3
Monthly	5 <sup>th</sup> business day to Contract Administrator and HUB Liaison	HUB Subcontracting Plan (HSP) Prime Vendor Progress Assessment Report	Contract, Exhibit J.6
Other	Each instance to Contract Monitor and Contract Administrator	Copy of each subcontract	Contract, Section I.2.D
Other	Within ten (10) calendar days of receipt of audit report to Contract Monitor	Corrective Action for Items of Non-Compliance identified	Contract, Section E.1.F
Other	Prior to Execution of Contract and upon renewal or replacement to Contract Administrator	Insurance Requirements	Contract, Section I.1
Other	Within thirty (30) calendar days of Contract Award to Contract Monitor	Assessment Plan	Contract, Section C.3.D
Other	Within thirty (30) calendar days of Contract Award to Contract Monitor	Accreditation Plan	Contract, Section C.3.E
Other	Within thirty (30) business days of onsite inspection.	List of Assessors and Qualifications	Contract, Section C.3.K
Other	Within thirty (30) calendar days of completed inspection	Written Inspection Report	Contract, Section C.3.O
Annual	Prior to Execution of Contract and again within one-hundred twenty (120) calendar days after the end of the Contractor's fiscal year	Financial Rating	Contract, Section B.1.4, G.3.8

## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 INSPECTION OF SERVICES

- A. Acceptance criteria for all deliverables under this Contract may be found in Section C.
- B. The Department 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. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall 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, the Department shall require the 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. The Department shall, 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 the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.
- E. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3 of this Contract.
- F. If any services are non-compliant with this Contract's requirements, the Contractor will be notified describing specific areas of non-compliance. The Contractor shall have a ten (10) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, 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 the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

### E.2 INSPECTION BY STATE EMPLOYEES

- A. The Contractor shall 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 as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this

Contract's performance and for a period of four (4) years after the termination of this Contract.

- B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/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, as well as any other persons designated by the Department including Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

### **E.3 MONITORING CRITERIA**

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and the Department's Policies.
- B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by the Department. Such monitoring by the Department will not relieve the Contractor of any of its obligations under this Contract.
- D. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1, Inspection of Services.

## **SECTION F - DELIVERIES OR PERFORMANCE PERIOD**

### **F.1 CONTRACT TERM**

This Contract will consist of a Base Period from date of award through November 30, 2020

This Contract may also be extended as per Section H.16, Option to Extend Services.

The terms, conditions, and rates for all extensions will remain as stated in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

**SECTION G - CONTRACT ADMINISTRATION DATA****G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR****G.1.1 Authorized Representative**

- A. In reference to the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative will be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. The Director is hereby designated as the Department's Authorized Representative. The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. Any party may designate any person as its Authorized Representative, at any time, by delivering to the other party a written designation signed, if on behalf of Contractor by its President or any Vice President, or if on behalf of the Department by the Director. Such designations will remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.
- D. The Department's Authorized Representative or his designated Representative is the only person authorized to make or approve changes in any requirements of this Contract, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event the Contractor makes any change at the direction of any person other than the Director or his designated Representative, the change will be considered 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 thereof.

**G.1.2 Contract Administrator**

- A. The Contract Administrator for administration of this Contract is John A. Kirchner, CTPM, CTCM.
- B. The telephone number for the Contract Administrator is (512) 424-7059.
- C. The e-mail address is [John.Kirchner@dps.texas.gov](mailto:John.Kirchner@dps.texas.gov)

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

**G.1.3 Contract Monitor**

- A. The Contract Monitor for this Contract is Forrest Davis.
- B. The telephone number for the Contract Monitor is (512) 424-2799.

- C. The e-mail address is Forrest.Davis@dps.texas.gov.
- D. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.
- E. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.
- F. If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

#### **G.1.4 Contractor Point of Contact**

- A. The Contractor Point of Contact for this Contract is Pamela L. Bordner
- B. The telephone number for the Contractor Point of Contact is (919) 773-2600
- C. The e-mail address is pbordner@ascl-d-lab.org

The Contractor shall provide a Point of Contact for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department. The Contractor Point of Contact shall report to the Department Contract Monitor or a designee. The Contractor Point of Contact shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Point of Contact or a designated representative shall meet with the Contract Monitor to discuss problems as they occur. The Contractor Point of Contact or designated representative shall respond within three (3) business days after notification of the existence of a problem.

#### **G.2 INVOICE REQUIREMENTS**

The Department shall pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided and the attendant charge. Itemized invoices will clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked, and the date range of work performance for this associated charge.

- A. The Contractor's Invoice will include the following:
  - 1. This Contract number;
  - 2. Remittance Address; and
  - 3. Prompt Payment Discount (the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) calendar days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).
- B. An invoice copy will be sent electronically to the Contract Monitor and apinvoices@dps.texas.gov. An original, hard-copy invoice, if required by the Contractor, will be submitted to the office designated below:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773**

**The Department will not pay any accrued interest charges for late payment if the invoice was not mailed to the appropriate address identified herein.**

**G.3 PAYMENTS**

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. If the Contractor elects to be set up for Direct Deposit Payment, the Contractor Direct Deposit authorization form may be obtained from the Department Contract Administrator. Upon the effective date of this Contract, the Contractor shall submit a completed authorization form.
- B. Regardless as to whether Direct Deposit is chosen, the Contractor shall submit a completed Contractor Direct Deposit/Advance Payment Notification Authorization (Exhibit J.2) and Substitute W-9 Form (Exhibit J.3) to the following address:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773  
Attention: Mary Hamilton  
Reference: Contractor 405-16-P007108**

**Notes: Contact John A. Kirchner when completed (512-424-7059 or [John.Kirchner@dps.texas.gov](mailto:John.Kirchner@dps.texas.gov))**

- C. If the Contractor has previously submitted a completed Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted. However, the Contractor is required to provide its eleven (11) digit Texas Identification Number (TINS) previously provided to the Contractor by the Texas Comptroller of Public Accounts.

TINS: 19430705780

**G.3.1 Billing and Payment**

- A. The Texas Government Code, Chapter 2251 (the "Prompt Payment Act") will govern payment and accrual of interest on any overdue payments.
- B. Notwithstanding anything else to the contrary in this Contract, the Department will not make any payments of any amount to the Contractor or any other entity or person, and the Contractor will not submit any invoices, until the Contractor has received from the Department a written Final Acceptance Document (Exhibit J.4) signed by the Department's Contract Monitor specifically stating that the Department accepts the work and the Contractor is authorized to submit an

invoice. A written Final Acceptance Document will be issued upon the delivery of the written notice of accreditation for the initial accreditation for all Department forensic testing laboratories; for the initial accreditation for breath alcohol calibration laboratories; for each annual accreditation; the Mid-Cycle DNA QAS Assessment; Expanded Surveillance Visits, and for each addition of a new Discipline after the initial accreditation.

- C. If the Department, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by the Contractor, the Department shall place a hold on the disputed items and pay the remaining amount of the invoice. The Department shall timely notify the Contractor of the dispute and request clarification and/or remedial action.
- D. If the dispute is resolved in the Contractor's favor, the Department shall pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in the Department's favor, the Contractor shall resubmit an invoice reflecting all corrections.

### **G.3.2 Payment Adjustment**

- A. The Department may elect to deduct from the Contractor Payment as specified in Section G.3.4, Deductions for Unacceptable Compliance and Section G.3.5, Withholding of Payment, any amount determined to be due as specified in Section E.1.E.
- B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

### **G.3.3 Late Payment**

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof will accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision will not excuse failure by the Department to make payment in strict accordance with this Contract.

### **G.3.4 Deductions for Unacceptable Compliance**

- A. The Contractor's failure to meet the listed specifications of this Contract will result in a deduction to the Contractor Payment.
- B. Non-compliance could result in the Department purchasing or replacing services or deliverables and deducting the cost from the Contractor Payment.

### **G.3.5 Withholding of Payment**

- A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected.
  - 1. Failure to submit reports required by Section D; Reports Required from Contractor.
  - 2. Failure to respond to audit reports; and
  - 3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within ten (10) calendar days upon receipt of written notification.
- B. The Department will not pay interest to the Contractor for monies so withheld.
- C. The Contractor Payment withheld will be released upon the Department's satisfaction that compliance has been achieved.
- D. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property will be withheld from the final Payment.
- E. With the exception of disputed issues, such withholding of final Payment by the Department will not exceed one-hundred twenty (120) calendar days from the date of this Contract's termination.

#### **G.3.6 Payment of Debt Owed to the State of Texas**

As required by Texas Government Code, Section 2252.903, payments due under this Contract will be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. The Contractor shall comply with rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

#### **G.3.7 Right to Offset**

In the event the Department determines that the Contractor owes money to the Department under any contract or purchase order, the Department, upon providing the Contractor with written notice of its intent to offset, will have the right to withhold monies due to the Contractor with respect to this Contract or purchase order or with respect to any other contract or purchase order with the Department and apply such monies to the money due to the Department.

#### **G.3.8 Annual Financial Disclosure Reports**

- A. The Contractor shall submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.4 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.

- C. Notwithstanding anything else in this Section G.3.8 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including but not limited to, the audits described in Section H of this Contract.

## SECTION H – TERMS AND CONDITIONS

This Contract includes the following Standard Terms and Conditions. Subcontractors shall also comply with these provisions.

### H.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS

- A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Department's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.
- B. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/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. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.
- C. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.
- D. The Department may, upon thirty (30) calendar days written notice to the Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect if funding or appropriations for this Contract are reduced by law, the statutory amount of compensation authorized for the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage.

### H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY

- A. The 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 the Department, and then only in accordance with explicit written instructions from the Department.
- B. The Contractor will not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract

without the express prior written consent of the Department. The Department is not authorized to provide endorsements.

- C. Notwithstanding the foregoing, the Contractor may make any disclosure required by law or regulation without the approval of the Department.

### **H.3 FURTHER OPPORTUNITY TO CURE**

- A. If an Event of Default of the type specified in Section H.4.1 occurs and if the Contractor reasonably believes that such Event of Default cannot be cured within the ten (10) business days allowed in Section E.1.F but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the ten (10) business day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. The Department shall promptly review the Contractor's plan for curing an Event of Default and at its discretion, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The Department's decision will be communicated in writing to the Contractor.
- D. The Department will not exercise its remedies thereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. The ten (10) calendar day time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

### **H.4 TERMINATION**

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

#### **H.4.1 Termination by Default**

The Department shall notify the Contractor in writing of any failure or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). The Department's notification will demand that the failure or default be remedied within ten (10) calendar days. The Department shall have the right to cancel this Contract upon ten (10) calendar days from written notice if the Contractor fails to remedy such failure or default within the ten (10) calendar day period.

#### **H.4.2 Termination for Unavailability of Funds**

This Contract may be terminated as provided in Section H.1 herein entitled "Availability of Funds for Next Fiscal Year and Legislative Actions." The Parties understand and agree that the obligations of the Department under this Contract are contingent upon the availability of funds to meet the Department's liabilities hereunder. The Department may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States, if these funds become unavailable to the Department.

#### **H.4.3 Termination for Convenience**

This Contract may be terminated, without penalty, by the Department, without cause by giving thirty (30) calendar days written notice of such termination to the Contractor.

#### **H.4.4 Termination by Mutual Agreement**

This Contract may be terminated upon mutual written agreement.

#### **H.4.5 Termination for Cause**

This Contract may be terminated by the Department if the Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in Section H.4.1 herein entitled "Termination by Default." The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

#### **H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Vendor List**

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

#### **H.4.7 General Termination Provisions**

- A. The termination of this Contract, under any circumstances whatsoever, will not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department will not limit any other right or remedy available to the Department at law or in equity.
- B. This Contract does not grant the Contractor a franchise or any other vested property right. The Department reserves the right, in its sole discretion, to solicit or contract with other contractors for similar services and deliverables under this Contract at any time. Except as expressly authorized by the Department under this Contract during the term of this Contract, the Contractor's provision of self-service or other services and deliverables under this Contract is not exclusive. In all events, no minimum number of applications is guaranteed. In all events, no minimum amount of compensation is guaranteed.
- C. The Department will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of the Department whether such claims of the Contractor are for compensation of anticipated profits, unabsorbed

overhead, interest on borrowing, or for any other reason in the event of termination hereunder.

- D. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which has been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.
- E. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department'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. The 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 the Department.
- F. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.
- G. The Department 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 the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department will determine the period of suspension based on the seriousness of the default.
- H. The Department and the State of Texas will not be liable to the 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, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

#### **H.5 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:
  - i. The dispute resolution process provided for in Texas Government Code, Chapter 2260, will be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.

- ii. The Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business will be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.
  - iii. The Contractor shall 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.
  - iv. Said notice will specifically state that the provisions of the Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under this Contract.
  - v. Compliance by the Contractor with the Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.
  - vi. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the parties are unable to resolve a dispute under this subparagraph (A).
  - vii. Compliance with the contested case process provided in the Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
  - viii. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract will be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Contractor shall comply with the Department administrative rules published in the Texas Administrative Code, Title 37, Public Safety and Corrections, Part I, Texas Department of Public Safety, Chapter 34, Negotiation and Mediation of Certain Contract Disputes.
- C. The Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, and shall conform to Department directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the Department at all times during the course of the dispute resolution process. The Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

## H.6 INDEMNIFICATION

### H.6.1 Acts or Omissions

**THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, 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, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE 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 WILL BE COORDINATED BY**

THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### H.6.2 Infringements

- A. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM 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 IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF THE CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- B. THE CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED; (II) ANY MODIFICATIONS MADE TO THE PRODUCT WITHOUT THE CONTRACTOR'S WRITTEN APPROVAL; (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE DEPARTMENT'S SPECIFIC INSTRUCTIONS; (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE DEPARTMENT; OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE DEPARTMENT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.
- C. IF THE CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE DEPARTMENT PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE DEPARTMENT, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE: (I) PROCURE FOR THE DEPARTMENT 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 THE DEPARTMENT'S USE IS NON-INFRINGEMENT.

### **H.6.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- A. THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES UNDER THIS CONTRACT. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.**
- B. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

### **H.7 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. The Department does not waive any privileges, rights, defenses, or immunities available to the Department by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

### **H.8 INDEPENDENT CONTRACTOR**

The Contractor and its employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. The Contractor and its employees, representatives, agents and any subcontractors will not be employees of the Department. Should the Contractor subcontract any of the services provided under this Contract, the Contractor expressly understands and acknowledges that in entering into such subcontracts, the Department is in no manner liable to any subcontractor(s) of the Contractor.

In no event will this provision relieve the Contractor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

#### **H.9 APPLICABLE LAW; VENUE**

This Contract will be governed by and construed in accordance with the substantive and procedural 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.

#### **H.10 ASSIGNMENT**

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

#### **H.11 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS**

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

#### **H.12 APPROVAL OF CONTRACT**

This Contract is subject to written approval of the Department Director or the Director's designated representative and will not be binding until so approved.

#### **H.13 NON-DISCRIMINATION**

- A. In the performance of this Contract, the 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. The 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. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.
- C. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/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. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.
- E. The Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

#### **H.14 AMENDMENTS**

Except as provided in Sections H.15 and H.16 of this Contract, this Contract may be amended only upon written agreement between the Department and the Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas will be void ab initio. The Department reserves the right to increase or decrease funding for this Contract via unilateral Contract modification.

#### **H.15 OPTION TO EXTEND THE TERM OF THE CONTRACT**

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

#### **H.16 OPTION TO EXTEND SERVICES**

- A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new contract, and transition into a new contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder will not exceed six (6) months.
- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section H.15.

#### **H.17 SEVERABILITY**

In the event that any provision of this Contract is held invalid, void, unenforceable or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, then the remaining terms, provisions, covenants, and conditions of this Contract will remain in full force and effect, and will in no way be affected, impaired, or invalidated.

**H.18 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM**

By entering into this Contract, the Contractor certifies and ensures that it utilizes and shall continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of this Contract; and
2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to this Contract, within the United States of America.

The Contractor shall provide, upon request of (agency name), an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and the Contractor's subcontractors, as proof that this provision is being followed.

**If this certification is falsely made, this Contract may be immediately terminated, at the discretion of the Department and at no fault to the Department, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the Department must undertake to replace this terminated Contract.**

**H.19 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS**

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

**H.20 PUBLIC SAFETY COMMISSION CONTRACT REVIEW**

The Texas Public Safety Commission or the Commission's designee (Commission) will receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

- A. Contracts valued at one-million and no/100 dollars (\$1,000,000.00) or more, including available renewal options;
- B. Contract amendments (other than exercise of available renewal options) valued at one-hundred thousand and no/100 dollars (\$100,000.00) or more that increase the value of the original contracts by 50% or more; and
- C. Contract amendments (other than exercise of available renewal options) valued at five hundred thousand and no/100 dollars (\$500,000.00) or more.

The Assistant Director, Administration, shall submit these reports to the Commission. The Commission shall review contracts prior to or after award by the Department if required by applicable law.

**H.21 STRICT COMPLIANCE**

Time is of the essence in the delivery of deliverables as set forth in this Contract. The Contractor shall strictly comply with all of the deadlines, requirements, and standards of performance for this Contract.

**H.22 APPLICABLE LAW AND CONFORMING AMENDMENTS**

The Contractor shall 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. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department or the Contractor's compliance with all applicable State and federal laws, and regulations.

**H.23 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS**

- A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall 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. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.
- B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.
- C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor personnel shall comply with all relevant Department 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 thereafter be amended.
- D. The Department shall have the right to require the Contractor to remove any of the Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

**H.24 FORCE MAJEURE**

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement contained herein 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 shall inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

**H.25 FORESEEABLE DELAY**

If a delivery delay is foreseeable and the delay is not caused by a force majeure event, the Contractor shall give written notice to the Department. The Department has the right to extend the delivery date if reasons appear valid. The Contractor shall keep the Department advised at all times of status of the deliverable. Default in promised (without accepted reasons) or failure to meet specifications authorizes the Department to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to all other legal and equitable remedies.

**H.26 NO SUBSTITUTIONS AND DELIVERY TIMES**

No substitutes or cancellations are permitted without written approval of the Department. Delivery will be made during normal business hours only, unless approval for late delivery has been obtained from the Department in writing.

**H.27 TESTING, ACCEPTANCE, RETURN, REVOCATION**

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

**H.28 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**

**THE CONTRACTOR SHALL DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR THE CONTRACTOR'S**

USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY THE CONTRACTOR OR OTHERWISE TO WHICH THE STATE OF TEXAS HAS ACCESS AS A RESULT OF THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY THE CONTRACTOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF THE CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM WILL BE MADE BY THE CONTRACTOR WITHOUT THE DEPARTMENT'S PRIOR WRITTEN APPROVAL. THE CONTRACTOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. THE CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST. THE CONTRACTOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS AND PERMITS.

#### **H.29 SURVIVAL**

Termination of this Contract for any reason will not release the 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, 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.

#### **H.30 SUCCESSORS**

This Contract will be binding upon and will inure to the benefit of the parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

#### **H.31 EMPLOYEE NON-SOLICITATION**

The Contractor will not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a Department employee nor was a Department employee during the previous twelve (12) months with whom the 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.

#### **H.32 COMMENCEMENT OF WORK**

Work performed before final execution of this Contract will be at the Contractor's risk and if a cost reimbursement contract, that work will not be reimbursed without prior written authorization from the Department for the Contractor to begin work.

**H.33 ROLLING ESTOPPEL**

- A. The Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The 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 the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.
- B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions will be in sufficient detail so that the Department 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.

**H.34 SALES AND USE TAX**

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

**H.35 NOTICES**

Any notice required or permitted under this Contract will be directed to the Contractor's Point of Contact as specified in G.1.4 and the Department's Contract Administrator as specified in Section G.1.2 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 and/or individual and the date upon which it will become effective.

**H.36 MOST FAVORED CUSTOMER**

The Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to the Department pursuant to this Contract are comparable to, or more favorable to, the Department than the price, charges, benefits, warranties, and terms that the Contractor has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of

this Contract, the Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor shall notify the Department of such more favorable terms and the Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to the Department under this Contract, and be retroactive to the effective date of this Contract.

#### **H.37 STATE EXCULPATION**

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

#### **H.38 TITLE AND RISK OF LOSS**

Title and risk of loss for deliverables will not pass to the Department until the Department actually receives, takes possession, and accepts the deliverables at the point or points of delivery (F.O.B. Destination).

#### **H.39 AVAILABILITY OF DEPARTMENT MANPOWER**

All of the Department's obligations and requirements in this Contract are subject to the availability of the Department manpower and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department manpower and the practicability of the Department to perform such obligations and requirements is within the sole discretion of the Department's management.

#### **H.40 INTERPRETATION AGAINST DRAFTER**

Ambiguities in this Contract or the language at issue will not be interpreted against the drafting party regardless of which party drafted this Contract or the language at issue.

#### **H.41 NON-INCORPORATION CLAUSE**

This Contract embodies the entire agreement between the Parties regarding the deliverables described herein, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the parties regarding the deliverables described in this Contract other than those specifically set forth herein.

#### **H.42 HEADINGS**

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for convenience only and will not be deemed to limit, amplify, or modify the terms of this Contract, nor to affect the meaning thereof.

**H.43 INTENTIONALLY LEFT BLANK****H.44 UNACCEPTABLE CONTRACTOR TERMS**

No Department action, including, but not limited to, issuance of this Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such within the Contractor's Proposal unless negotiated and reflected as such within this Contract. Such negotiated terms and conditions will take precedence over the other documents that collectively constitute this Contract as specifically provided in this Contract.

Contractor terms and conditions that may violate Texas law or may be unacceptable to the Department for inclusion in this Contract include:

- A. Incorporation of laws of a state other than Texas;
- B. Requirements for prepayment;
- C. Limitations on the Department's remedies;
- D. Requirements that the Department indemnify the Contractor;
- E. Requirements that the Contractor's documents control in case of conflict;
- F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and
- G. Disclaimer of warranties

**H.45 RECALL NOTICE**

The Contractor shall immediately upon discovery of same, advise the Department 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 twenty-four (24) hours of such verbal notification. The Contractor shall submit all such formal notices to the Department Contract Monitor.

**H.46 COMPETENCY ACKNOWLEDGEMENT**

The Contractor has read and fully understands this Contract between the Department and the Contractor. The Contractor is legally competent to execute this Contract and has done so with the Contractor's own free will and accord, without reliance on any representation of any kind or character by the Department which is not expressly set forth herein. The Contractor understands that it has an opportunity to consult with a lawyer prior to signing this Contract.

**H.47 MULTIPLE CONTRACTS**

This Contract may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Contract, it will not be necessary to produce or account for more than one (1) such counterpart.

**H.48 LITIGATION OR FELONY CRIMINAL CONVICTIONS**

The Contractor represents and warrants that it is not aware of and has received no notices of any court or governmental actions, proceedings, or investigations, etc., pending or threatened against the Contractor that would or could impair the Contractor's performance under this Contract or would otherwise be relevant to the Department entering into this Contract. The Contractor represents and warrants that the Contractor has not and the Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

**H.49 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING**

The Contractor represents and warrants that the Department payments to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Texas Government Code, Sections 556.005 and 556.008.

**H.50 FALSE STATEMENTS**

The Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If the Contractor signs this Contract with a false statement or it is subsequently determined that the Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this Contract, the Contractor will be in default under this Contract and the Department may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.

**H.51 PUBLIC INFORMATION ACT**

A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas 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. The Contractor shall maintain the confidentiality of

information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

- B. The Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt 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.

#### **H.52 APPROVAL OF EMPLOYEES**

- A. The Contractor shall retain no upper level management personnel for administration of the services without prior approval of each selection by the Department's Authorized Representative or his designee which approval will not be unreasonably withheld.
- B. The Contractor shall provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by the Department.

#### **H.53 PERSONNEL**

##### **H.53.1 Qualifications of Personnel**

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

**H.53.2 Replacement of Personnel at the Department's Request**

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

**H.53.3 Unauthorized Removal of Personnel**

It is critical to the overall success of the project that the Contractor not remove or reassign, without the Departments' 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 the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel shall only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor will be considered by the Department as a material breach of this Contract and grounds for termination.

**H.54 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor shall 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.

**H.55 BOOKS AND RECORDS**

All records and documents pertinent to the services contracted hereunder will be kept for a minimum of four (4) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

**H.56 ORGANIZATIONAL AND NAME CHANGE**

The Contractor shall submit written notification to the Department of any changes in the Contractor's name, address, telephone number, facsimile number and/or email address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as," "DBA" or "also known as," "AKA" and any legal corporate name change filed with the Secretary of State.

**H.57 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor's Authorized Representative shall provide the following to the Department's Program Manager within ten (10) calendar days of executing this Contract:
  - i. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and
  - ii. Acceptable fingerprints for all proposed personnel.
- B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. The Department has the right to prevent the Contractor's personnel from gaining access to the Department building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.9 entitled "Criminal History Background Checks" for details on this requirement.
- C. The Department issued identification cards will be worn at all times and will be worn in a visible location.

**H.58 INFORMATION TECHNOLOGY STANDARDS**

The Contractor shall comply with all technology, security, accessibility, warranty, maintenance, confidentiality, testing and other standards, policies and procedures of the Department and the State of Texas that are applicable to the Contractor in its performance of this Contract as such standards, policies, and procedures are amended by the Department or the State throughout the term of this Contract, including any renewal or optional periods. The Information Resource Manager (IRM) or authorized designee designated by the Department shall assist the Contractor in reviewing these standards, policies and procedures and identifying those that are applicable to the Contractor in its performance of this Contract.

**H.59 WARRANTIES****H.59.1 Third Party Warranties**

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

**H.59.2 Contractor Warranties**

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

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

**H.60 DRUG-FREE WORKPLACE**

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants) issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) 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.

**H.61 AUTHORITY TO AUDIT**

- A. The Contractor understands that acceptance of funds 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, to conduct an audit or investigation in connection with those funds during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor shall cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract.
- B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.
- E. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments to the Contractor.

**H.62 FRAUD, WASTE OR ABUSE**

- A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) 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 the Department, it can be reported to the SAO by calling 1-800-892-8348 or on the SAO's website at [www.sao.state.tx.us](http://www.sao.state.tx.us). It can also be reported to the Department's Office of the Inspector General at (512) 424-2015, the Department Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

**H.63 INTENTIONALLY LEFT BLANK****H.64 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213**

Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for

Electronic and Information Resources specified in 1 TAC, Chapter 213 and 1 TAC, Chapter 206, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

**H.65 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)**

- A. Any software, 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 the 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 the Department by the Contractor upon completion, termination, or cancellation of this Contract.
- B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.
- C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access the System and the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.

**H.66 NOTICE UNDER GOVERNMENT CODE 2261.252**

Pursuant to Government Code 2261.252 the Department 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 or the Procurement Director or their covered family members have a financial interest in the vendor. Any contract found to violate Government Code 2261.252 is void.

**H.67 INTENTIONALLY LEFT BLANK**

**H.68 DISCLOSURE OF RESTRICTED EMPLOYMENT**

Pursuant to Government Code 572.069 the Contractor certifies that it has not employed and will not employ a former Department employee or state officer who participated in a procurement or contract negotiation for the Department involving the Contractor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

**H.69 NOTICE UNDER GOVERNMENT CODE 2252.908**

Pursuant to Government Code 2252.908 the Department may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the Department at the time the business entity submits the signed

contract to the Department. The Texas Ethics Commission has adopted rules and procedures under these provisions:

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

Any contract found to violate Government Code 2252.908 is void.

## SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

This Contract includes the following Supplemental Terms and Conditions. Subcontractors shall also comply with these provisions.

### I.1 INSURANCE REQUIREMENTS

- A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract.
- B. The insurance coverage(s) will be evidenced by immediate delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Copies and changes to insurance coverage(s), including extensions, renewals, cancellations and revisions will be submitted to the Contract Administrator within thirty (30) calendar days of the effective date.
- D. The Contractor represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar days prior written notice to the Department. The Certificate(s) will be addressed to the Texas Department of Public Safety as the Certificate holder.
- E. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide the Department with proof of coverage and represents and warrants that it shall maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:

1. **Workers' Compensation and Employers' Liability.** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.  
**Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state the Contractor's employee resides in.**  
**Coverage B – Employer's Liability (EL) \$1,000,000 each accident limit / \$1,000,000 Disease Policy / \$1,000,000 Disease each employee limit.**

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by WC and EL.

2. **Business Automobile Liability Insurance.** The Contractor shall maintain Business Automobile insurance coverage for all owned, hired, and non-owned vehicles, with a minimum **combined single limit of \$1,000,000** for each accident for bodily injury and property damage. Such insurance will include coverage for loading and unloading hazards.

If the Contractor will carry pollutants or hazardous materials, endorsements for Pollution Liability Coverage for Automobile and Motor Carrier Act will be included.

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by the business auto liability insurance (or any other applicable auto physical damage coverage.)

3. **Commercial General Liability Insurance Coverage.** The Contractor shall maintain Commercial General Liability insurance coverage that will include, but not be limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

- \$1,000,000 each occurrence
- \$2,000,000 General Aggregate limit
- \$2,000,000 Products and Completed Products
- \$1,000,000 Personal/Advertising injury
- \$50,000 Damage to Premises
- \$5,000 Medical Payments

- a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.
- b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.
- c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.
- d. The Department will be named as an additional insured by using endorsement CG2026 or broader.
- e. The Contractor's coverage will include an endorsement for waiver of subrogation and a 30 Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

- F. Professional Liability.** The Contractor shall maintain Professional Liability insurance coverage (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:

- \$1,000,000 per occurrence,
- \$2,000,000 annual aggregate.

If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of this Contract and acceptance by the Department.

Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract.

**G. Commercial Crime Insurance.** The Contractor shall maintain Commercial Crime insurance coverage to cover losses from Employee Dishonesty with a minimum limit of:

- **\$50,000 each occurrence.**

Coverage will be endorsed to cover third party property and the Department will be a joint loss payee.

**H. Cyber Insurance.** The Contractor shall maintain Cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by the Contractor under or as a result of this Contract. This insurance will provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department

**I. Umbrella / Excess Liability.** The Contractor may combine its primary and Excess / Umbrella Liability limits to meet the minimum required coverage for any line of coverage; however, if it chooses this option, the coverage will be written at least as broad as those requirements defined above.

- **\$1,000,000 Minimum Limit.**

#### **I.1.1 ADDITIONAL PROVISIONS**

The Contractor shall ensure that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- A. Name the Department and its board, trustees, officers, employees, agents, representatives and volunteers as additional insured to all applicable policies.
- B. Waiver of subrogation against the Department and its board, trustees, officers, employees, agents, and volunteers, for bodily injury (Including death), property damage or any other loss to all policies.
- C. The Contractor's insurance will be the primary insurance in regards to the Department and its board, trustees, officers, employees, agents, and volunteers.

- D. All provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, will be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. All Certificates of Insurance will identify the service or product being provided and the name of the responsible party.
- F. No "self-insurance" coverage will be acceptable.
- G. The Contractor's insurance coverage will continue in full force and effect during the term of this Contract. This Contract will not be effective unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the effective date of this Contract.
- H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated "A" or better by A.M. Best or equivalent rating by a similar insurance rating service.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.
- K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

#### **I.1.2 SUBCONTRACTOR'S INSURANCE**

The Contractor's insurance policies will provide coverage for the Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

#### **I.2 SUBCONTRACTS**

- A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the 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 the deliverables is planned to be subcontracted,

the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.

- B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.
- C. The management of any subcontractor will be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- D. The Contractor shall furnish to the Department copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.

### **I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION**

- A. The Contractor shall make a good faith effort to comply with all state Historically Underutilized Business (HUB) requirements pursuant to Texas Government Code, Chapter 2261 and administrative rules, if applicable. The Contractor shall also comply with the attached HUB Subcontracting Plan.
- B. The Contractor shall comply with the implementation of the HUB Subcontracting Plan (HSP) submitted as part of its Proposal. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.
- C. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, the Department's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) business days after the effective date of this Contract.
- D. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Contractor Progress Assessment Report, which is included as Exhibit J.6, HUB Subcontracting Plan.
- E. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

**I.4 INTENTIONALLY LEFT BLANK****I.5 TRANSITION**

- A. The Contractor shall provide detailed procedures to be accomplished upon termination of this Contract and transition to Department management or management by a third party.
- B. Upon termination of this Contract, the Contractor shall work with the Department under Department supervision for a period of sixty (60) days, prior to the expiration of this Contract, to ensure the orderly transfer and efficient transition from current Contractor management to the Department management (or management by a third party).
  - 1. Thirty calendar days before the end of the transition period, the Contractor shall transfer all maintenance records, files and logs to the Department.
  - 2. In the event the Contractor requires copies of any records after Contract expiration and management transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- C. The Department reserves the right to require the Contractor, at the Contractor's expense, to provide an additional staff member for the sole purpose of overseeing the transition of records and State-Owned property and equipment.
  - 1. The Contractor employee shall be assigned beginning thirty (30) days from the date of this Contract award and again for the sixty (60) days prior to the conclusion of this Contract.
  - 2. This employee shall work a shift/schedule to meet the needs of the Department.
  - 3. The Contractor employee shall represent the Contractor in all transition activities.
  - 4. In the event the Contractor fails to have a representative present during transition inventories, the Contractor waives all rights to contest the inventory.

**I.6 OTHER CONTRACTS**

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department shall provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor shall work cooperatively with the additional contractor in order to ensure that the performance of the services and/or capital improvements is not unnecessarily delayed. The Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractor(s).

**I.7 SUSPENSION OF WORK**

- A. The Department may order the 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 the Department.
- 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 this Contract modified in writing accordingly.
- C. A claim under this clause will not be allowed:
  - 1. For any costs incurred more than twenty (20) calendar days before the 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.

#### **I.8 STOP-WORK ORDER**

- A. The Contract Administrator may, at the request of the Department, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, or the work called for by this Contract for a period of up to ninety (90) calendar days after the order is delivered to the 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 clause. Upon receipt of the order, the Contractor shall, at the Department'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 ninety (90) calendar days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contract Administrator may either:
  - a. Cancel the stop-work order; or
  - b. 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 clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume Work. The Department shall make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and this Contract will be modified, in writing accordingly, if:

- a. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
  - b. The Contractor asserts its right to the adjustment within thirty (30) calendar 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 costs 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 the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Department will not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

#### **I.9 CRIMINAL HISTORY BACKGROUND CHECKS**

- A. The Contractor shall have its project personnel submit to the Department a fingerprint-based Criminal History Background Investigation, if required by the Department, at the Contractor's expense. To facilitate this Criminal History Background Investigation, each person shall complete the Department's Contractor Background Information form (HR-22), which will be provided by the Department.
- B. If the Department requires a fingerprint-based Criminal History Background Investigation, the Contractor will not allow personnel to work on the project who have not successfully completed the Department's fingerprint-based Criminal History Background Investigation and who do not otherwise maintain the Department's security clearance. The Department has the right to prevent the Contractor's personnel from gaining access to the Department's building(s) and computer systems if the Department determines that such personnel do not pass the background check or fail to otherwise maintain the Department security clearance.
- C. When required, the Contractor's Point of Contact shall provide the following to the Department's Contract Monitor within 14 calendar days of the effective date of this Contract:
1. The completed Contractor Background Information form (HR-22) for all proposed personnel; and
  2. Acceptable fingerprints for all proposed personnel.
- D. Throughout the term of this Contract, the Department may require the Contractor personnel to submit an annual Department fingerprinted-based Criminal History Background Investigation to the Department.

- E. Throughout the term of this Contract, the Contractor shall promptly notify the Department of any activity or action by the Contractor's personnel that may affect that individual's ability to continue to work under this Contract.

## **I.10 CONFIDENTIALITY AND SECURITY REQUIREMENTS**

### **I.10.1 General Confidentiality Requirements**

- A. All information provided by the Department or sub-recipients to the Contractor or created by the Contractor in performing the obligations under this Contract is confidential and will not be used by the Contractor or disclosed to any person or entity, unless such use or disclosure is required for the Contractor to perform work under this Contract.

The obligations of this section do not apply to information that the Contractor can demonstrate:

- 1) Is publicly available;
  - 2) The Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act;
  - 3) The Contractor independently developed without regard to the Department confidential information; or
  - 4) Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that the Contractor shall furnish prompt written notice of such required disclosure and shall reasonably cooperate with the Department at the Department's cost and expense, in any effort made by the Department to seek a protection order or other appropriate protection of its confidential information.
- B. The Contractor shall notify the Department in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of such unauthorized release.
- C. The Contractor shall notify sub-recipient in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of any unauthorized release of confidential information obtained from sub-recipient(s).
- D. The Contractor shall maintain all confidential information, regardless whether obtained from the Department or from sub-recipient(s) in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.
- E. If the Contractor has any questions or doubts as to whether particular material or information is confidential information, the Contractor shall obtain the prior written approval of the Department prior to using, disclosing, or releasing such information.
- F. The Contractor acknowledges that the Department's and sub-recipient(s)' confidential information is unique and valuable, and that the Department and sub-recipient(s) may have no adequate remedy at law if the Contractor does not comply with its confidentiality obligations under this Contract. Therefore, the Department shall have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary, and permanent

injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of the Contractor if the Contractor fails to perform any of its confidentiality obligations under this Contract.

- G. The Contractor shall immediately return to the Department all confidential information when this Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of this Contract or when the Department requests that such confidential information be returned.
- H. Information, documentation and other material in connection with this Contract, including the Contractor's Proposal, may be subject to public disclosure pursuant to the Texas Government Code, Chapter 552.
- I. The FBI and the Department have computer security requirements. The Contractor's and subcontractor's employees working on this Contract shall sign and submit appropriate agreements and abide by these security requirements, within five (5) calendar days of the Department's request.

#### **I.11 DISCLOSURE OF SECURITY BREACH**

Without limitation on any other provision of this Contract regarding information security or security breaches, the Contractor shall provide notice to the Department's Contract Monitor and the CISO as soon as possible following the Department's discovery or reasonable belief that there has been unauthorized exposure, access, disclosure, compromise, or loss of sensitive or confidential Department information ("Security Incident").

- A. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the CISO detailing the circumstances of the incident, which includes at a minimum:
  - 1. A description of the nature of the Security Incident;
  - 2. The type of Department information involved;
  - 3. Who may have obtained the Department information;
  - 4. What steps the Contractor has taken or shall take to investigate the Security Incident;
  - 5. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
  - 6. A point of contact for additional information.
- B. Each day thereafter until the investigation is complete, the Contractor shall provide the CISO with a written report regarding the status of the investigation and the following additional information as it becomes available:
  - 1. Who is known or suspected to have gained unauthorized access to the Department's information;
  - 2. Whether there is any knowledge if the Department information has been abused or compromised;
  - 3. What additional steps the Contractor has taken or will take to investigate the Security Incident;
  - 4. What steps the Contractor has taken or will take to mitigate any negative effect of the Security Incident; and

5. What corrective action the Contractor has taken or will take to prevent future similar unauthorized use or disclosure.
- C. The Contractor shall confer with the CISO regarding the proper course of the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall cooperate fully by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s).
  - D. Subject to review and approval of the CISO, the Contractor shall, at its own cost, provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice will be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's written request, the Department shall have the right to collect such costs.

## **I.12 CONTRACTOR'S COMPLIANCE WITH THE DEPARTMENT'S INFORMATION SECURITY REQUIREMENTS**

### **I.12.1 Department Information Protection Policies, Standards & Guidelines.**

The Contractor, its employees, and any subcontractors shall comply with all applicable Department Information Protection Policies, Standards & Guidelines and any other Department requirements that relate to the protection or disclosure of Department Information. Department Information includes all data and information: (i) submitted to the Contractor by or on behalf of the Department; (ii) obtained, developed, produced by the Contractor in connection with this Contract; (iii) communicated verbally whether intentionally or unintentionally; or (iv) to which the Contractor has access in connection with the services provided under this Contract. Such Department Information may include taxpayer, the Contractor, and other state agency data held by the Department. As used herein, the terms "Sensitive" and "Confidential" information will have the meanings set forth in the Department's Information Protection Policies, Standards & Guidelines. All waiver requests will be processed in accordance with the Department's Information Protection Policies, Standards & Guidelines Waiver Policy. The Department reserves the right to audit the Contractor's compliance with the Department's Information Protection Policies, Standards & Guidelines. The Department reserves the right to take appropriate action to protect the Department's network and information including the immediate termination of system access.

The Contractor shall ensure that any confidential Department Information in the custody of the Contractor is properly sanitized or destroyed when the information is no longer required to be retained by the Department or the Contractor in accordance with this Contract. Electronic media used for storing any confidential Department Information will be sanitized by clearing, purging or destroying in accordance with NIST Special Publication 800-88 Guidelines for Media Sanitization. The Contractor shall maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- A. Date and time of sanitization/destruction,

- B. Description of the item(s) and serial number(s) if applicable,
- C. Inventory number(s), and
- D. Procedures and tools used for sanitization/destruction.

No later than sixty (60) calendar days from this Contract's expiration or termination or as otherwise specified in this Contract, the Contractor shall complete the sanitization and destruction of the data and provide to the Department all sanitization documentation.

#### **I.12.2 Access to Internal Department Network and Systems.**

As a condition of gaining remote access to any internal Department network and systems, the Contractor shall comply with the Department's policies and procedures. The Department's remote access request procedures will require the Contractor to submit a Remote Access Request form for the Department's review and approval.

- A. Remote access technologies provided by the Contractor will be approved by the Department's CISO.
- B. Individuals who are provided with access to the Department network may be required to attend or review the Department's Security Awareness Training on an annual basis.
- C. The Contractor shall secure its own connected systems in a manner consistent with Department requirements.
- D. The Department reserves the right to audit the security measures in effect on the Contractor's connected systems without prior warning.

The Department also reserves the right to immediately terminate network and system connections not meeting such requirements.

### **I.13 SYSTEM SECURITY AND ACCESS**

#### **I.13.1 Information Technology Standards**

The Contractor represents and warrants that it shall comply with all technology, security, accessibility, warranty, maintenance, confidentiality, testing and other standards, policies and procedures of the Department and the State of Texas that are applicable to the Contractor in its performance of this Contract as such standards, policies, and procedures are amended by the Department or the State throughout the term of this Contract, including any renewal or optional periods. The Information Resource Manager designated by the Department shall assist the Contractor in reviewing these standards, policies and procedures and identifying those that are applicable to the Contractor in its performance of this Contract.

#### **I.13.2 Cloud Security**

The Contractor shall comply with the current Cloud Security Alliance's (CSA) Cloud Control Matrix (CCM) security requirements for Contractor hosted services or applications that are

included as part of the Contractor's solution. Information pertaining to CSA <https://cloudsecurityalliance.org/> and CCM information may be found at <https://cloudsecurityalliance.org/research/ccm/>.

### **I.13.3 User Security**

- A. Account Management: Establish and administer user accounts in accordance with role-based scheme and will track and monitor role assignment.
- B. Account Management: Automatically audit account creations, modifications, disabling and termination actions with notification to the Department's personnel.
- C. Prevent multiple concurrent active sessions for one user identification.
- D. Enforce a limit of no more than three (3) consecutive invalid access attempts by a user.
- E. Automatically lock the account/node for a three (3) minute time period unless released by the Department's Administrator.
- F. Prevent further access to the system by initiating a session lock after a maximum of thirty (30) minutes of inactivity, and the session lock will remain in effect until the user reestablishes access using appropriate identification and authentication procedures.
- G. Ensure all users will be uniquely identified.
- H. Force users to follow the secure password attributes, below, to authenticate a user's unique ID. The secure password attributes will:
  - 1. Be a minimum length of 12 characters;
  - 2. Not be a dictionary word or proper name;
  - 3. Not be the same as the User ID;
  - 4. Expire within a maximum of ninety (90) calendar days;
  - 5. Not be identical to the previous ten (10) passwords;
  - 6. Not be transmitted in the clear text outside the secure location;
  - 7. Not be displayed in clear text when entered;
  - 8. Never be displayed in clear text on the screen; and
  - 9. Include 2 numbers, 2 special, 2 upper and 2 lower characters

### **I.13.4 System Security**

- A. Provide audit logs that enable tracking of activities taking place on the system.
- B. Audit logs must track successful and unsuccessful system log-on attempts.
- C. Audit logs must track successful and unsuccessful attempts to access, create, write, delete or change permission on a user account, file, directory or other system resource.
- D. Audit logs must track successful and unsuccessful attempts to change account passwords.

- E. Audit logs must track successful and unsuccessful actions by privileged accounts.
- F. Audit logs must track successful and unsuccessful attempts for users to access, modify, or destroy the audit log.
- G. Provide the following content to be included with every audited event:
  - 1. Date and time of the event;
  - 2. The component of the information system (e.g. software component, hardware component) where the event occurred;
  - 3. IP address;
  - 4. Type of event;
  - 5. User/subject identity; and
  - 6. Outcome (success or failure) of the event.
- H. Provide real-time alerts to appropriate Department officials in the event of an audit processing failure. Alert recipients and delivery methods must be configurable and manageable by the Department's System Administrators.
- I. Undergo vulnerability scan/penetration testing conducted by the Department or the Texas Department of Information Resources. The Contractor shall remediate legitimate vulnerabilities and system/application will not be accepted until all vulnerability issues are resolved at no cost to the Department.
- J. Notifications will display an approved system use notification message or banner before granting access to the system. The notification will state:
  - 1. Users are accessing a Department system;
  - 2. System usage will be monitored, recorded and subject to audit;
  - 3. Unauthorized use of the system is prohibited and subject to criminal and civil penalties; and
  - 4. A description of the authorized use of the system.
- K. The Contractor shall implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for endpoints, servers and mobile devices. This must include mechanisms to identify vulnerabilities and apply security patches.
- L. The Contractor shall establish and maintain a continuous security program as part of the Services. The security program must enable the Organization (or its selected third party) to:
  - 1. Define the scope and boundaries, policies, and organizational structure of an information security management system;
  - 2. Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Organization due to the Services, subject to the terms, conditions and procedures;
  - 3. Implement appropriate mitigating controls and training programs, and manage resources; and

4. Monitor and test the security program to ensure its effectiveness. The Contractor shall review and adjust the security program in light of any assessed risks.

#### **I.13.5 Physical Access Controls**

- A. The Contractor shall restrict physical access to the system(s) containing the Department's data to authorized personnel with appropriate clearances and access authorizations.
- B. The Contractor shall enforce physical access authorizations for all physical access points to the facility where information system resides;
- C. The Contractor shall verify individual access authorizations before granting access to the facility containing the information system;
- D. The Contractor shall control entry to the facility containing the information system using physical access devices and guards; and
- E. The Contractor shall change combinations and keys when keys are lost, combinations are compromised, or individuals are transferred or terminated.
- F. The Department and the Contractor shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training. The Contractor shall, at the request of the Department or, in the absence of any request from the Department, at least quarterly, provide the department with a report of the incidents that it has identified and taken measures to resolve.

#### **I.13.6 Data Security**

- A. If the Contractor or any subcontractors require access to the Department's network; the Department's data; or the network processing, transporting, or storing of the Department's data (may at the Department's discretion), the Contractor shall be required to sign the CJIS Security Addendum, and all of the Contractor's employees requiring access to the Department's network shall sign the FBI Certification to the CJIS Security Addendum and complete a fingerprint based background check.
- B. The Contractor's solution will protect against an employee falsely denying having performed a particular action (non-repudiation).
- C. Require the Contractor, subcontractor, and their staff to obtain and provide proof of PII certifications for its employees accessing the Department's data at the request of the Department.
- D. Comply with relevant federal and state statutes and rules, and the Department's policies, and standards, including but not limited to CJIS requirements.
- E. Data will not be exported to an external location without the permission of the Department.
- F. In the event of any impermissible disclosure, loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and

take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

### **I.13.7 Encryption**

The system will protect the confidentiality of the Department's information. All data transmitted outside or stored outside the secure network will be encrypted. When cryptography (encryption) is employed within information systems, the system will perform all cryptographic operations using Federal Information Processing Standard (FIPS) PUB140-2 validated cryptographic modules with approved modes of operation. The system will produce, control, and distributes symmetric cryptographic keys using NIST-approved key management technology and processes. The key management process is subject to audit by the Department.

- A. **Wireless:** The following requirements specifies the minimum set of security measures required on WLAN-enabled portable electronic devices (PEDs) that transmit, receive, process, or store PII or confidential information:
1. **Personal Firewall:** WLAN-enabled PED will use personal firewalls or run a Mobile Device Management system that facilitates the ability to provide firewall services.
  2. **Anti-Virus Software:** Anti-virus software will be used on wireless ECMs-capable PEDs or run a Mobile Device Management System that facilitates the ability to provide anti-virus services.
  3. **Encryption of PII or confidential data-in-transit via WLAN-enabled PEDs,** systems and technologies will be implemented in a manner that protects the data end-to-end. All systems components within a WLAN that wirelessly transmit PII or confidential information will have cryptographic functionality that is validated under the National Institute of Standards and Technology (NIST) Cryptographic Module Validation Program as meeting requirements per Federal Information Processing Standards (FIPS) Publication 140-2. Encryption will be a minimum of 128 bit.
  4. **Data-at-Rest:** Data at rest encryption will be implemented in a manner that protects PII and confidential information stored on WLAN enabled PEDs by requiring that the PED must be powered on and credentials successfully authenticated in order for the data to be deciphered. Data-at-rest encryption will include the encryption of individual files, portions of the file system (e.g., directories or partitions), or the entire drive (e.g. hard disks, on-board memory cards, memory expansion cards). In recognition of the increased risk of unauthorized access to PII or confidential information in the event that a PED is lost or stolen and the inherently mobile nature of these devices, encryption will be provided for data-at-rest on all WLAN enabled PEDs that is validated as meeting FIPS 140-2.
  5. **WLAN Infrastructure:** WLAN infrastructure systems may be composed of either stand-alone (autonomous) access points (AP) or thin APS that are centrally controlled by a WLAN controller.
  6. **Validated Physical Security:** APs used in the WLANS should not be installed in unprotected environments due to an increased risk of tampering and/or theft.
- B. **Mobile Device Management Requirement.** Mobile Device Management (MDM) facilitates the implementation of sound security controls for mobile devices and

allows for centralized oversight of configuration control, application usage, and device protection and recovery. MDM will include the following core features:

1. The ability to push security policies to managed devices;
2. The ability to query the device for its configuration information;
3. The ability to modify device configuration as required;
4. Security functionality that ensures the authenticity and integrity of the transaction in the three categories above;
5. Asset management (track/enable/disable) mobile devices being managed via the MDM server;
6. The ability to manage proxy access to network resources via the connection of the mobile device to the MDM server;
7. The ability to query devices being managed on the status of security policy compliance and to implement a specified mediation function based on compliance status;
8. The ability to download and store mobile device audit records;
9. The ability to receive alerts and other notifications from managed mobile devices;
10. The ability to receive alerts and other notifications from managed mobile devices;
11. The ability to generate audit record reports from mobile device audit records; and
12. Application management (application white list) for applications installed on managed mobile devices.

#### **I.13.8 Secure Erasure Of Hard Disk Capability**

All equipment provided to the Department by the Contractor that is equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) will have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC §202.

#### **I.13.9 Data Center Location Requirements**

The data center must be located in the continental United States of America.

#### **I.13.10 Access to Internal Department Network and Systems**

As a condition of gaining remote access to any internal Department network and systems, the Contractor shall comply with Department policies and procedures. The Department's remote access request procedures will require the Contractor to submit a Remote Access Request form for the Department's review and approval.

- A. Remote access technologies provided by the Contractor will be approved by the Department's CISO.
- B. Individuals who are provided with access to the Department network may be required to attend or review the Department's Security Awareness Training on an annual basis.

- C. The Contractor shall secure its own connected systems in a manner consistent with Department requirements.
- D. The Department reserves the right to audit the security measures in effect on the Contractor's connected systems without prior warning.
- E. The Department also reserves the right to immediately terminate network and system connections not meeting such requirements.

#### **I.13.11 FBI CJIS Security Addendum**

The Contractor shall comply with the originally signed CJIS Security Addendum which can be downloaded from <http://www.txdps.state.tx.us/securityreview>. Additionally, a CJIS Security Addendum Certification will be signed by each employee performing duties related to this project prior to final Contract award. Each original Certification will include an original signature of the employee and the Contractor's representative. Non-compliance by the Contractor will be cause for termination of this Contract and the Department may elect to enter into negotiations with the next highest evaluated Offer.

#### **I.13.12 Sensitive Personal Information**

To the extent this subsection does not conflict with the subsection herein entitled "General Confidentiality Requirements," the Contractor shall comply with both subsections. To the extent this subsection conflicts with the subsection herein entitled "General Confidentiality Requirements," this subsection entitled "Sensitive Personal Information" controls.

- A. "Sensitive personal information" is defined as follows:
  - 1. An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
    - a) Social security number;
    - b) Driver's license number or government-issued identification number; or
    - c) Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
  - 2. Information that identifies an individual and relates to:
    - a) The physical or mental health or condition of the individual;
    - b) The provision of health care to the individual; or
    - c) Payment for the provision of health care to the individual.
- B. Sensitive personal information does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.
- C. "Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information the Contractor maintains under this Contract,

including data that is encrypted if the Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.

- D. The Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the Contractor under this Contract.
- E. The Contractor shall notify the Department, any affected sub-recipient and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, the Contractor shall delay providing notice to the affected people and sub-recipients at the Departments' request, if the Department determines that the notification will impede a criminal investigation. Notification to the affected people will be made as soon as the Department determines that it shall not compromise any criminal investigation.
- F. The Contractor shall give notice as follows, at the Contractor's expense:
  - 1. Written notice;
  - 2. Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;
  - 3. Notice as follows:
    - a) If the Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, the Contractor may give notice as follows:
      - i. Electronic mail, if the Contractor has an electronic mail address for the affected people;
      - ii. Conspicuous posting of the notice on the Contractor's website;
      - iii. Notice published in or broadcast on major statewide media; or
    - b) If the Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," the Contractor may provide notice in accordance with that policy.
- G. If this subsection requires the Contractor to notify at one time more than 10,000 people of a breach of system security, the Contractor shall also notify, without unreasonable delay, each consumer reporting agency (as defined by 15 U.S.C. Section 1681a) that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.

- H. In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, the Department is authorized to assess liquidated damages in the amount of (\$1,000.00 per day) against the Contractor for the following damages, assessment of breach and any labor costs associated with such an assessment; however, the Department reserves the right to claim actual damages for any damages other than the following: limited to the initial assessment and review of lost or compromised data. This amount is a reasonable estimate of the damages the Department shall suffer as a result of such breach and is enforceable.
- I. The Contractor will not be responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than the Contractor, the Contractor's subcontractor, or the Contractor's agent. (This clause is not to be interpreted that the Contractor is absolved of liability with any other sections pertaining to cyber security or data protection).
- J. Any liquidated damages assessed under this Contract may, at the Departments' option, be deducted from any payments due the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

#### **I.13.13 Cyber Insurance Requirement**

The Contractor will maintain sufficient cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by the Contractor under or as a result of this Contract.

- A. This insurance will provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code.
- B. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract.
- C. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.

**I.13.14 Representations And Warranties Related To Software**

If any software is provided under this Contract, the Contractor represents and warrants each of the following:

- A. The Contractor has sufficient right, title, and interest in the Software to grant the license required.
- B. Contract terms and conditions included in any "clickwrap", "browsewrap", "shrinkwrap", or other license agreement that accompanies any Software, including but not limited to Software Updates, Software Patch/Fix, or Software Upgrades, provided under this Contract are void and have no effect unless the Department specifically agrees to each licensure term in this Contract.
- C. The Software provided under this Contract does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right;
- D. Software and any Software Updates, Software Maintenance, Software Patch/Fix, and Software Upgrades provided under this Contract will not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and
- E. Software provided under this Contract does not and will not contain any computer code that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanism (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or that would permit the Contractor to access the Software to cause such disablement or impairment (sometimes referred to as "trap door" devices).

**I.13.15 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 the 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 the Department by the Contractor upon completion, termination, or cancellation of this Contract.
- B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.
- C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

- D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access, as necessary for the Department to use and access the turnkey solution during the term of the lease, the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.

**SECTION J - LIST OF EXHIBITS**

EXHIBIT NO.	TITLE	NUMBER OF PAGES
Exhibit J.1	Department Crime Laboratory Forensic Testing Laboratory Sites	2
Exhibit J.2	Department Breath Alcohol Calibration Laboratory Sites	1
Exhibit J.3	Change Order Request Form	4
Exhibit J.4	Final Acceptance Document	1
Exhibit J.5	INTENTIONALLY LEFT BLANK	1
Exhibit J.6	INTENTIONALLY LEFT BLANK	2
Exhibit J.7	HUB Subcontracting Plan	10
Exhibit J.8	INTENTIONALLY LEFT BLANK	2
Exhibit J.9	INTENTIONALLY LEFT BLANK	1
Exhibit J.10	Non-Disclosure Agreement	1