

BASIC DIR TECHNOLOGY PURCHASES TERMS AND CONDITIONS

Vendor understands that TXDPS is a "Customer" under Vendor's DIR Contract referenced on page 1 of the TXDPS PO. In submitting information to TXDPS in response to this PR, Vendor affirms its understanding of the General Provisions of Vendor's DIR Contract [generally located in Section 3 of Appendix A, DIR Standard Terms and Conditions for TXMAS Contracts] [generally located in Section 4 of Appendix A, DIR Standard Terms and Conditions for ICT Product and Related Services Contracts]:

1. A. Entire Agreement

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

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the DIR Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers will not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendor.

2. TXDPS issues this PR as Customer under Vendor's DIR Contract and requests that Vendor submit a response to TXDPS based on these additional terms and conditions which TXDPS has determined are specific to the TXDPS PO and are allowable under the provisions of Vendor's DIR Contract, reference section 1 of this PR.

3. **BOX CHECKED IF THIS SECTION 4 APPLICABLE TO THIS PR.** **CRIMINAL HISTORY BACKGROUND CHECK:**

- A. Vendor shall have its project personnel – as specifically identified by TXDPS -- submit to TXDPS a fingerprint-based Criminal History Background Investigation, if required by TXDPS, at Vendor's expense. To facilitate this Criminal History Background Investigation, each person shall complete TXDPS' Vendor Background Information form (HR-22), which shall be provided by TXDPS.
- B. If TXDPS requires a fingerprint-based Criminal History Background Investigation, Vendor will not allow personnel to work on the project who have not successfully completed TXDPS's fingerprint-based Criminal History Background Investigation and who do not otherwise maintain TXDPS's security clearance. TXDPS has the right to prevent Vendor's personnel from gaining access to TXDPS' building(s) and computer systems if TXDPS determines that such personnel do not pass the background check or fail to otherwise maintain TXDPS security clearance.
- C. When required, Vendor's Project Manager shall provide the following to TXDPS' Project Manager within 21 calendar days of receiving this PO: a) the completed Vendor Background Information form (HR-22) for all proposed personnel; and b) acceptable fingerprints for all proposed personnel.
- D. Throughout the term of this PO, TXDPS may require Vendor personnel to submit an annual TXDPS fingerprinted-based Criminal History Background Investigation to TXDPS.
- E. Throughout the term of this PO, Vendor shall promptly notify TXDPS of any activity or action by Vendor's personnel that may affect that individual's ability to continue to work under this PO.

4. NOTICE:

Any written notices required under this PO will be by hand delivery to Vendor's office address specified on Page 1 of this PO or by U.S. Mail, certified, return receipt requested, to TXDPS, 5805 N. Lamar Blvd., Austin, Texas 78752. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

5. OWNERSHIP OF HARDWARE AND TANGIBLE PERSONAL PROPERTY; PURCHASES ONLY:

Except as otherwise indicated on this PO by specific reference to this Section, TXDPS shall own all hardware and tangible personal property provided by Vendor under this PO. This PO is structured as a separate contract under which the costs for hardware and tangible personal property are separately stated from the charge for services. Under this PO, title in all hardware and tangible personal property shall pass directly from Vendor to the State of Texas upon delivery, and upon delivery all property shall be labeled as the property of the State of Texas. Vendor shall make no use of the hardware or tangible personal property prior to passage of title to the State of Texas. TXDPS makes no representation or warranty to Vendor that Vendor's purchase of such hardware and tangible personal property shall be exempt from any state, local or other applicable taxes; however, Vendor shall make reasonable efforts to obtain such exemptions prior to purchasing such hardware and tangible personal property and

shall notify TXDPS of the status of such exemptions. Vendor's pricing shall be reduced by the amount of taxes resulting from such exemptions.

6. REPRESENTATIONS AND WARRANTIES RELATED TO SOFTWARE:

Vendor represents and warrants each of the following for all Software to which TXDPS has access under this PO:

- A. Vendor 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 PO 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 PO 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 PO 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 Vendor to access the Software to cause such disablement or impairment (sometimes referred to as "trap door" devices").

7. INFORMATION TECHNOLOGY REQUIREMENTS AND STANDARDS:

Vendor represents and warrants that it shall comply with all technology, security, accessibility, warranty, maintenance, confidentiality, testing and other standards, policies and procedures of TXDPS and the State of Texas that are applicable to Vendor in its performance of this PO as such standards, policies, and procedures are amended by TXDPS or the State throughout the term of this PO, including any renewal or optional periods. The Information Resource Manager designated by TXDPS shall assist Vendor in reviewing these standards, policies and procedures and identifying those that are applicable to Vendor in its performance of this PO. Vendor shall comply with TXDPS standards and requirements wherever they are applicable to this PO. TXDPS shall have the sole right to waive specific requirements if, in its sole judgment doing so would mitigate costs or risks or significantly improve the installed and configured solution. **If required, additional requirements are included as Attachments A and B to this PR.**

A. Cyber Security Contract Requirements Exhibit, if required, this information is provided as Attachment A

B. IT Standards and Requirements Exhibit, if required, this information is provided as Attachment B

8. TEXAS PUBLIC INFORMATION ACT:

The Confidentiality Clause included in Vendor's DIR Contract [generally located in Section 8 of Appendix A, DIR Standard Terms and Conditions for TXMAS Contracts] [generally located in Section 9) of Appendix A, DIR Standard Terms and Conditions for ICT Product and Related Services Contracts], is modified to include the following sentence. Vendor shall make any information created or exchanged with the state pursuant to this PO, and not otherwise exempted 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. **TXDPS requires such information to be available in latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper) format.**

9. IMMIGRATION:

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

10. VENDOR AFFIRMATIONS TO TXDPS:

Signing a response to this PR with a false statement or otherwise providing TXDPS with a false statement is a material breach of contract and shall void this PO, and Vendor shall be removed from all bid lists. During the term of this PO, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to TXDPS all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties. By signature hereon affixed, Vendor hereby certifies that:

- A. No Gratuities. Vendor represents that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this PO.
- B. Child Support Representation and Certification. Under the Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five (25%) percent is not eligible to receive payments from State funds under a PO to provide property, materials or services. Government entities and any business

entity including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Section 231.006.:

Check ONE:

_____ Vendor DOES NOT have a sole proprietor, majority shareholder or substantial owner who is a natural person capable of being a child support obligor therefore IS NOT subject to Section 231.006.

_____ Vendor DOES have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS subject to Section 231.006.

Print Name:	Social Security Number:
Print Name:	Social Security Number:
Print Name:	Social Security Number:

Under Texas Family Code § 231.006, (relating to child support) Vendor, by accepting this PO, certifies that it is not ineligible to receive payments under this PO and acknowledges that this PO may be terminated and payment may be withheld if this certification is inaccurate.

- C. Certification Concerning Financial Participation. Under §2155.004, Gov't Code, Vendor certifies that it is not ineligible to receive this PO and acknowledges that this PO may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for this PO. Vendor certifies that it has not received compensation for participation in the preparation of the specifications for this PO.
- D. Debts and Delinquencies. Under §2252.903, Gov't Code, Vendor agrees that any payments due under this PO shall 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. Vendor shall comply with rules adopted by the state under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- E. Contracting with Executive Head of State Agency. Pursuant to §669.003, Gov't Code, TXDPS may not issue a PO to a person who employs a current or former executive head of any state agency until four years has passed since that person was the executive head of the state agency. By submitting a Response to this Price Request, Vendor certifies that it does not employ any person who was the executive head of any state agency in the past four years. If Vendor has a disclosure to make regarding the prohibition in Section 669.003 or otherwise employs a current or former Executive Head of a State Agency, Vendor shall complete the following information in order for the Response to be evaluated:

Name of Former Executive:

Name of State Agency:

Date of Separation from State Agency:

Position with Vendor:

Date of Employment with Vendor:

- F. Buy Texas. In accordance with §2155.4441, Gov't Code, Vendor agrees that during the performance of this PO it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- G. Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Vendor List: TXDPS shall have the absolute right to terminate this PO without recourse as follows:
 - i. If Vendor 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

- ii. If Vendor becomes suspended or debarred from doing business with the federal government as listed in the Systems for Award Management (SAM) maintained by the General Services Administration; or
 - iii. If Vendor becomes listed on the State of Texas debarred Vendor List, TXDPS will provide Vendor with written notice to terminate this PO which termination will become effective immediately upon Vendor's receipt of the notice.
- H. Certification Concerning Hurricane Relief. A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Under Texas Government Code, Section 2261.053, Vendor certifies that the individual or business entity named in this PO is not ineligible to receive this PO and acknowledges that this PO may be terminated and payment withheld if this certification is inaccurate.

Under Texas Government Code, Section 2155.006, Vendor certifies that the individual or business entity named in this Bid or this PO is not ineligible to receive this PO and acknowledges that this PO may be terminated and payment withheld if this certification is inaccurate.

- I. Texas Government Code Chapter 556. Vendor represents and warrants that payment to Vendor and Vendor's receipt of appropriated or other funds under this PO are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.
- J. Conflict of Interest. Pursuant to Texas Government Code, Section 572.051, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. Texas Government Code, Section 572.051, outlines the ethical standards required of state officers and employees who interact with public purchasers in the conduct of state business.

Specifically, a TXDPS employee may not have an interest in, or in any manner be connected with a contract or offer for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state shall be mindful of these restrictions when interacting with public purchasers of TXDPS or purchasers of other state agencies.

The Vendor shall comply with the Conflict of Interest provisions and disclosure requirements as listed in the Texas Contract Management Guide found at: <https://www.comptroller.texas.gov/purchasing/docs/contract-management-guide.pdf> (pages 23-35).

- K. No Collusion: Antitrust. (1) Vendor represents and certifies that its employees, agents, and representatives have not and will not discuss or disclose the terms of its Bid and its submission or Bid thereto with any third party other than the persons or entities, which Vendor engaged to assist it with respect to such Bid or submission. (2) Neither Vendor nor the firm, corporation, partnership or institution represented by Vendor or anyone acting for such firm, corporations, or institution has a) violated the antitrust laws of the State of Texas under Business Commerce Code, Chapter 15, or the federal antitrust laws; or b) communicated the contents of its Bid either directly or indirectly to any competitor or any other person engaged in such line of business during the procurement process for this Pricing Request.
- L. By signature hereon, and by checking or initialing either Subsection (A) or Subsection (B), as applicable, Vendor represents and warrants the following:

1) Vendor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Vendor or any of the individuals or entities included in the DIR Master Contract as, Independent Contractor, of this PO that would or could impair Vendor's performance under this PO, related to the subject matter of this PO, or otherwise be relevant to the agency's consideration of Vendor's Bid. Vendor represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Vendor or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Vendor's Response to this Pricing Request. In addition, Vendor represents and warrants that it shall notify TXDPS in writing within five (5) business days of any changes to the representations or warranties in this Subsection (A) and understands that failure to so timely update TXDPS shall constitute breach of contract and may result in immediate termination of this PO.

2) Vendor is unable to make the representation and warranty in Subsection (A) above and instead represents and warrants that it has included as a detailed attachment in its Pricing Request Response, which expressly references this Subsection (B), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Vendor's performance under this PO; (2) relate to the solicited or similar goods or services of this PO; or (3) be otherwise relevant to TXDPS' consideration of Vendor's Pricing Request Response. In addition, Vendor represents and warrants that it shall notify TXDPS in writing within five (5) business days of any changes to the representations or warranties in this Subsection (B) or attachments in the Pricing Request Response to Subsection (B) and

understands that failure to so timely update TXDPS shall constitute breach of contract and may result in immediate termination of the PO.

- M. Computer Equipment and Computer Recycling Program. If Vendor is submitting a Response to a Pricing Request for the purchase or lease of computer equipment, then Vendor certifies its compliance with Subchapter Y, Chapter 361, Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC Chapter 328.
- N. Franchise Tax Representation; Taxes. In submitting a Response to this PR, Vendor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. Vendor has filed all necessary federal, state, and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon. Vendor has no knowledge of any tax defiance which has been or might be asserted against it and which would materially and adversely affect Vendor's ability to perform its obligations under this PO.
- O. Organization and Qualification. If Vendor operates as a corporation incorporated under the laws of any state outside Texas, it is duly qualified to do business as a foreign corporation in good standing in Texas.
- P. Deceptive Trade Practices; Unfair Business Practices. Vendor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Vendor has not been found to be liable for such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that those any such officers have not been found to be liable for such practices in such proceedings.
- Q. Relationships. Vendor represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Vendor and an employee of TXDPS, and Vendor has not been an employee of TXDPS within the immediate twelve (12) months prior to Vendor's PR response.
- R. OSHA. Vendor represents and warrants that all performances under this PO meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law and its regulations in effect or proposed as of the effective date of this PO.
- S. EEOC; Non-Discrimination. Vendor represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action. Vendor agrees that no person will, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this PO. Vendor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor." Vendor has also reviewed the non-discrimination clauses of this PO and represents and warrants that it is in compliance and shall be in compliance under this PO.
- T. Americans with Disabilities Act (ADA). Vendor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).
- U. Agreement to Terms. Vendor represents and warrants that it has read and agrees to all terms and conditions of this PR, unless Vendor specifically takes an exception and offers an alternative provision in Vendor's Response as provided in this Section 12.U. Inclusion of such conflicting terms may result in disqualification of the Response in TXDPS' sole discretion.
- V. Certification. By signature on this PR Response, Vendor represents and warrants that the individual signing this document and the documents made part of the submitted Response is authorized to sign such documents on behalf of the company and to bind company under any PO which may result from the submission of this Response. By signing hereon, Vendor represents and warrants that all statements and information prepared and submitted in its PR Response are current, complete and accurate. By signing hereon, the Vendor affirms that the award of a PO between the Vendor and TXDPS will not create a conflict of interest or cause an appearance of a conflict of interest. In its response, Vendor must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Vendor's (and any proposed subcontractors) submission of a response and possible PO award. A description of some conflicts of interest may be found in Section 12.J above, but this list should not be considered exhaustive or limiting. If the circumstances certified by Vendor change or additional information is obtained subsequent to submission of response, by submitting a response, Vendor agrees that it is under a continuing duty to supplement its response under this provision, and Vendor shall submit updated information as soon as reasonably possible upon learning of any change to Vendor's Affirmations.

11. REQUIRED SENATE BILL 20 AND HB 1295 CLAUSES:

A. 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 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.

B. Notice Under Government Code 2261.252

Pursuant to Government Code 2261.252 TXDPS 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.

C. Disclosure of Interested Parties

If TXDPS determines that Texas Government Code § 2252.908 may apply to any contract awarded as a result of this solicitation, TXDPS will advise Vendor of its obligation to disclose interested parties to the Texas Ethics Commission (TEC) and TXDPS as specified in the statute.

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

TEC Form 1295 is an online form available at TEC's website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

Upon completion, Vendor must submit the form online to TEC and then print the completed form that includes the Certificate Number automatically assigned by TEC. Vendor's authorized agent must sign the printed form, have the form notarized, and submit the form to TXDPS. The address for submission will be provided to the potential awardee(s).

For further information, see Texas Government Code § 2252.908 and 1 Texas Administrative Code Ch. 46 as well as TEC's website.

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