



# Texas Department of Public Safety Purchase Order

Blanket Order Number  
  
405-16-P006827  
  
SHOW THIS NUMBER ON ALL  
PACKAGES, INVOICES AND  
SHIPPING DOCUMENTS.

V E N D O R	Vendor Number: 00026513 US HealthWorks Medical Group of TX, Inc  25124 Springfield Court Suite 200 Valencia, CA 91355-1087
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S H I P T O	
B I L L T O	

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.

Solicitation (Bid) No.:	Payment Terms: State of Texas Prompt Pay  Shipping Terms:  Delivery Calendar Day(s) A.R.O.: 30
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Item # 4

This blanket purchase order award will facilitate payments for services being provided under Contract Number (and previous PO number) 405-15-P002635 as signed and accepted by all parties.

This purchase order number #405-16-P006827 replaces the previous purchase order number #405-15-P002635 issued to your company for this product and/or service. The number noted on this purchase order must be reflected on all invoices and correspondence regarding this product and/or service.

This Blanket Purchase Order NOT-TO-EXCEED amount of \$608,000.00 authorized funding for the full term of this contract including renewals from April 7, 2015 through August 31, 2019.

Initial Term: Date of Award through August 31, 2016  
 First Renewal Term: September 1, 2016 through August 31, 2017  
 Second Renewal Term: September 1, 2017 through August 31, 2018  
 Third and final Renewal Term: September 1, 2018 through August 31, 2019

The following documents are here by incorporated to this Purchase Order in order of precedence:

- 405-15-P002635 - Signed two party signature contract
- 405-ETR-15-Q000129 - Vendors Response Package
- 405-ETR-15-Q000129 - The Complete Solicitation documents including all Exhibit's.

Customer Contract Monitor:  
 Vicky Aguirre  
 512-424-5903  
 Vicky.aguirre@dps.texas.gov

Contractor - Project Manager  
 Miranda Green, Center Manager, Austin-Lamar  
 512-447-9661  
 Miranda.green@ushworks.com

Contract Administrator  
 Ashley Waffer  
 512-424-5028  
 Ashley.waffer@dps.texas.gov

Item # 2

Class-Item 948-48

Comprehensive professional pre-employment physicals for law enforcement candidates as defined in Section C.5.A.1.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 350.25		0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 3

Class-Item 948-48

Orthopedic Evaluation, as needed and as defined in Section C.5.A.2.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 300.00		0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 1  
Class-Item 948-48

Cardiologist Evaluation, as needed and as defined in Section C.5.A.3.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 150.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 5  
Class-Item 948-48

Spirogram

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 27.50	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 6  
Class-Item 948-48

T-L-Survey

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 122.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 7  
Class-Item 948-48

CBC-PROMED

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 25.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 8  
Class-Item 948-48

OM-CBC PRO-MED OCC

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 22.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 9  
 Class-Item 948-48

Cardio Echo

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
0.00	\$ 250.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00

Item # 10  
 Class-Item 948-48

X-Rays, if required to complete an evaluation on previous injuries.  
 Prices for X-Rays not listed below will need to be pre-approved by the Contract Monitor

- 1- Ankle (3 view) - Cost \$86.00
- 2- Calcaneus, (2 view)- cost \$72.00
- 3- Chest (2 view)- Cost \$99.00
- 4- Clavicle, Complete - cost \$86.00
- 5- Elbow (1 views)- cost \$59.00
- 6- Elbow (2views)- cost \$110.00
- 7- Facial Bones, Complete- cost \$149.00
- 8- Femur (2 view)- cost \$108.00
- 9- Finger (2 View)- cost \$63.00
- 10- Foot (3 view)-cost \$86.00
- 11- Forearm (2 view) Cpst \$89.00
- 12- Hand (2 views)- Cost \$72.00
- 13- Hand (3 views)- Cost \$86.00
- 14- Hip - (2 view)- cost \$131.00
- 15- Knee (2 view)- cost \$108.00
- 16- Lumbar Spine (3 view)-cost \$131.00
- 17- Lumbar Spine (5 view)- Cost \$184.00
- 18- Shoulder (2 view) - cost \$114.00
- 19- Spine OM-L(2 or 3 View)-Cost \$99.00
- 20- Thoracic Spine (2 view)-cost \$154.00
- 21- TIB/Fibula - cost \$96.00
- 22- Wrist (3 view)-Cost \$86.00

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

Item # 11  
 Class-Item 948-48

Tests, Examinations, and any other charge not previously covered, but pre-approved by Contract Monitor.

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

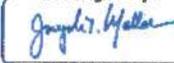
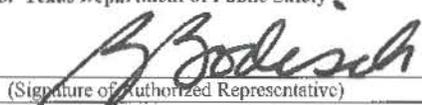
TAX:	\$ 0.00
FREIGHT:	\$ 0.00
TOTAL:	\$ 0.00

APPROVED

By: Jennifer Feliciano,CTCM, CTPM

Phone#: (512) 424-5255

BUYER

<b>MODIFICATION OF CONTRACT</b>			Page of <b>1</b>	Pages <b>2</b>
<b>1A. Contract No.</b>  405-15-P002635	<b>1B. Order No.</b> (PO,JO,SA)	<b>2. Modification No.</b>  M-001	<b>3. Effective Date</b>  Upon execution by both parties	
<b>4. Issued By:</b> Texas Department of Public Safety Procurement and Contract Services Commodities and Services Branch P.O. Box 4087 Austin, Texas 78773-0130		<b>5. Name and Address of Contractor (No., street, city, state &amp; ZIP code)</b> U.S. HealthWorks Medical Group of Texas, Inc. P.O. Box 404974 Atlanta, Georgia 30384-4974		
<b>6. BILATERAL MODIFICATION ISSUED PURSUANT TO AUTHORITY UNDER:</b> Contract Section H10. Assignment and Section H14. Amendments				
<b>7. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 ORIGINAL TO THE ISSUING OFFICE.</b>				
<b>8. PURPOSE OF MODIFICATION:</b> Reflect Assignment of Contract, Administrative Updates and Terms and Conditions				
<b>9. DESCRIPTION OF MODIFICATION:</b>				
<p><b>A. Modify Section 9, Name and Address of the Contractor</b> To approve the change in name of the Contractor from MEC Associates of Austin, LLP, dba PRO MED to U.S. HealthWorks Medical Group of Texas, Inc.</p> <p><b>B. Modify Section G.1.2, Contract Administrator which reads:</b> The Contract Administrator for administration of this Contract is Vania Ramaekers, CTPM, and CTCM. The telephone number for the Contract Administrator is (512) 424-2534. The e-mail address is <a href="mailto:vania.ramaekers@dps.texas.gov">vania.ramaekers@dps.texas.gov</a>.</p> <p>To read: The Contract Administrator for administration of this Contract is Ashley Waffer. The telephone number for the Contract Administrator is (512) 424-5028. The e-mail address is <a href="mailto:ashley.waffer@dps.texas.gov">ashley.waffer@dps.texas.gov</a>.</p> <p><b>C. Modify Section G.1.4, Contractor Project Manager Terms which reads:</b> The Project Manager for this Contract is Lori Dieter Carson. The telephone number for the Project Manager is 512-444-6824. The cell-telephone number for Project Manager is 512-779-2019. The e-mail address for the Project Manager is <a href="mailto:lori@promedaustin.com">lori@promedaustin.com</a></p> <p>To read: The Project Manager for this Contract is Miranda Green, Center Manager, Austin-Lamar. The telephone number for the Project Manager is 512-447-9661. The e-mail address for the Project Manager is <a href="mailto:miranda.green@ushworks.com">miranda.green@ushworks.com</a>.</p>				
Except as provided herein, all terms and conditions of the contract referenced above, as hereto changed, remain unchanged and in full force and effect.				
<b>9A. Name and Title of Authorized Representative (Type or Print)</b>  Joseph T. Mallas President and CEO		<b>9B. U.S. HealthWorks Medical Group of Texas, Inc.</b> DocuSigned by:  _____ (Signature of Authorized Representative)		<b>9C. Date Signed</b>  2/23/2016
<b>10A. Authorized Representative</b>  Robert J. Bodisch, Sr. Deputy Director, Homeland Security and Services		<b>10B. Texas Department of Public Safety</b>  _____ (Signature of Authorized Representative)		<b>10C. Date Signed</b>  2/26/16



**MODIFICATION OF CONTRACT**

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Pages

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**D. Add new Section H.66 to the Contract to read as follows:**

**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.

**E. Add new Section H.67 to the Contract to read as follows:**

**Certification Concerning Restricted Employment for Former State Officers or Employees under Texas 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.

**F. Add new Section H.68 to the Contract to read as follows:**

**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.

## SOLICITATION, RESPONSE AND AWARD

1. CONTRACT NO. 405-15-P002635	2. SOLICITATION NO. 405-ETR-15-Q000129	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFQ) <input type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED February 27, 2015
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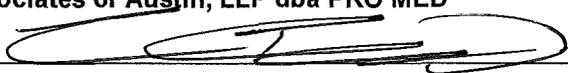
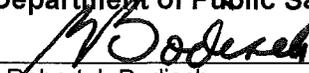
### REQUEST FOR QUALIFICATIONS PROFESSIONAL PRE-EMPLOYMENT PHYSICAL EXAM SERVICES FOR LAW ENFORCEMENT CANDIDATES

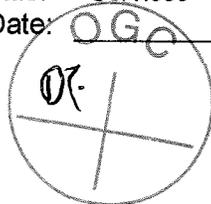
5. Sealed Responses will be received by the Department until <b>3:00 p.m. local time on March 23, 2015</b> and submitted to the issuing office:  <p style="text-align: center;">Texas Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar, Bldg. A. Austin, Texas 78773 <b>Attention: 405-ETR-15-Q000129</b></p>	6. FOR INFORMATION CONTACT:  Vania Ramaekers, CTPM, CTCM Contract Administrator  PHONE: (512) 424-2534 FAX: (512) 424-5419 E-MAIL: vania.ramaekers@dps.texas.gov
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### RESPONSE (Will be fully completed by the Respondent)

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 the SOLICITATION and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	001	3/16/2015		
9. NAME AND ADDRESS OF THE RESPONDENT: →	MEC Associates of Austin, LLLP, dba PRO MED 3801 South Lamar Blvd. Austin Texas 78704		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN THE RESPONSE (Type or Print) Sohail A. Saeed, DO Director South PRO MED and Senior Consultant Occupational Medicine	
11. TELEPHONE NO. (Include area code) 512-444-6824	12. SIGNATURE On file		13. QUALIFICATION DATE 03/23/2015	

### TO BE COMPLETED AT TIME OF AWARD

Document Type: S Statutory Cite: Texas Government Code, Section 2254	
This award document consummates this Contract which consists of the following documents: (a) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award (b) the Contractor's Response, 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 and (c) this Response and Award Document.	
Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Solicitation, Response and Award Document; negotiated changes; BAFO; points of clarification; RFQ as posted; and the Contractor's Response.	
This Contract will consist of a Base Period from Date of Award through August 31, 2016 with three (3) one (1) year renewal Option Periods (September 1, 2016 through August 31, 2017 and September 1, 2017 through August 31, 2018 and September 1, 2018 through August 31, 2019). This Contract may be extended for an additional six (6) month period (September 1, 2019 through February 28, 2020) at the Department's option, per Section H.16, Option to Extend the Term of the Contract. The terms, conditions, and rates for all extensions will remain as stated in this Contract.	
MED Associates of Austin, LLP dba PRO MED  By:  Name: Sohail A. Saeed, DO Director South PRO MED and Senior Consultant Occupational Medicine Title: Senior Consultant Occupational Medicine Date: 04/07/2015	Texas Department of Public Safety  By:  Name: Robert J. Bodisch Deputy Director, Homeland Security and Services Title: Services Date: 04/07/2015



The following items are mutually agreed to by the Contractor and the Department and are hereby incorporated into this Contract.

1. The Solicitation, Offer 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:
  - Deleted definition of "Best and Final Offer (BAFO)";
  - Revised definition of "Contract" to include awarded firm;
  - Revised definition of "Contractor" to include awarded firm; and
  - Deleted definition of "Respondent".
3. Section B.1.1, Professional Services Being Acquired has been revised as follows:
  - Revised paragraph A, to include the awarded firm;
  - Deleted paragraph C, and D; and
  - Renamed paragraph E as B, and revised language to reflect contract rather than solicitation language.
4. Section B.1.2, Pricing Instructions for Proposal has been renamed as Section B.1.2 General Requirements and revised as follows:
  - Deleted paragraph A, B, and C;
  - Renamed paragraph D as A and revised language to reflect contract rather than solicitation language;
  - Deleted paragraph E;
  - Renamed paragraph F as B;
  - Deleted paragraph G and H; and
  - Renamed paragraph I as C.
5. Section B.1.3, Financial Ratings has been revised by deleting paragraph A and renaming paragraph B as A.
6. Section B.2, Pricing Schedule, has been revised to include contract rather than solicitation language and to incorporate the Contractor's rates under this Contract.
7. Section C, Description/Specifications/Work Statement, has been revised throughout to include contract rather than solicitation language and reflect negotiations of the Department and the Contractor.
8. Section C.2.C, General Duties and Obligations, has been revised to clarify Contractor's staff that will be required to attend the Department's orientation for Arrest Control Tactics and Physical Readiness Testing.
9. Section C.6, Proposed Statement of Work (SOW) has been renamed Statement of Work (SOW) with the Statement of Work proposed by the Contractor as part of its Qualifications Response incorporated by reference into this Contract.
10. Section C.7.A.4, regarding reference requirements has been deleted; however, the references as submitted by the Contractor within its Qualification Response, is incorporated by reference into this Contract.

11. Section C.7.A.5 has been deleted.
12. Section C.7.A.6 has been revised to include contract rather than solicitation language.
13. Section C.7.A.7 has been revised to include contract rather than solicitation language.
14. Section C.6.B, has been revised to include contract rather than solicitation language.
15. Section C.6.C, has been revised to include contract rather than solicitation language.
16. Sections C.6.D and C.6.E have been deleted; however, these forms remain part of the RFQ incorporated by reference into this Contract.
17. Sections C.8, Qualifications of Proposed Staff (Including any Subcontractors) has been renamed Qualifications of Staff (Including any Subcontractors) and includes contract rather than solicitation language.
18. Sections C.9, References and C.10, Required Information have been deleted; however, these forms remain part of the RFQ incorporated by reference into this Contract.
19. Section D, Reports and Deliverables has been revised to include clarify the reportable items, reflect contract negotiations and to include contract rather than solicitation language.
20. Section F.1, Place of Performance has been revised to include the locations of the Contractor's two (2) facilities meeting the 10 mile radius location requirements and the one (1) facility outside the 10 mile radius negotiated for overflow use only, to be utilized only when needed and only when requested by the Contract Monitor.
21. Section G, Contract Administration Data has been revised to include contract rather than solicitation language.
22. Section G.1.4, Contractor Project Manager has been revised to include the Contractor's Project Manager's contact information.
23. Section H, Standard Terms and Conditions, header, has been revised to remove solicitation language.
24. Section H.18, Immigration, has been revised to include contract rather than solicitation language within the "U.S. Department of Homeland Security's E-Verify System subsection.
25. Section H.66, Note to Contractor has been deleted.

26. Section I, Supplemental Terms and Conditions, header, has been revised to delete solicitation language.
27. Section IF.2 has been revised to show the negotiated Medical Malpractice limits for the Contractor as well as the Contractor's medical staff.
28. Exhibit J.1, Historically Underutilized Business Subcontracting Plan (HSP), is hereby incorporated into this Contract as completed by the Contractor.
29. Exhibits J.2 through J.10 have been deleted; however, these exhibits remain part of the RFQ incorporated by reference into this Contract.
30. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by the Department has been deleted; however, this Section remains part of the Contractor's Qualification's Response incorporated by reference into this Contract.
31. Sections L and M of the RFQ as issued by the Department have been deleted; however, these Sections remain part of the RFQ incorporated by reference into this Contract.
32. Changes have been made throughout the document to correct references to the solicitation and Respondent/Contractor 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.

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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:

“ACT” means Arrest Control Tactics.

“ADA” means Americans with Disabilities Act.

“Additional Services” means additional services required to be furnished by the Contractor pursuant to changes in Department and Public Safety Commission (PSC) policies from those in effect as of the effective date of this Contract.

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

“Base Period” means Date of Award through August 31, 2016.

“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 8:00 p.m., Central Time.

“Candidate” means an individual referred by the Department to the Contractor for a pre-employment physical examination.

“Compliance Standards” means Contract requirements that have specific and clearly defined recoupment strategies to ensure that the Department does not pay for services that are not of substandard quality or have not been received.

“Contract” means this written agreement entered into by the Department and MEC Associates of Austin, LLC, dba PRO MED, which will incorporate the contents of RFQ No. 405-ETR-15-Q000129 and the Contractor’s response, negotiations changes, BAFO, except as specifically provided to the contrary in this Contract, and any modifications to this Contract resulting from RFQ No. 405-ETR-15-Q000129.

“Contract Administrator” means the representative of the Department’s Procurement & Contract Services Bureau who is 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 who is 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.2.

“Contractor” means MEC Associates of Austin, LLC dba PRO MED

“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 (TXDPS).

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

"ETR" means the Education, Training & Research Division of TXDPS.

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

"Fiscal Year" means any of the one (1) year periods beginning September 1 and ending August 31, 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.

"GAAP" means Generally Accepted Accounting Principles.

"GAAS" means Generally Accepted Auditing Standards.

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

"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.

"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.

"PRT" means Physical Readiness Testing.

"Project Manager (PM)" means appointee, designee, or alternate designee as assigned by the Contractor and the Department as referenced in Section G.1.4.

"PSC" means the Public Safety Commission, the Department's governing body.

"Qualifications Response" means the Contractor's Response to RFQ No. 405-ETR-15-Q000129 that clearly defines the Contractor's qualifications related to the level of services described in Section C of the RFQ. The Response includes all information and materials submitted by the Contractor which includes the (Sealed) Cost Proposal, Technical Proposal, draft Statement of Work (SOW) and other information and materials provided to the Department by the Contractor prior to the RFQ opening date and time.

"RFQ" means Request for Qualifications.

"Service Commencement Date" means the date on which the Contractor is eligible to begin providing services pursuant to this Contract. For the purposes of this Contract, that date shall be the date of full execution of this Contract.

"Services" means professional pre-employment physical examinations in compliance with the terms of this Contract.

**SECTION B - SERVICES AND PRICES/COSTS****B.1 SERVICES AND PRICES/COSTS****B.1.1 Professional Services Being Acquired**

- A. The Texas Department of Public Safety (Department) and MEC Associates of Austin, LLP, dba Pro Med (Contractor) hereby enter into this Contract for comprehensive professional pre-employment physicals for law enforcement candidates at three (3) medical care facilities in the Austin area. The Contractor will perform Services in accordance with the specifications as detailed in Section C of this Contract.
- B. The number of candidates that will be referred for pre-employment physical examinations during the term of this Contract will be solely at the Department's discretion.

**B.1.2 General Requirements**

- A. Any quantities referenced in this Contract are estimates based on historical information and may be increased or decreased during the term of this Contract.
- B. The Contractor shall ensure that no additional expense other than those listed in this Contract is added to an individual examination, unless the expense is necessary to complete a medical evaluation. If the expense is necessary, the Contractor shall obtain prior approval from the Department's Authorized Representative for said expense. The Contractor shall report all changes, additions, and deletions via e-mail to the Contract Administrator.
- C. All Contract changes will be documented via a two party signed Contract Amendment or Modification. These changes will be accompanied by a Purchase Order Change Notice (POCN) document. The Contract Amendment or Modification will address such changes as Scope of Work, pricing, terms, and delivery.

**B.1.3 Financial Ratings**

- 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 SCHEDULES****B.2.1 Price Categories**

- A. Unit prices are all-inclusive for items 1, 2, and 3; these prices include the requirements listed in Section C of this Contract.
- B. The Additional Services listed below are historically the most commonly requested services; however, this is not an all-inclusive list. The Contractor shall follow the process defined in Section B.1.2 items B and C for providing services not currently listed under this Pricing Schedule.

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION
1	Comprehensive professional pre-employment physicals for law enforcement candidates as defined in Section C.5.A.1.	750	each	\$ 350.25	\$ 262,687.50
2	Orthopedic Evaluation, as needed and as defined in Section C.5.A.2.	50	each	\$ 300.00	\$ 15,000.00
3	Cardiologist Evaluation, as needed and as defined in Section C.5.A.3.	50	each	\$ 150.00	\$ 7,000.00
	<b>ADDITIONAL SERVICES (EXAMS and/or X-RAYS)</b>				
1	Cardio Echo	As needed	each	\$ 250.00	
2	CBC – Pro Med	As needed	each	\$ 25.00	
3	OM-CBC-Pro Med OCC	As needed	each	\$ 22.00	
4	Spirogram	As needed	each	\$ 27.50	
5	T-L-Survey	As needed	each	\$ 122.00	
	<b>X-RAYS</b>				
1	Ankle (3 view)	As needed	each	\$ 86.00	
2	Calcaneus, (2 view)	As needed	each	\$ 72.00	
3	Chest (2 view)	As needed	each	\$ 99.00	
4	Clavicle, Complete	As needed	each	\$ 86.00	
5	Elbow (1 views)	As needed	each	\$ 59.00	
6	Elbow (2views)	As needed	each	\$ 110.00	
7	Facial Bones, Complete	As needed	each	\$ 149.00	
8	Femur (2 view)	As needed	each	\$ 108.00	
9	Finger (2 View)	As needed	each	\$ 63.00	
10	Foot (3 view)	As needed	each	\$ 86.00	
11	Forearm (2 view)	As needed	each	\$ 89.00	
12	Hand (2 views)	As needed	each	\$ 72.00	
13	Hand (3 views)	As needed	each	\$ 86.00	
14	Hip - (2 view)	As needed	each	\$ 131.00	
15	Knee (2 view)	As needed	each	\$ 108.00	
16	Lumbar Spine (3 view)	As needed	each	\$ 131.00	
17	Lumbar Spine (5 view)	As needed	each	\$ 184.00	
18	Shoulder (2 view)	As needed	each	\$ 114.00	
19	Spine OM-L(2 or 3 View)	As needed	each	\$ 99.00	
20	Thoracic Spine (2 view)	As needed	each	\$ 154.00	
21	TIB/Fibula	As needed	each	\$ 96.00	
22	Wrist (3 view)	As needed	each	\$ 86.00	
23	Additional items with appropriate pre-approvals	As needed	each	\$	

**SECTION C – DESCRIPTION / SPECIFICATIONS / WORK STATEMENT****C.1 BACKGROUND**

The Department is an executive agency of the State of Texas with a large variety of public functions including law enforcement, traffic and driver regulation, and recordkeeping. The Department conducts three (3) annual recruit training schools to fulfill vacancies and new position requirements for the Department's Law Enforcement Divisions. Each recruit school accommodates approximately one hundred and sixty (160) recruits; however, the ETR Division will process up to 375 candidates per school.

**C.2 GENERAL DUTIES AND OBLIGATIONS**

- A. The Contractor shall provide pre-employment physical examinations for candidates in compliance with this Contract.
- B. The Contractor shall coordinate billing, appointments and reports necessary for candidates when orthopedic and cardiologic exams are required.
- C. The Contractor shall ensure all physicians under its employment, with less than three (3) years of experience providing Services to the Department under this Contract or previous contract(s), attend the Department's orientations for Arrest Control Tactics (ACT) and Physical Readiness Testing (PRT). This orientation(s) will take place at the Department's Austin Headquarters Training Academy.

**C.3 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor will not deviate from the Department Policies and Procedures during the provision of services without obtaining the prior written approval of the Department.
- B. The Department shall notify the Contractor of all changes in, or additions to, such Policies and Procedures, after which time the Contractor shall comply with the Policies and Procedures contained therein, unless the Department approves in writing a deviation from such Policies and Procedures.
- C. The Contractor's written request for deviations from the Department's Policies and Procedures will originate from the Contractor's Authorized Representative or his/her designee and will be forwarded to the Department's Contract Administrator. The Contractor's written requests for deviation will contain language that details the specific deviation with reference to the policy number or procedure, section, paragraph, etc., as well as the justification for such deviation.
- D. Unless a deviation from the Contractor is specifically requested and approved in writing by the Department, the Contractor shall comply with the Department's Policies and Procedures. A contract award will not imply approval of a Policy or Procedure deviation. Any deviations previously granted by the Department under a separate or previous contract do not apply to this Contract.
- E. The Contractor shall comply with Department policies regarding building access and physical security as appropriate. The Contractor shall comply with the Department's Computer Services Security Policies as appropriate. The Contractor will be provided with such policies after a contract award has been made. The Contractor will

conform to the State of Texas Security policies and procedures for handling data. The Contractor acknowledges that no personal identifiable or private information collected will be used, sold or shared by the Contractor for any purpose other than the intended purpose of administering the services provided under this Contract. In the event of a security breach where names, mailing addresses, birthdates, social security numbers, credit card information and drivers license data is disclosed. Contractor will be responsible for notifying anyone affected by such a security breach. Failure to comply with security standards may lead to the suspension or termination of this Contract. If a security breach occurs on the Department's side, the Contractor will not be liable if the Department is at fault.

#### **C.4 GENERAL REQUIREMENTS**

- A. The Contractor's and subcontractor's personnel shall maintain the qualifications and pass the standard Department Contractor Background Check during the term of this Contract as well as any approved and executed renewals/extensions.
- B. The Department's management reserves the right to interview any subcontractors assigned to provide services under this Contract.
- C. Disclosures: Conflict of Interest
  - 1. The Contractor represents and warrants that it and its proposed personnel have no actual or potential conflicts of interest in providing the Services to the Department under this Contract. The Contractor also represents and warrants that its provision of Services under this Contract would not create the appearance of impropriety. The Contractor shall disclose any existing or potential conflicts of interest the Contractor might have in providing Services to the Department under this Contract.
  - 2. As part of this disclosure requirement, the Contractor shall include all past and present contractual, business, financial or personal relationships between the Contractor and the Department and between the Contractor's proposed subcontractors, if any, and the Department. For purposes of this disclosure requirement, "past" is defined as within the two (2) calendar years prior to the deadline for submission of the Response. For purpose of this disclosure requirement, the "Department" is defined as the appointed Public Safety Commission that heads the agency as well as the Department's employees or recent former employees. For purposes of this disclosure requirement, "recent former employees" are defined as those Department employees who have terminated agency employment within the two (2) calendar years prior to the execution of this Contract. For each item, the Contractor shall provide a detailed explanation of why the Contractor does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to the Contractor's submission of a Response, or its performance of this Contract.
  - 3. For purposes of this Contract, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections outside simply providing a Response. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity; see Chapter 573, Texas Government Code, which defines these degrees of

consanguinity and affinity. Connections other than such family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish the Contractor's independence of judgment or effectiveness in the performance of the Contractor's responsibilities to the Department or the state under this Contract. Connections also fall within this definition if a reasonable person could expect connection, within the overall context of the Contractor's submission of a Response, possible selection as the Contractor or its performance of this Contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict with interest. Connections also fall within this definition if the relationship is with the Department or other State of Texas employees with authority to make decisions or recommendations on state contracting or procurement of this Contract. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of "purchasing personnel" in Section 2262.004(a) (2) of the Texas Government Code.

4. The Contractor affirms that it has not given, 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 or any employee or representative of same, in connection with this procurement.
5. The Contractor shall disclose any proposed personnel under this Contract who are current or recent former employees of the Department or the State of Texas. Recent former employees are defined above.
6. Disclosures under these provisions are information that will be evaluated by the Department; however all information provided will not necessarily lead to a restriction or disqualification. Issues will be considered on a case by case basis in the best interest of the State of Texas.
7. If the Contractor is in doubt about whether information should be disclosed, the Contractor may contact the Contract Administrator for assistance. Failure to disclose any required information under these provisions may be cause for disqualification or termination of this Contract. The Department reserves the right, in its sole discretion, to determine if any issue should result in disqualification or termination of this Contract.
8. During the term of this Contract, the Contractor shall have the continuing responsibility to promptly provide the Department with information about any actual or potential conflicts of interest or appearance of impropriety issues between the Contractor, including any subcontractors, and any entities or persons the Contractor is assigned or may be assigned to monitor or review.
9. If circumstances change or additional information is obtained subsequent to the execution of this Contract, the Contractor's duty to promptly disclose information to the Department under these provisions continues under the term of this Contract and does not end with submission of a Response or receipt of contract award.

## C.5 SCOPE OF WORK & REQUIREMENTS

- A. The Contractor shall provide services as assigned by the Department under the three (3) service categories as defined below.
- B. Each category under this Contract is based on current estimated quantities; The Department does not guarantee to purchase any minimum quantity. The Department reserves the right to increase the quantities of this Contract at the same original terms and conditions.

### C.5.A.1 Category One, Comprehensive Pre-Employment Physical Examination

- 1. The Department shall direct each candidate to the office(s) of the Contractor with the following forms:
  - a. L-2 License Medical Condition Declaration – To be signed by the examining physician.
  - b. RC-14 Notice to Physician - Certificate of Examination (RC-14 Form) - To be completed by the medical staff and signed by the physician.
  - c. RC-13 Medical Personal History Questionnaire (RC-13 Form) - This is a medical questionnaire that is filled out by the candidate and reviewed by the medical staff.
- 2. The Contractor will comply with the following minimum requirements for the Comprehensive Pre-employment Physical Examinations :
  - a. Provide onsite x-rays and laboratory lab specimen collection and results including x-ray capabilities;
    - i. X-rays , if required to complete an evaluation on previous injuries
    - ii. Comprehensive Metabolic Blood Panel Test
  - b. Conduct a ten (10) panel urine drug screening for the following drugs: (Urine sample will be taken on-site )
    - i. Buprenorphine
    - ii. Barbiturates
    - iii. Benzodiazepines
    - iv. Cocaine
    - v. Methadone
    - vi. Morphine
    - vii. Methamphetamine
    - viii. Marijuana
    - ix. Oxycodone
    - x. Tricyclic Antidepressants
  - c. Conduct a Chemical Test Strip Urinalysis for the following:
    - i. Specific gravity
    - ii. pH
    - iii. Protein
    - iv. Glucose
    - v. Ketones
    - vi. Blood

- vii. Leukocyte esterase
  - viii. Nitrite
  - ix. Bilirubin
  - x. Urobilinogen
- d. Conduct an Anabolic Steroid Urine Test
  - e. Provide on-site Audiograms
  - f. Provide on-site EKGs with interpretation and report
  - g. Schedule an appointment for the candidate with a specialist (Orthopedic, Cardiologist) within 24 hours after conducting the physical exam, when medical history or physical exam deems it necessary for further evaluation.
  - h. Submit one bill for all services conducted including the billing for the specialist as defined in Section G.3.
3. All services and required forms for a physical examination of a candidate shall be completed within three (3) business days and results will be ready for pick-up by the Department's authorized Contract Monitor or designee. Two exceptions to this requirement are: (1) if further testing is required by the candidate, or waiting for candidate to submit additional information, i.e., medical records or other pertinent information necessary to complete examination.
- a. If previous medical records must be requested for further medical evaluation, the Contractor may request an extension to this deadline. Such deadline extensions will be requested in writing via fax or email. The Department's Contract Monitor shall return approval of the extension request, in writing via fax or email.
  - b. When anabolic steroid tests are involved, results may be submitted after the Candidate's file is returned to the Department, but in no case will exceed two (2) weeks for such a submittal.

#### **C.5.A.2 Category Two, Orthopedic Specialist Evaluations**

1. When required, the Contractor will send the Candidate to be evaluated for an Orthopedic Specialist evaluation.
2. This appointment will be set within 24 hours after the physical examination appointment is completed. When exams are conducted on a Friday, the Contractor will schedule any necessary additional examinations for the following Monday.
3. The Contractor shall provide verbal notice of appointment with the Specialist to the Contract Monitor by phone and follow up with an email detailing the appointment with the specialty physician's name, date and time.
4. The Contractor shall provide reports related to the Specialist evaluations to the Department.

#### **C.5.A.3 Category Three, Cardiologist Evaluations**

1. When required, the Contractor will send the Candidate to be evaluated for a Cardiologist Specialist evaluation.

2. This appointment will be set within 24 hours after the physical examination appointment is completed. When exams are conducted on a Friday, the Contractor will schedule any necessary additional examinations for the following Monday.
3. The Contractor shall provide verbal notice of appointment with the Specialist to the Contract Monitor by phone and follow up with an email detailing the appointment with the specialty physician's name, date and time.
4. The Contractor shall provide reports related to the Specialist evaluations to the Department.

#### C.5.B Acceptance Criteria

1. Acceptance Criteria will be determined by the Contractor's ability to comply with the minimum requirements for each Candidate's physical examination and additional examination of specialist timeline, accuracy of forms and reporting requirements. The following forms will be evaluated prior to acceptance of Services:
  - a. L-2 License Medical Condition Declaration
  - b. RC-14 Notice to Physician - Certificate of Examination
2. The Contractor will be required to provide monthly reporting of each Candidate for which exams were performed during the previous month. This report will include but is not limited to the following information:
  - a. Date when Candidate made first contact
  - b. Physical Exam appointment schedule
  - c. Completed services with date and time

#### C.6 STATEMENT OF WORK (SOW)

- A. The Contractor's proposed SOW, provided within its Qualifications Response, is incorporated in its entirety by reference into this Contract. This SOW describes how the Contractor will accomplish the Services identified in this Section C. The Contractor shall maintain the appropriate credentials and experience regarding the services under this Section C.
- B. The Contractor shall ensure the primary Services will be performed by its medical and non-professional staff in the following categories (**See Section C.5**)
  1. Intake exam and review of forms, Registered Nurse (RN);
  2. Physical Exams, Physicians;
  3. Testing and Reporting, Licensed/Certified medical professionals (Radiologist, Technologist);
  4. Billing - Account Technician; and
  5. Setting appointments - Administrative Assistants

**C.7 CONTRACTOR QUALIFICATIONS (INCLUDING ANY SUBCONTRACTOR)**

A. The Department has established the following criteria as minimum qualifications for this Contract:

1. The Contractor's facility shall meet the following requirements:

- a. Medical facilities will be located within a ten (10) mile radius of the Department's Headquarters complex located at 5805 N. Lamar Blvd, Austin, Texas 78752.
- b. Medical facilities will be available to conduct exams Monday through Friday from 8AM to 8PM, but will preferably allow for scheduled weekend exams when necessary.
- c. Medical Facilities will, at a minimum, be able to process twenty (20) Candidates per day for the term of this Contract.
- d. Medical facilities will meet all state and federal regulations regarding inspections, facilities, staff and equipment.

2. Staff Qualifications:

- a. Physicians conducting the medical evaluations shall hold a valid full Medical License issued by the Texas Medical Board having a minimum specialty certification with the American Board of Family Medicine. In addition, physicians will be required to have a minimum of three (3) years practical experience in the field of pre-employment physical examinations.
- b. Due to the intensity of the Department's physical fitness and combat training program, examining physicians shall have documented training and experience with sports medicine or military medical examinations, The Department's medical entrance standards for a Candidate were established using the same standards as medical entrance evaluations for military personnel used in the United States Department of Defense.
- c. The Contractor will employ Registered Nurses (RN) with valid licenses at all locations conducting the exams.
- d. The Contractor shall, at a minimum, have a valid licensed/certified limited Medical Radiologic Technologist at all locations conducting the exams.
- e. Additional staff being proposed for services under this Contract shall be qualified to handle the reporting and services as specified within this Section C.

3. The Contractor shall provide licensed medical professionals that meet the minimum qualifications as described in this Section C. Current employees licenses, certifications and resumes will be forwarded to the Department as they are renewed or updated. The Contractor will provide the necessary documentation for new employees recommended to work under this Contract within ten (10) business days of the employee's hire date.

4. The Contractor shall ensure the staff identified in this Contract are available and will provide Services under this Contract. The Contractor shall ensure all necessary medical licenses and technical certifications remain current throughout the term of this Contract.
- B. The Contractor shall maintain the necessary facilities, abilities, and financial resources to provide the services on an as needed, as requested basis. The Contractor shall provide notice to the Department within thirty (30) calendar days if, during the term of this Contract, changes occur to the facilities, abilities or financial resources necessary to provide services under this Contract

## **C.8 QUALIFICATIONS OF STAFF (INCLUDING ANY SUBCONTRACTORS)**

### **A. Change in Personnel**

The Contractor shall provide resumes for all new or replacement partners, managers, supervisors, physicians, sub-contractors for orthopedic and cardiologist specialties, registered nurses, accounting staff, and administrative assistants proposed to work on this Contract, along with a list stating the proposed job responsibilities, areas of expertise, percentage of time the person will dedicate to this Contract, and the title and role of the proposed staff member or sub-contractor.

The resumes will contain at a minimum the following information:

- A full name (including full middle name);
  - A five-year employment history;
  - A specific description of relevant experience, education, certifications, areas of specialization, and qualifications the person has with the scope of work;
  - Any additional information the Contractor considers helpful to indicate the individual's ability to aid the Contractor in successfully completing the required deliverables;
  - Medical professionals' license information shall be submitted with the resumes.
- B. The Contractor shall designate a person as the Contractor's Project Manager with whom the Department Contract Monitor or designee may communicate to arrange and coordinate the creation and delivery of deliverables throughout the Contract period. The Contractor shall list the name, title, work address, cell phone, work phone, fax number, email address and any other pertinent contact information of this coordinator and update as necessary.
  - C. Staff resumes will be identical in format and presentation. Resumes will present sufficient detail to provide the Department with a convincing indication that the personnel involved can successfully provide the services. The key personnel, as identified in the Contractor's Qualifications Response, are considered to be essential and no substitutions will be made without prior written consent of the Department. The Department reserves the right, in its sole discretion, to approve each member of the team and to request substitutions.

**C.9 DEPARTMENT RECORDS**

- A. Upon conclusion of this Contract, the Department will own the complete files, notes, charts, and drawings related to the execution of the services under this Contract. The Contractor will keep any copies that are needed for its records and future planning for renewal/extension terms.
- B. Records shall be labeled in a manner satisfactory to the Department as well as organized and retained in the original folder. The Contractor shall comply with additional instructions pertaining to Department records as detailed in Section H.55, Books and Records of this Contract.
- C. All documents written to fulfill this Contract will be the property of the Department; the Department may use, update, and distribute the documents as the Department deems appropriate.
- D. Plans developed for this Contract are considered confidential and proprietary and are not to be distributed to unauthorized parties.
- E. In the event the Contractor requires copies of any non-confidential records after conclusion of this Contract or Contract expiration and management transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- F. Records will be maintained in accordance with the Department's Records Retention Schedule.
- G. The Department will own the copyright for all materials created as part of this Contract, unless otherwise mutually agreed upon in writing.

## SECTION D – REPORTS AND DELIVERABLES

## D.1 REPORTS and DELIVERABLES REQUIRED FROM THE CONTRACTOR

FREQUENCY	DUE DATE	REPORT - DELIVERABLE	AUTHORITY
Monthly	15 <sup>th</sup> business day of the month to Accounts Payable, with a copy to the Contract Monitor.	Invoice with billing forms for prior months completed and accepted examinations	Contract, Section G
Monthly	5 <sup>th</sup> business day to Contract Administrator.	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Section I.3.E and Exhibit J.1
Monthly	Last business day of the month to be submitted to the Contract Monitor.	Status Report for candidates referred	Contract Section C.5.B
After Award	Ten (10) calendar days after award to the Contract Administrator.	Schedule kick-off meeting.	Contract Administrator
After Award	Ten (10) business days after the scheduled kickoff meeting, to the Contract Administrator and at replacement of approved staff members.	HR-22, - Vendor Background Investigation Form , to enable a Contractor Background Investigation and Fingerprint Criminal History Check	Contract Monitor
After Award	Ten (10) business days after the Contract award date and upon renewals or replacements.	Revised Insurance Certificates showing: a. The Department named as an additional insured by using endorsement CG2026 or broader, b. endorsement waiver of subrogation, and c. 30 Day Notice of Cancellation to the Department	Contract, Section I.1
Other	Prior to Contract execution and upon renewals or replacement to the Contract Administrator	Insurance Certificates	Contract, Section I.1
Other	Upon hiring of new key medical and professional staff.	Resumes, Certifications, Licenses, Background and Fingerprint Criminal History Checks.	Contract C.8 and I.F.2

**D.1.2 Reports:** The Contractor will produce a Status Report for Candidates referred during a month. This report is due on the last business day of the month. Each report will include the following details:

- a. Candidates intake completed
- b. Candidates physical exam completed
- c. Candidates waiting for specialized appointments
- d. Candidates specialized exam completed

**D.1.3 Revised or Additional Reports:** At the sole discretion of the Department, reports may be revised or additional reports maybe required.

## 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.5.B.
- 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 the Contract. The Department shall perform inspections in a manner that shall 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 of the 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 may exercise its rights of recovery of money owed as authorized in Section G.3.3 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 acceptance of deliverables 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 Services performed by the Contractor will 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. The Contractor will provide when requested by the Department its Texas Department of State Health Services (DSHS) inspection documentation.

- 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, shall 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, per Section H: 61 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 (Per Section H:61). 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.F.

## SECTION F – RESTATEMENT OF DELIVERIES AND PERFORMANCE

### F.1 PLACE OF PERFORMANCE

The Contractor shall perform services at the medical facility locations identified by this Contract with each location meeting the requirements set forth under this Contract.

- 3801 S. Lamar Boulevard, Austin, Texas 78704;
- 2000 W. Anderson Lane, Austin, Texas 78757; and
- 13831 U.S. Highway 183 North, Austin, Texas 78750. \*

***\* This location is 12.5 miles from the Department's Headquarters, and as such is to be used for overflow, only as needed, and only as authorized by the Contract Monitor.***

### F.2 CONTRACT TERM

- A. This Contract will consist of a Base Period from date of award through August 31, 2016 with three (3) one (1) year Optional Renewal Periods: September 1, 2016 through August 31, 2017; September 1, 2017 through August 31, 2018; and September 1, 2018 through August 31, 2019.
- B. The Contract may be extended for an additional six (6) month period (September 1, 2019 through February 28, 2020) at the Department's option, per section H.16, Option to Extend the Term of the Contract.
- C. 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 state, 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 Vania Ramaekers, CTPM, and CTCM.
- B. The telephone number for the Contract Administrator is (512) 424-2534.
- C. The e-mail address is [vania.ramaekers@dps.texas.gov](mailto:vania.ramaekers@dps.texas.gov).
- D. 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 Monitors****G.1.3.1 Primary**

- A. The Contract Monitor of this Contract is Vicky Aguirre.
- B. The telephone number for the Contract Monitor is (512) 424-5903.

- C. The e-mail address is [vicky.aguirre@dps.texas.gov](mailto:vicky.aguirre@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 documented via a two-party signed Contract Amendment or Modification, signed by the Department's Authorized Representative or his designee and the Contractor's Authorized Representative. This change will be accompanied by a Purchase Order Change Notice (POCN) The Contract Amendment/Modification document will address such changes as Scope of Work, pricing, terms, and delivery.

#### G.1.3.2 **Secondary**

- A. The Secondary Contract Monitor of this Contract is Pedro Amador.
- B. The telephone number for the Contract Monitor is (512) 424-2126.
- C. The e-mail address is [pedro.amador@dps.texas.gov](mailto:pedro.amador@dps.texas.gov)
- D. The Secondary Contract Monitor will be responsible for this contract when the primary contract monitor provides the vendor with written notice of long term absence.
- E. The Secondary 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.
- F. The Secondary Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.
- G. If, as a result of technical discussions, it is desirable to modify this Contract, changes will be documented via a two-party signed Contract Amendment or Modification, signed by the Department's Authorized Representative or his designee and the Contractor's Authorized Representative. This change will be accompanied by a Purchase Order Change Notice (POCN) The Contract Amendment/Modification document will address such changes as Scope of Work, pricing, terms, and delivery.

#### G.1.4 **Contractor Project Manager**

- A. The Project Manager for this Contract is [Lori Dieter Carson](#).
- B. The telephone number for the Project Manager is [512-444-6824](tel:512-444-6824).
- C. The cell-telephone number for Project Manager is [512-779-3019](tel:512-779-3019).
- D. The e-mail address for the Project Manager is [lori@promedaustin.com](mailto:lori@promedaustin.com)
- E. The Contractor shall provide a Project Manager 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.

- F. The Project Manager shall have full authority to act for the Contractor in the performance of the required services. The Project Manager or a designated representative shall meet with the Contract Monitor(s) to discuss problems as they occur. The Project Manager or designated representative shall respond within three (3) business days after notification of the existence of a problem.

## G.2 INVOICE REQUIREMENTS

The Department will pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided. Itemized invoices will clearly identify the services completed and accepted, deliverables delivered, and the date range of worked performance of this associated charge.

The Contractor's Invoice will include the following:

1. This Contract number;
2. Remittance Address; and

Prompt Payment Discount (the Contractor may offer a prompt payment discount, e.g., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires an expedited payment).

- B. An invoice copy may be sent electronically to: [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov) with a copy to the Contract Monitor at: [recruitingInvoices@dps.texas.gov](mailto:recruitingInvoices@dps.texas.gov). The original invoice will be submitted to the office designated below:

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

**The State will not incur any penalty 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.7) and Substitute W-9 Form (Exhibit J.9) to the following address:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773  
Attention: Mary Hamilton**

**Reference: Vendor Set-up for RFQ 405-15-Q000129**

**Note: Contact Vania Ramaekers when completed (512-424-2534 or [vania.ramaekers@dps.texas.gov](mailto:vania.ramaekers@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: 1742448113

- D. In the event the Contractor elects to decline Direct Deposit on the Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form, the payment will be mailed to the following remittance address:

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**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. The Contractor shall provide one master billing invoice, which includes information and charges for the exams and specialty exams provided to candidates for the prior month. (The Department will not pay subcontractors on separate invoices under this Contract)
- C. The Contractor shall provide documentation to support the exams and specialty exams provided to each candidate with the monthly invoices.
- D. The Contractor shall bill the Department for exams completed and accepted according to Section G.2, Invoice Requirements. The Contractor invoices will be subject to the Department's usual auditing and accounting procedures, which will be paid within thirty (30) calendar days after receipt of an accurate Contractor's invoice.
- E. Payment for Monthly Services: The Contractor shall bill the Department for each calendar month, one (1) calendar month in arrears for the amount due for the monthly services rendered. Each invoice is subject to the Department's usual auditing and accounting procedures. The Contractor's compensation may be subject to proration or reimbursement for unforeseen situations at the discretion of the Department.
- F. 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.

- G. 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 shall 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.1; 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 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.1.5 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 - STANDARD TERMS AND CONDITIONS**

Subcontractors will also comply with these terms.

### **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 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 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 shall 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 day's 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 shall 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. 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:
  - 1. 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.

2. 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, and Subchapter B.
  3. 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 78773.
  4. 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.
  5. 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.
  6. 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).
  7. 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.
  8. 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 WILL 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 WILL 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 WILL 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 IN 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 WILL 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 WILL 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 Customers 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. 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 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 THIS CONTRACT**

- A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor prior to Contract expiration.
- B. The preliminary notice does not commit the Department to an extension.
- C. If the Department exercises this option, this Contract shall 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 transitioning 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 IMMIGRATION

The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who shall perform any labor or services under this Contract. The Contractor shall also comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

### **U.S. Department of Homeland Security's E-Verify System**

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will 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 the Department, 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 Contractor's subcontractors, as proof that this provision is being followed.

**If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the 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) shall 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 shall 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 shall 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.
- E. The Contractor shall comply with Texas Government Code, Chapter 730, the Motor Vehicle Records Disclosure Act, and the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. § 2721 et.seq.)

#### **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 shall 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 shall 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 shall 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 respective party's contacts as specified in Sections G.1.2 and G.1.5 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 contracts 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's manpower and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department's 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 ATTACHMENTS**

The Department reserves the right, in its sole discretion, to reject any Contractor terms and conditions or other documents or attachments as part of the Contractor's Offer.

**H.44 UNACCEPTABLE CONTRACTOR TERMS**

No Department action, including, but not limited to, execution of a Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such in 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 indemnifies 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's 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's 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. 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 accepted 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, shall 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 the obligations of the Contractor under 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 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 shall 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 shall 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 into 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's issued identification cards shall be worn at all times 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) 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 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**

- B. 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.
- C. 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.
- D. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- E. 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.
- F. 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 REDACTED DOCUMENTATION**

The Contractor **shall include within its Response**, an electronic copy of the Contractor's Response with specified private information removed, plus an overview of the nature of the information removed per Section L.11.

#### **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 shall be the exclusive property of the State of Texas and all such data shall 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 shall 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 kiosk service 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 I – SUPPLEMENTAL TERMS AND CONDITIONS

Subcontractors will 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) days of the effective date.
- D. The Contract represents and warrants all required policies, with the exception of Medical Malpractice, contain endorsements prohibiting cancellation except upon at least thirty (30) calendar days prior written notice to the Department. The Medical Malpractice insurance coverage will prohibit cancellation except upon a minimum of ninety (90) 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(s) reside 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 Liability 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.** The Contractor shall maintain Commercial General Liability Insurance coverage that includes, but is not 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 shall 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.**

1. The Contractor shall maintain Professional Liability 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.

- 2. Medical Malpractice.** The Contractor shall maintain Medical Malpractice insurance coverage that covers both the facility(ies) and its medical providers with minimum limits:  
\$ 500,000 per occurrence,  
\$1,000,000 annual aggregate.

In addition, to the above requirement the Contractor shall require and maintain individual Medical Malpractice insurance coverage for all medical personnel with minimum limits:  
\$ 500,000 per occurrence,  
\$1,000,000 annual aggregate.

If this insurance is written on a claims-made form, coverage shall 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, shall 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 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 an insurance carrier 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 will 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. Contractor shall also comply with its attached HUB Subcontracting Plan.
- B. A detailed description of the HSP submitted with the Contractor's Response is included as Exhibit J.1, HUB Subcontracting Plan (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, this agency'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 Vendor Progress Assessment Report, which is included within Exhibit J.1, HUB Subcontracting Plan.
- E. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

#### **I.4 LIQUIDATED DAMAGES – not applicable**

#### **I.5 TRANSITION – not applicable**

#### **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 shall 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 shall 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's Representative 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 Department's Representative 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 ETR Manager in the administration of this Contract, or
  - 2. By the Department's Representative's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.
  - 3. A claim under this clause shall not be allowed:
    - A. For any costs incurred more than twenty (20) days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order; and
    - B. 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 – Not applicable****I.9 CRIMINAL HISTORY BACKGROUND CHECKS**

- A. The Contractor shall have its contract 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 Vendor 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 contract 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 Project Manager shall provide the following to the Department's Contract Manager within 10 calendar days of the effective date of this Contract: 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 Contract, the Department may require the Contractor personnel to submit to an annual Department fingerprinted-based Criminal History Background Investigation
- 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 the Contractor personnel's ability to continue to work under this Contract.

**I.10 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

The Contractor shall comply with any and all rules and regulations pertaining to HIPAA and shall utilize any HIPAA forms necessary for services provided under this Contract.

## **I.11 CONFIDENTIALITY AND SECURITY REQUIREMENTS**

### **I.11.1 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. That it 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's 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 will 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-recipients 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 of whether it was obtained from the Department or from a sub-recipient 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 Offer, 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 assignment shall sign and submit appropriate agreements and abide by these security requirements, within five (5) calendar days of a the Department's request.

### **I.11.2 Sensitive Personal Information**

- A. 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.

"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 Department's request, if the Department determines that the notification shall impede a criminal investigation. The notification to the affected people will be made as soon as the Department determines that it will not compromise any criminal investigation.

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.
- F. If this subsection requires the Contractor to notify at one time more than ten-thousand (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.
- G. 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 (\$2,000.00 per day) against the Contractor for the following damages; however, the Department reserves the right to claim actual damages for any damages other than the following: assessment and review of lost or compromised data to include any labor costs associated with such an assessment. This amount is a reasonable estimate of the damages the Department will suffer as a result of such breach and is enforceable. 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). Any liquidated damages assessed under this Contract may, at the Department's 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.12 DISCLOSURE OF SECURITY BREACH**

- A. 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 Manager 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"). 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 will take to investigate the Security Incident;
  5. What steps the Contractor has taken or will 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). 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 shall 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.13 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.14 CONTRACTOR'S COMPLIANCE WITH DEPARTMENT INFORMATION SECURITY REQUIREMENTS**

#### **I.14.1 Department's Information Protection Security Policies, Standards & Guidelines.**

- A. 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, or 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, vendor, and other state agency data held by the Department. As used herein, the terms "Sensitive" and "Confidential" information shall have the meanings set forth in the Department's Information Protection Policies, Standards & Guidelines. All waiver requests shall 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.
  
- B. 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 shall 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:
  - 1. Date and time of sanitization/destruction;
  - 2. Description of the item(s) and serial number(s) if applicable;
  - 3. Inventory number(s); and
  - 4. Procedures and tools used for sanitization/destruction.

- C. 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.14.2 Access to Internal Department Network and Systems.**

- A. 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.
1. Remote access technologies provided by the Contractor will be approved by the Department's CISO.
  2. 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.
  3. The Contractor shall secure its own connected systems in a manner consistent with Department requirements.
  4. The Department reserves the right to audit the security measures in effect on the Contractor's connected systems without prior warning.
  5. The Department also reserves the right to immediately terminate network and system connections not meeting such requirements.

### **I.15 IT & DATA SECURITY REQUIREMENTS**

#### **I.15.1 Cloud Security Requirements**

The Contractor shall comply with the current Cloud Security Alliance's (CSA) Cloud Control Matrix (CCM) security requirements (See Exhibit J.11) for the Contractor-hosted services or applications that are included as part of the Contractor's kiosk service. Information pertaining to CSA <https://cloudsecurityalliance.org/> and CCM information may be found at <https://cloudsecurityalliance.org/research/ccm/>. The Contractor **shall provide within its Offer, a detailed description on how it meets these references security requirements.**

#### **I.15.2 System Access Control**

The Contractor-hosted Service shall support external authentication and authorization services, auditing and role definitions.

A. Logging Requirements:

1. Audit logs will enable tracking activities to take place on the system;
2. Successful and unsuccessful system log-on attempts;
3. Successful and unsuccessful attempts to access, create, write, delete, or change permission on a user account, file, directory, or other system resource;
4. Successful and unsuccessful attempts to change account passwords;
5. Successful and unsuccessful actions by administrator accounts;

6. Successful and unsuccessful attempts for users to access, modify, or destroy the audit log.
- B. The following content will 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. Type of event;
  4. User/subject identity; and
  5. Outcome (success or failure) of the event.
- C. The System will provide alerts to appropriate Department officials in the event of an audit processing failure.

### **I.15.3 Account Management**

- A. Establish and administer user accounts in accordance with role-based scheme and track and monitor role assignments.
- B. Automatically audit account creations, modification, and disabling, termination actions and notify appropriate individuals, as necessary.
- C. Prevent multiple concurrent active sessions for one (1) user identification.
- D. Establish systems that will enforce a limit of no more than three (3) consecutive invalid access attempts by a user.
- E. Establish a system that will automatically lock the account/node for a thirty (30) minute time period, after the unsuccessful attempts maximum is met, unless released by an administrator.
- F. Establish a system that will prevent further access to the system by initiating a session lock after a maximum of thirty (30) minutes of inactivity, and the session lock remains in effect until the user reestablishes access using appropriate identification and authentication procedures.
- G. Establish a system that uniquely identifies all users.
- H. Establish a system that follows the secure password attributes, below, to authenticate an individual's unique ID. The passwords will:
  1. be a minimum length of twelve (12) characters on all systems;
  2. password must contain at least two of each of the following: Upper case, Lower case, numbers, and symbols;
  3. not be a dictionary word or proper name;
  4. not be the same as the User ID;
  5. expire within a maximum of ninety (90) calendar days;
  6. not be identical to the previous ten (10) passwords;
  7. not be transmitted in the clear outside the secure location; and
  8. not be displayed when entered

- I. Establish a system that protects the confidentiality of Department Information. All data will be encrypted when it is being transmitted or stored. 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.
- J. If the Contractor requires access to the Department's network, data or the network processing, transporting, or storing Department data, the Contractor shall sign the CJIS Security Addendum, and all its employees requiring access to the Department's network or data shall sign the FBI Certification page to the CJIS Security Addendum and complete a fingerprint based background check.
- K. Establish a system that will undergo:
  - 1. Vulnerability scanning/penetration testing conducted by the Department or the Texas Department of Information Resources (DIR) on a frequent basis; and
  - 2. Remediation of legitimate vulnerabilities within 30 calendar days of notification by the Department when new vulnerabilities potentially affecting the system/application are identified and reported.
- L. System use notification:
  - 1. The system will display an approved system use notification message or banner before granting access to the system. The notification will state:
  - 2. system usage may 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.
- M. The system will prevent an individual from denying that previous actions had been performed by the user. The goal is to ensure that the recipient of the data is assured of identity (non-repudiation).

#### **I.15.4 System Security**

- A. Provide audit logs that enable tracking of activities taking place on the system.
- B. Audit logs will track successful and unsuccessful system log-on attempts.
- C. Audit logs will 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 will track successful and unsuccessful attempts to change account passwords.
- E. Audit logs will track successful and unsuccessful actions by privileged accounts.
- F. Audit logs will 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 will 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 (DIR). 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 will 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 will enable the Department (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 Department due to the kiosk service, 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.15.5 Data Security**

- A. If the Contractor or any sub-contractors 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 kiosk service shall protect against an employee falsely denying having performed a particular action (non-repudiation).
- C. Require the Contractor, sub-contractor, and their staff shall obtain and provide proof of PII certifications for its employees accessing the Department's data at the request of the Department.
- D. The Contractor shall 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 shall 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.15.6 Data Center Location Requirements**

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

### **I.15.7 Paper/Wireless Devices**

The following requirements specify the minimum set of security measures required on WLAN-enabled portable electronic devices (PEDs) that transmit, receive, process, or store PII or confidential information:

- A. Personal Firewall. WLAN-enabled PED will use personal firewalls or run a Mobile Device Management system that facilitates the ability to provide firewall services.
- B. Anti-Virus Software. Anti-virus software will be used on wireless-capable PEDs or run a Mobile Device Management System that facilitates the ability to provide anti-virus services.
- C. 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. Department prefers 256-bit encryption.

- D. 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 will 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.
- E. 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.
- F. Validated Physical Security. APs used in the WLANS will not be installed in unprotected environments due to an increased risk of tampering and/or theft.

### **I.15.8 Physical Access Controls**

- A. The Contractor shall restrict physical access to the system 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 the 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 Contractor shall implement network-based or host-based intrusion detection tools.
- G. The Contractor shall, in addition:
  - 1. Monitor inbound and outbound communications for unusual or unauthorized activities;
  - 2. Send individual intrusion detection logs to a central logging facility where correlation and analysis will be accomplished as a system-wide intrusion detection effort.
- H. The Contractor shall employ automated tools to support near-real-time analysis of events in support of detecting system level attacks

- I. The Contractor shall provide the Department with a security plan outlining these requirements and any additional provisions in place.
- J. 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.15.6 Incident Reporting and Notification Requirements**

The Contractor shall provide the Department immediate notification (within 4 hours) of any successful intrusions, attacks, or internal misuse, so the Department can take steps to determine whether its systems have been compromised. The Department shall take appropriate steps to isolate and respond to such incidents, in accordance with its incident response procedures.

**SECTION J - LIST OF EXHIBITS**

<b>EXHIBIT NO.</b>	<b>TITLE</b>	<b>NUMBER OF PAGES</b>
J.1	HUB Subcontracting Plan (HSP)	XX