



# Texas Department of Public Safety Purchase Order

Purchase Order Number  
  
405-16-P008224  
  
SHOW THIS NUMBER ON ALL  
PACKAGES, INVOICES AND  
SHIPPING DOCUMENTS.

**V  
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D  
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R**  
Vendor Number: 00004301  
1311231081100 | OPTIMUM TECHNOLOGY, INC.  
  
100 E CAMPUS VIEW BLVD  
SUITE 380  
USA  
COLUMBUS, OH 43235-4647

**S  
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P  
T  
O**  
Texas Department of Public Safety  
Law Enforcement Support  
5805 North Lamar Blvd  
Austin, TX 78752-4431  
US  
Email: eprocurementshipping@dps.texas.gov  
(512) 424-2000

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

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

Solicitation (Bid) No.:

Payment Terms:  
  
Shipping Terms:  
  
Delivery Calendar Day(s) A.R.O.: 0

Item # 2

This Purchase Order incorporates the contract fully executed by Texas Department of Public Safety and Optimum Technology, Inc. dated 07/12/2016. This PO is awarded based on Best Value pursuant to Texas Government Code, Sections 2155.074 and 2155.075, 2156.007, 2157.003 and 2157.125.

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

1. Contract between TXDPS and Optimum Technology dated 07/12/2016.
2. TXDPS issued Purchase Order
3. TXDPS Solicitation Request for Offer 405-16-R023393 and any subsequent modifications and amendments.
4. Optimum Technolgy, Inc. response to Request for Offer dated 03/25/2016.

This Contract will consist of a Base Period from Date of Award through 08/31/2017. 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 applicable funding. This contract may be renewed for three (3) one (1) year optional renewal periods. RENEWALS: 1st OPTIONAL TERM 09/01/2017 through 08/31/2018  
 2nd OPTIONAL TERM 09/01/2018 through 08/31/2019  
 3rd OPTIONAL TERM 09/01/2019 through 08/31/2020

DPS CONTRACT MONITOR: Jennifer Norton  
 PHONE: 512-424-7793  
 EMAIL: jennifer.norton@dps.texas.gov

VENDOR CONTACT: Frank Xavier  
 PHONE: 614-547-1110 ext. 120  
 EMAIL: frank.xavier@otech.com

DPS PROCUREMENT CONTACT: Kenneth Maze  
 PHONE: 512-424-7347  
 EMAIL: Kenneth.Maze@dps.texas.gov

Item # 1  
 Class-Item 920-64

UCR system

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
316000.00	\$ 1.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 316,000.00

TAX:	\$ 0.00
FREIGHT:	\$ 0.00
TOTAL:	\$ 316,000.00

APPROVED

By: Ken Maze, CTPM

Phone#: (512) 424-7347

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BUYER

### SOLICITATION, OFFER, AND AWARD

1. CONTRACT NO. 405-16-P008224	2. SOLICITATION NO. 405-16-R023393	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFO) <input type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED 06/22/2016
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### SOLICITATION Uniform Crime Reporting System (UCR)

5. OFFEROR:  Optimum Technology, Inc. 100 E. Campus View Blvd Suite 380 Columbus, OH 43235	6. FOR INFORMATION CONTACT:  Kenneth Maze Contract Administrator PHONE: (512) 424-7347 E-MAIL: <a href="mailto:kenneth.maze@dps.texas.gov">kenneth.maze@dps.texas.gov</a>
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### OFFER

7. DISCOUNT FOR PROMPT PAYMENT:➔	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: (The Offer acknowledges receipt of amendments to this Request for Offer and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	A-001	02/23/2016		
	A-002	03/01/2016		
9. NAME AND ADDRESS OF CONTRACTOR:➔	100 E. Campus View Blvd Suite 380 Columbus, OH 43235		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print) Josh M. Davda, President & CEO	
11. TELEPHONE NO. (Include area code) Phone: (614) 785-1110 Cell: (614) 668-5234	12. SIGNATURE On-file		13. OFFER DATE 03/18/2016	

### TO BE COMPLETED AT TIME OF AWARD

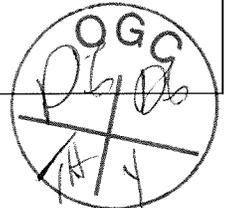
Statutory Cite: Texas Government Code, Section 2157.068

This award document consummates the Contract which consists of the following documents: (a) this Offer and Award document; (b) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Offer, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

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

This Contract shall consist of a Base Period from Date of Execution through 08/31/2017 with (3) three (1) one year optional renewal periods;

<b>Optimum Technology, Inc.</b>	<b>Texas Department of Public Safety</b>
By:	By:
Name: Josh M. Davda	Name: Steven C. McCraw
Title: President & CEO	Title: Director
Date: June 24, 2016	Date: 7/12/2016





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

1. The Solicitation, Proposal and Award form has been revised to update the Contract Number, remove the proposal preparation instructions, and to add the Contractor's name in the Contractor signature block.
2. Section A, Definitions, has been revised as follows:
  - Revise definition of "Contract" to include award firm;
  - Revise definition of "Contractor" to include awarded firm; and
  - Delete definition of "Respondent".
  - Add definition of "Offer"
3. Section B.1.1, Services Being Acquired, has been revised to include contract rather than solicitation language generally describing the services to be provided.
4. Section B.1.2, Pricing, has been revised to reflect contract language rather than solicitation language.
5. Section B.1.3, Audited Financial Statements has been revised to reflect contract language.
6. Section B.2, Price Schedule, has been revised to include contract rather than solicitation language and to incorporate the Contractor's name, address and included the Best and Final Offer (BAFO) price under this Contract.
7. Section B.2.1, Base Period, language explaining the NIBRS prices have been incorporated based on the negotiations
8. Section B.2.2, Standard Maintenance Services was moved in its entirety to Section B.2.6 and replaced by Section B.2.2, Hosting Services to add the negotiated language between the Department and the Contractor.
9. Section B.2.3, Modification and Enhancement Services was moved in its entirety to Section B.2.7 and replaced by Section B.2.3, Customization Services to add the negotiated language between the Department and the Contractor.
11. Section B.2.4, Training Service, was added to this Contract to include the negotiated language between the Department and the Contractor.
12. Section B.2.5, Warranty, was added to this Contract to include negotiated language between the Department and the Contractor.
13. Section B.2.6 Standard Maintenance Services was added to this Contract to include, the negotiated rates.
14. Section B.2.7, Modification and Enhancement Services, was added to this Contract to include the negotiated hourly rates for the referenced job titles.
15. Section B.2.7.A.1 issued by the Department during the RFO has been updated to reflect Contract language
16. Section B.2.7.A.2 issued by the Department during the RFO has been updated to reflect Contract language.
17. Section C, Description/Specifications/State of Work, has been revised throughout to include contract rather than solicitation language and reflect negotiations of the Department and the Contractor.
18. Section C.2.B.1, languages was incorporated based on negotiation with the Contractor



19. Section C.2.B.2, languages was incorporated based on negotiation with the Contractor
20. Section C.3.2.F issued by the Department during the RFO has been deleted and replaced with "This Section is Intentionally Left Blank."
21. Section C.3.2.G issued by the Department during the RFO has been deleted and replaced with "This Section is Intentionally Left Blank."
22. Section C.6.2.B, System Availability, removed respondent's languages.
23. Section C.8. G, languages was incorporated based on negotiation with Contractor
24. Section C.17, Minimum Contractor Requirements, has been deleted in its entirety."
25. Section D, Reports and Deliverables, has been updated.
26. Section G.1.2, Department Contract Administrator has been updated to reflect new Contract Administrator
27. Section G.1.5, Contractor's Project Manager, has been revised to include the Contractor's information.
28. Section G.3.B has been has been updated to add the Contractor's TINS number.
29. Section G.3.C issued by the Department during the RFO has been deleted and replaced with "This Section is Intentionally Left Blank."
30. Section G.3.D issued by the Department during the RFO has been deleted and replaced with "This Section is Intentionally Left Blank."
31. Section G.3.E has been added to include that the Contractor elected to do direct deposit.
32. Section H, Standard Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.
33. Section I, Supplemental Terms and Conditions, has been revised to delete solicitation language under the header title for Section I.
34. Section I.3, Historically Underutilized Business (HUB) Participation, has been updated to incorporate the changes from Amendment A-001 to the RFO.
35. Section I.3.3, HUB Participation Goal, has been updated to incorporate the changes from Amendment A-001 to the RFO.
36. Section I.3.5, CPA Centralized Master Bidder's List, NIGP Codes has been updated to incorporate the changes from Amendment A-001 to the RFO.
37. Section J, List of Exhibits, has been revised as follows:
  - Exhibit J.3, Application for Texas Identification Number has been deleted for purposes of this list of revisions; however, this Exhibit, as completed by the Contractor, is part of the Contractor's Offer incorporated by reference into this Contract as described on page 1 of this Contract.;
  - Exhibit J.4, Direct Deposit Form has been deleted for purposes of this list of revisions; however, this Exhibit, as completed by the Contractor, is part of the Contractor's Offer incorporated by reference into this Contract as described on page 1 of this Contract;
  - Exhibit J.5, Request for Taxpayer Identification Number and Certification has been deleted for purposes of this list of revisions; however, this Exhibit, as completed by the Contractor, is part of the



Contractor's Offer incorporated by reference into this Contract as described on page 1 of this Contract.

- Exhibit J.10, Optimum's Technical Offer.
38. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by the Department has been deleted for purposes of this list of revisions; however, this Section, as completed by the Contractor, is part of the Contractor's Offer incorporated by reference into this Contract as described on page 1 of this Contract.
  39. Sections L and M of the RFO as issued by the Department have been deleted for purposes of this list of revision; however, these Sections are part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.
  40. 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").



## Table of Contents

<b>SOLICITATION, OFFER, AND AWARD.....</b>	<b>1</b>
<b>SECTION A – DEFINITIONS.....</b>	<b>11</b>
<b>SECTION B - SERVICES AND PRICES/COSTS.....</b>	<b>16</b>
<b>B.1 SERVICE AND PRICING REQUIREMENTS.....</b>	<b>16</b>
B.1.1 Services Being Acquired.....	16
B.1.2 Pricing.....	16
B.1.3 Financial Ratings.....	17
<b>B.2 PRICING SCHEDULE.....</b>	<b>17</b>
B.2.1 Base Period.....	17
B.2.2 Hosting Services.....	20
B.2.3 Customization Services considered part of Standard Maintenance and Support.....	20
B.2.4 Training Services.....	20
B.2.5 Warranty.....	20
B.2.6 Standard Maintenance Services.....	20
B.2.7 Modification and Enhancement Services.....	21
<b>SECTION C - STATEMENT OF WORK.....</b>	<b>22</b>
<b>C.1 INTRODUCTION.....</b>	<b>22</b>
<b>C.2 SCOPE.....</b>	<b>23</b>
C.3.1 General System Overview.....	23
C.3.2 General Technical Requirements.....	24
<b>C.4 BUSINESS MAINTENANCE REQUIREMENTS.....</b>	<b>27</b>
<b>C.5 SYSTEM HARDWARE AND SOFTWARE MAINTENANCE AND SUPPORT.....</b>	<b>28</b>
C.5.1 Software Maintenance.....	28
C.5.2 Preventive Maintenance.....	28
C.5.3 Remedial Maintenance.....	29
C.5.4 Future System Modifications and Enhancements.....	29
C.5.5 Change Management for Change Order Request(s).....	30
<b>C.6 SERVICE LEVEL STANDARDS.....</b>	<b>31</b>
C.6.1 Outage Response Service Levels.....	31
C.6.2 Optimal System Performance.....	31
<b>C.7 DATA BACKUP AND DISASTER RECOVERY.....</b>	<b>32</b>
<b>C.8 TRANSITION PLAN/PROCEDURES.....</b>	<b>33</b>
<b>C.9 REPORTS.....</b>	<b>35</b>
C.9.1 System Performance Reports.....	35
C.9.2 Statistical Data Reports.....	36
<b>C.10 INFORMATION TECHNOLOGY (IT) REQUIREMENTS.....</b>	<b>36</b>
C.10.1 Environment Standards.....	37
C.10.2 Communication Standards.....	38
C.10.3 Network Topography.....	38
C.10.4 Workstation Installed Software.....	38
<b>C.11 MAINTENANCE AND SUPPORT.....</b>	<b>38</b>
C.11.1 Contractor Hosted COTS Software Services.....	38
C.11.2 Department Hosted COTS Software.....	38
C.11.3 Software Updates.....	39
C.11.4 Hardware.....	39



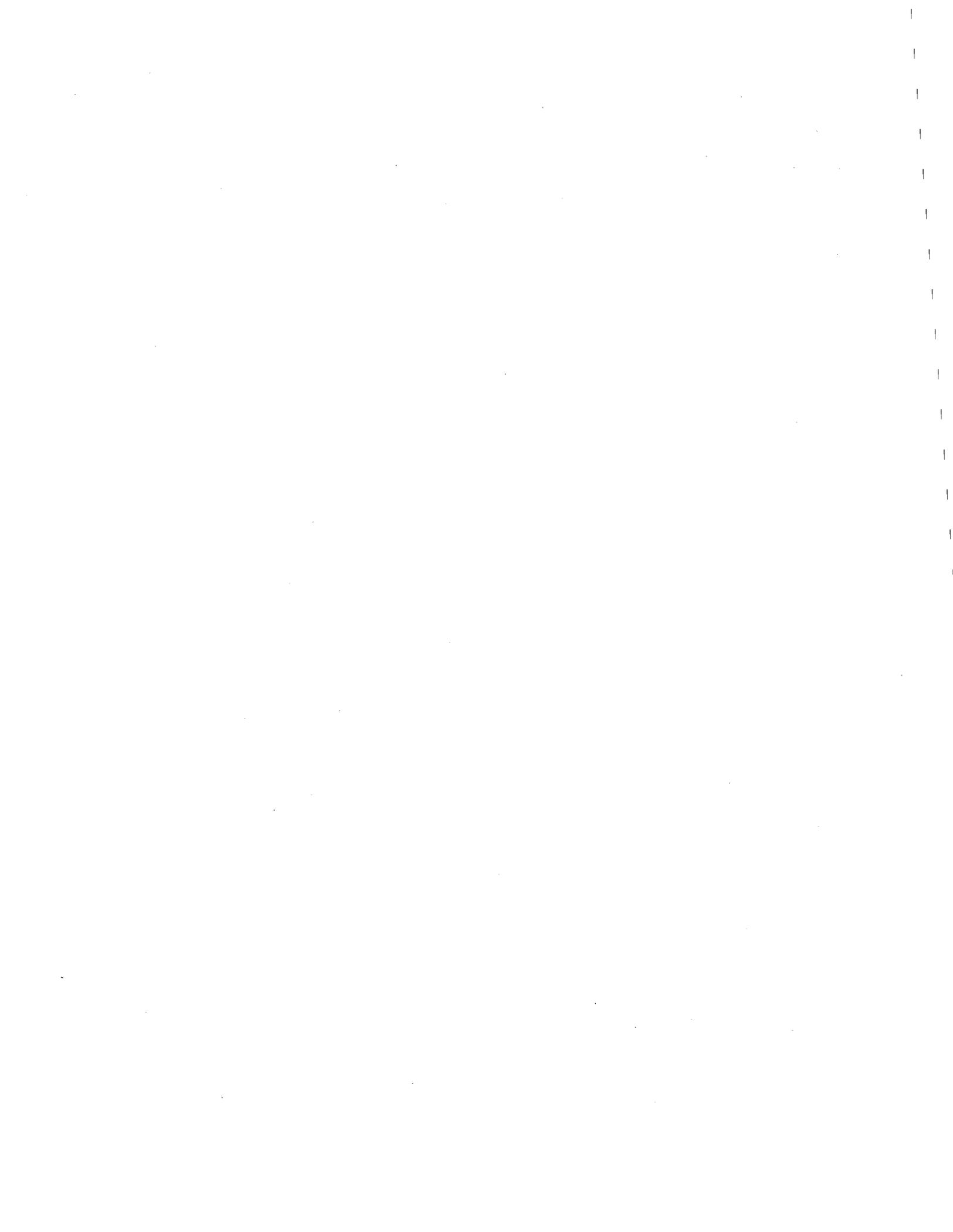
C.11.5	Change Control Participation .....	39
C.11.6	Service Outage Escalation and Communication .....	40
<b>C.12</b>	<b>IT SERVICE LEVEL STANDARDS .....</b>	<b>40</b>
C.12.1	System Production Control .....	40
C.12.2	System Support .....	40
<b>C.13</b>	<b>SYSTEM PERFORMANCE .....</b>	<b>41</b>
C.13.1	Response Time .....	41
C.13.2	Contact Persons .....	41
C.13.3	Recovery Points .....	41
C.13.4	Hardware and Software Refresh .....	42
C.13.5	ADA Compliance .....	42
<b>C.14</b>	<b>TRAINING .....</b>	<b>42</b>
<b>C.15</b>	<b>TESTING REQUIREMENTS, IMPLEMENTATION AND ACCEPTANCE .....</b>	<b>43</b>
C.15.1	Implementation and Acceptance .....	43
C.15.2	Unit Testing: .....	43
C.15.3	System Testing: .....	44
C.15.4	Performance/Load Testing: .....	44
C.15.5	System Integration Testing: .....	44
C.15.6	User Acceptance Testing (UAT): .....	45
C.15.7	Final Acceptance: .....	46
C.15.8	Failure Resolution: .....	46
C.15.9	Retest .....	46
<b>C.16</b>	<b>DEPARTMENT RECORDS AND DATA RETENTION .....</b>	<b>46</b>
<b>C.17</b>	<b>This Section is intentionally left blank .....</b>	<b>47</b>
<b>SECTION D – REPORTS AND DATA .....</b>		<b>48</b>
D.1	CONtract compliance reports required from the contractor .....	48
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>		<b>49</b>
E.1	INSPECTION OF SERVICES .....	49
E.2	INSPECTION BY STATE EMPLOYEES .....	49
E.3	MONITORING CRITERIA .....	50
<b>SECTION F - DELIVERIES OR PERFORMANCE PERIOD .....</b>		<b>51</b>
F.1	CONTRACT TERM .....	51
<b>SECTION G - CONTRACT ADMINISTRATION DATA .....</b>		<b>52</b>
<b>G.1</b>	<b>AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR .....</b>	<b>52</b>
G.1.1	Authorized Representative .....	52
G.1.2	Department Contract Administrator .....	52
G.1.3	Department Contract Monitor .....	52
G.1.4	Department Project Manager .....	53
G.1.5	Contractor Project Manager .....	53
<b>G.2</b>	<b>INVOICE REQUIREMENTS .....</b>	<b>53</b>
<b>G.3</b>	<b>PAYMENTS .....</b>	<b>54</b>
G.3.1	Billing and Payment .....	54
G.3.2	Payment Adjustment .....	55
G.3.3	Late Payment .....	55



G.3.4	Deductions for Unacceptable Compliance .....	55
G.3.5	Withholding of Payment .....	55
G.3.6	Payment of Debt Owed to the State of Texas .....	56
G.3.7	Right to Offset .....	56
G.3.8	Annual Financial Reports .....	56
<b>SECTION H – TERMS AND CONDITIONS .....</b>		<b>57</b>
H.1	AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS .....	57
H.2	NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY .....	57
H.3	FURTHER OPPORTUNITY TO CURE .....	57
H.4	TERMINATION .....	58
H.4.1	Termination by Default .....	58
H.4.2	Termination for Unavailability of Funds .....	58
H.4.3	Termination for Convenience .....	58
H.4.4	Termination by Mutual Agreement .....	58
H.4.5	Termination for Cause .....	58
H.4.6	Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor List .....	59
H.4.7	General Termination Provisions .....	59
H.5	DISPUTE RESOLUTION .....	60
H.6	INDEMNIFICATION .....	61
H.6.1	Acts or Omissions .....	61
H.6.2	Infringements .....	61
H.6.3	Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity .....	62
H.7	NO WAIVER OF DEFENSES .....	62
H.8	INDEPENDENT CONTRACTOR .....	62
H.9	APPLICABLE LAW; VENUE .....	63
H.10	ASSIGNMENT .....	63
H.11	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS .....	63
H.12	APPROVAL OF CONTRACT .....	63
H.13	NON-DISCRIMINATION .....	63
H.14	AMENDMENTS .....	63
H.15	OPTION TO EXTEND THE TERM OF THE CONTRACT .....	64
H.16	OPTION TO EXTEND SERVICES .....	64
H.17	SEVERABILITY .....	64
H.18	U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM .....	64
H.19	LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS .....	65
H.20	PUBLIC SAFETY COMMISSION CONTRACT REVIEW .....	65
H.21	STRICT COMPLIANCE .....	65
H.22	APPLICABLE LAW AND CONFORMING AMENDMENTS .....	65
H.23	COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS .....	65



H.24	FORCE MAJEURE.....	66
H.25	FORESEEABLE DELAY.....	66
H.26	NO SUBSTITUTIONS AND DELIVERY TIMES .....	66
H.27	TESTING; ACCEPTANCE; RETURN; REVOCATION.....	66
H.28	PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS .....	67
H.29	SURVIVAL .....	67
H.30	SUCCESSORS .....	67
H.31	EMPLOYEE NON-SOLICITATION.....	67
H.32	COMMENCEMENT OF WORK .....	68
H.33	ROLLING ESTOPPEL .....	68
H.34	SALES AND USE TAX .....	68
H.35	NOTICES .....	68
H.36	MOST FAVORED CUSTOMER.....	68
H.37	STATE EXCULPATION .....	69
H.38	TITLE AND RISK OF LOSS .....	69
H.39	AVAILABILITY OF DEPARTMENT MANPOWER .....	69
H.40	INTERPRETATION AGAINST DRAFTER.....	69
H.41	NON-INCORPORATION CLAUSE.....	69
H.42	HEADINGS.....	69
H.43	ATTACHMENTS .....	69
H.44	UNACCEPTABLE CONTRACTOR TERMS.....	69
H.45	RECALL NOTICE.....	70
H.46	COMPETENCY ACKNOWLEDGEMENT .....	70
H.47	MULTIPLE CONTRACTS .....	70
H.48	LITIGATION OR FELONY CRIMINAL CONVICTIONS .....	70
H.49	PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING.....	71
H.50	FALSE STATEMENTS.....	71
H.51	PUBLIC INFORMATION ACT .....	71
H.52	APPROVAL OF EMPLOYEES.....	71
H.53	PERSONNEL .....	71
H.53.1	Qualifications of Personnel .....	71
H.53.2	Replacement of Personnel at The Department's Request .....	72
H.53.3	Unauthorized Removal of Personnel.....	72
H.54	UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS .....	72
H.55	BOOKS AND RECORDS.....	72
H.56	ORGANIZATIONAL AND NAME CHANGE .....	73



H.57	DEPARTMENT POLICIES AND PROCEDURES.....	73
H.58	INFORMATION TECHNOLOGY .....	73
H.59	WARRANTIES .....	73
H.59.1	Third Party Warranties .....	73
H.59.2	Contractor Warranties.....	73
H.60	DRUG-FREE WORKPLACE .....	74
H.61	AUTHORITY TO AUDIT .....	74
H.62	FRAUD, WASTE OR ABUSE.....	75
H.64	ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213.....	75
H.65	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (State Ownership) 75	
H.66	NOTE TO CONTRACTOR .....	76
H.67	NOTICE UNDER GOVERNMENT CODE 2261.252 .....	76
H.68	NOTICE UNDER GOVERNMENT CODE 2252.908 .....	76
H.69	DISCLOSURE OF RESTRICTED EMPLOYMENT.....	76
<b>SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS.....</b>		<b>77</b>
I.1	INSURANCE REQUIREMENTS .....	77
I.1.1	Additional Provisions .....	79
I.1.2	Subcontractor's Insurance .....	80
I.2	SUBCONTRACTS .....	80
I.3	HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION .....	80
I.4	LIQUIDATED DAMAGES .....	83
I.6	OTHER CONTRACTS .....	83
I.7	SUSPENSION OF WORK.....	84
I.8	STOP-WORK ORDER.....	84
I.9	WORK MADE FOR HIRE .....	85
I.10	SYSTEM SECURITY AND ACCESS .....	85
I.10.1	Information Technology Standards.....	85
I.11	CLOUD SECURITY .....	85
I.12	USER SECURITY .....	85
I.13	SYSTEM SECURITY .....	87
I.14	PHYSICAL ACCESS CONTROLS .....	88
I.15	DATA SECURITY .....	88
I.16	ENCRYPTION.....	89
I.17	SECURE ERASURE OF HARD DISK CAPABILITY .....	90
I.18	DATA CENTER LOCATION REQUIREMENTS.....	90
I.19	ACCESS TO INTERNAL DEPARTMENT NETWORK AND SYSTEMS .....	90



I.20	FBI CJIS SECURITY ADDENDUM.....	91
I.21	CRIMINAL HISTORY BACKGROUND CHECKS .....	91
I.22	DEPARTMENT INFORMATION PROTECTION POLICIES, STANDARDS & GUIDELINES.....	91
I.23	CONFIDENTIALITY AND SECURITY REQUIREMENTS .....	92
I.23.1	General Confidentiality Requirements .....	92
I.23.2	Sensitive Personal Information.....	93
I.24	DISCLOSURE OF SECURITY BREACH.....	95
I.25	REPRESENTATIONS AND WARRANTIES RELATED TO SOFTWARE.....	96
I.26	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP) .....	97
<b>SECTION J - LIST OF EXHIBITS .....</b>		<b>98</b>



## SECTION A – DEFINITIONS

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

**“Application Programming Interface”** (API) means routines, protocols, and tools for building a software application.

**“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.

**“BAFO”** means Best and Final Offer.

**“Base Period”** means the Date of Execution through August 31, 2017.

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

**“Business Hours”** means 8:00 a.m. to 5:00 p.m., Central Time

**“CJIS Security Addendum”** means a document that describes the FBI security related requirements the Department applies to all contractors and subcontractors that work on this project. An executed copy of the CJIS Security Addendum is a required part of this Contract. A copy of this form may be found at: <http://www.txdps.state.tx.us/SecurityReview/documents.htm>

**“Computerized Criminal History (CCH)”** means the Computerized Criminal History repository administered by the Crime Records Service of the Department.

**“Contract”** means the written agreement entered into by the Department and Optimum Technology, Inc.

**“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 Optimum Technology, Inc.

**“Contractor Hosted”** means a combination of traditional IT functions to be provided by the Contractor such as infrastructure, applications software - including Commercial Off the Shelf Software (COTS) Solution, security, monitoring, storage, web development, website hosting, provider of hardware and hardware maintenance, and e-mail, over the Internet or other Wide Area Networks (WAN).

**“Contributing Agency”** means the law enforcement agency, or contributor, of crime data to the Department UCR System.

**“Conversion” or “Convert”** means a two-step process of first applying SRS edits (Hierarchy Rule, multiple weapons to a single weapon, etc.) to NIBRS data, then placing that data in the SRS database. This process follows strict adherence to the Technical Specifications created by the FBI.

**“COTS”** means Commercial Off the Shelf Software.

**“CPA”** means the Texas Comptroller of Public Accounts.



**“Criminal Justice Information Services (CJIS)”** means the FBI Division responsible for the collection, warehousing, and timely dissemination of relevant CJI to the FBI and to qualified law enforcement, criminal justice, civilian, academic, employment, and licensing agencies. CJIS is the FBI Division charged with setting the minimum security requirements or controls an agency must have in place to protect any criminal justice information obtained from the FBI system(s). The FBI CJIS publishes the CJIS Security Policy which details those security requirements.

**“Date of Execution”** means the date this Contract is fully executed.

**“Days”** means calendar days unless otherwise specified.

**“Department”** means the Texas Department of Public Safety.

**“Department Hosted”** means a combination of traditional IT functions to be provided by the Department such as infrastructure, applications software, security, monitoring, storage, web development, website hosting, provider of hardware and hardware maintenance, and e-mail, over the Internet or other Wide Area Networks (WAN).

**“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.

**“DOJ”** means the Department of Justice.

**“DRP”** means Disaster Recovery Plan.

**“Edits”** means the error checking the System performs on data uploaded into the System.

**“End-of-life”** means the point at which the manufacturer deems the product is at the end of its useful life, and will no longer be marketing, selling, or sustaining it.

**“Enhancements”** means modifications to the UCR System requested by the Department to enhance the current UCR functionality.

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

**“FBI”** means the Federal Bureau of Investigation.

**“Field”** means the specific data within the incident or report (i.e.: “Victim Age” or “Location”).

**“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.

**“GUI”** means Graphic User Interface, which is the software-based method by which all computer-driven user interaction (including web-based interaction) is performed.

**“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.



**“IEPD”** means “Information Exchange Package Documentation” which is a protocol of standard data tags for identifying data and data subsets (i.e.: “T-DEx IEPD” or “NIBRS IEPD”).

**“Incident Ticket”** means a running report on a particular issue which tracks its initial report of the issue, the status changes for the issue, and the resolution when determined.

**“Information Technology Division (ITD)”** means the Department's Information Technology Division which is responsible for agency technology innovation, maintenance, and support as applicable.

**“Ingestion”** means the inputting of data in IEPD or Flat File form into the Department database.

**“Invoice”** means 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.

**“Mandatory”** means required, compulsory or obligatory.

**“May”** means advisory or permissible.

**“Must”** means required, compulsory or obligatory.

**“National Incident Based Reporting System (NIBRS)”** means the FBI program for crime data collection by incident, following twenty three (23) offense types with forty nine (49) distinct offenses and a significantly larger data set than the companion Summary (SRS) Program. Data is submitted by incident with all details connected within the incident.

**“Near real-time”** means that there are no significant delays.

**“NIBRS Conversion”** means the process of applying all Summary edits (Hierarchy Rule, etc.) to NIBRS data and placing that converted data into the SRS system.

**“NIEM”** means the National Information Exchange Model. This is an XML-based information exchange framework. NIEM is designed to develop, disseminate, and support enterprise-wide information exchange standards and processes that will enable jurisdictions to automate information sharing.

**“Offer”** means Optimum's Technical Offer.

**“Operational”** means fully functional and having passed all stated test and acceptance criteria of the Department and documented as such.

**“ORI”** means the Originating Agency Identification Number. ORIs are unique numbers assigned by the FBI that identify entities' authorized to access CJIS systems.

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

**“Period of Maintenance Coverage”** means a period of time that the Contractor is required to provide maintenance services. The Period of Maintenance Coverage is 24x7x365.

**“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.



**“Personally Identifying Information (PII)”** means one or more pieces of information that, when considered together or in the context of how the information is presented or gathered, are sufficient to specify a unique individual. The pieces of information can be: (1) personal characteristics, for example, biometric records or dates of birth; (2) a unique set of numbers or character assigned to a specific individual, for example, social security numbers or name.

**“Preventive Maintenance”** means the care and services by personnel for the purpose of maintaining equipment and facilities in satisfactory operating condition by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects.

**“Principal Period of Operation”** means the period of normal operating hours in a given day, namely 8:00 a.m. to 6:00 p.m.

**“Project Manager (PM)”** means appointee, designee, or alternate designee as assigned by the Department and the Contractor as referenced in Section G.1.4 and G.1.5.

**“PSC”** means the Public Safety Commission, the Department’s governing body.

**“Records Management System (RMS)”** means an automated case/file management tool.

**“Remedial Maintenance”** means maintenance performed during System component failure that is performed by the Contractor on an unscheduled basis.

**“Repository”** means the final resting place for the fully vetted and corrected data. From here data is staged for submission to the FBI.

**“Segment”** means the NIBRS data group-level as detailed in the NIBRS Technical Specification (i.e.: “Administration Segment” or “Victim Segment”).

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

**“Severity Level”** means a defining classification scheme for all issues with corresponding resolutions times.

**“Shall”** denotes the imperative, required, compulsory or obligatory.

**“Software”** means any application programs for exclusive use with the UCR system.

**“Staging Area”** means the virtual area where SRS data edits are applied and the data is held to be corrected prior to being “pushed” to the Repository. Data in this virtual arena may be entered, edited, and added to prior to submission to the Repository.

**“Submission”** means a monthly set of Uniform Crime Reporting data including individual forms.

**“Summary Reporting System (SRS)”** means the FBI program for data collection in the original 1927 summary format. This includes ten (10) distinct offenses and applies a “Hierarchy Rule”. Summary is a simple tallying of crimes, property and arrests.

**“Support Services”** means responding to end user requests for assistance with UCR.

**“System”** means the UCR System, including all hardware, software, and communication devices.

**“System Backups”** means procedures utilized to backup data to protect against data loss in the event of system outage. Backups shall include cold (offline) and hot (online) backups.



**“System Component”** means any individual unit of Hardware or Software which together with other system components make up the System as a whole.

**“System Failure”** means a breakdown of any System hardware, operating system or application software which prevents the accomplishment of the System's intended function.

**“System Functionality and Operational Effectiveness”** means that the UCR System is performing at the levels specified within the Service Level Agreement.

**“System Users”** means a submitting agency user (end user) as well as Department personnel (admin user) of the System.

**“Test Case”** means a specific executable test that examines all aspects including inputs and outputs of a system and then provides a detailed description of the steps that will be taken, the results that will be achieved, and other elements that will be identified.

**“UAT”** means User Acceptance Testing.

**“Utility or Utilities”** means software that performs a very specific task that provides an addition to the capabilities provided by the System. Utility software is designed to help analyze, configure, optimize or maintain a computer or application but is not essential to the operation of the System.

**“Voluntary Product Accessibility Template” (VPAT)** means a Respondent generated statement to provide relevant information regarding how the Respondent's product or services claims to be compatible with 508 standards.

**“Work Breakdown Structure (WBS)”** means a deliverable-oriented decomposition of a project into small components. A WBS element may be a product, data, service, or any combination thereof. A WBS also provides the necessary framework for detailed cost estimating and control, along with providing guidance for schedule development and control.

**“XML”** means Extensible Markup Language and is a markup language that defines a set of rules for encoding documents in a format which is both human-readable and machine-readable.



## **SECTION B - SERVICES AND PRICES/COSTS**

### **B.1 SERVICE AND PRICING REQUIREMENTS**

#### **B.1.1 Services Being Acquired**

The Contractor shall provide a System to replace, update and enhance the current Uniform Crime Reporting System (UCR) System, which includes the components as listed below in Section B.1.2.A.

The Contractor will be provided with a data repository system which will be composed of two separate front-end systems, one for NIBRS data and one for SRS. Both will share a common database but will be accessed by distinct front-end GUIs access.

#### **B.1.2 Pricing**

The Pricing Schedule in Section B.2 incorporates the established pricing. These prices are inclusive of all costs, fees, licenses and expenses and represent the Contractor's sole compensation under this Contract.

This Contract provides services for implementation, project planning, software development, customizations, training, maintenance, support, documentation, and enhancements of the System. These prices are Firm Fixed Pricing applicable to the products and services requested and received by the Department in compliance with this Contract.

- A. The Contractor's pricing schedule is for each component of the System.
  - 1. User Interface (GUI), refer to part C.3
  - 2. Database, refer to part C.3
  - 3. NIBRS Query Tool; refer to part C.3 and C.9.2.2
  - 4. Other, any applicable components not priced in the above pricing schedules
  - 5. Maintenance, refer to part C.12
- B. The Contractor's failure to clearly identify all costs associated with its offer will be at the expense of the Contractor.
- C. Unless otherwise specified, all products offered will be new and in first class condition, and will include shipping FOB Destination Prepaid and Allowed. Verbal agreements to the contrary will not be recognized.
- D. The Contractor shall complete the following UCR milestones as outlined in the Project Plan. Each milestone will require Testing, Implementation and Acceptance as stated in Section C.15. Initial milestones will be determined by the Department and will be paid in accordance with Section G.3.1. Project Milestones will include but are not limited to the following:
  - 1. Build Data Repository
  - 2. Build distinct GUIs for SRS and NIBRS
  - 3. Real-time edits for both front-end systems
  - 4. Reports (ad hoc, end-of-year, etc.)
  - 5. Build Query Tool for NIBRS data.
  - 6. Develop migration from old to new System
  - 7. Developmental testing of the system before it is brought online.
  - 8. Final Acceptance: The Contractor's System will meet the requirements specified in Section C.15, Testing, Implementation and Acceptance.
  - 9. Continuation of Services: The Department shall develop and negotiate Exhibit J.6, Change Order Request Form(s) for additional services and enhancements. The Contract Monitor shall work with the Contractor to prepare the Change Order Request Form.



- E. Section B.2.2 – Standard Maintenance Services: The Contractor prices for the required services will include but may not be limited to: preventive and remedial maintenance, hardware parts, software and components, labor, fees and expenses.
- F. Section B.2.3 – Modification and Enhancement Services: The Contractor prices will include labor and products. The Contractor prices for labor and Systems hardware/software components will be firm fixed pricing.
- G. All costs associated with the Contractor's staff assigned to provide Standard Maintenance and Modification and Enhancement Services will include but are not limited to conversations held via phone, videoconferencing or emails, attending meetings, creating or administering project documentation, researching, buying of products, tracking of daily operational and functional requirements, and providing future project plans for customization, enhancements and general services in support of the System at no additional cost to the Department.
- H. The Department reserves the right to purchase any and all identified hardware, software, and networking components and provide same to the Contractor for utilization in enhancements.

**B.1.3 Financial Ratings**

- A. The Contractor shall submit a copy of at least one rating from organizations such as Dun & Bradstreet (D&B) Business Information Report or Fitch Ratings **annually**. The report will include the Contractor's Viability Score and the Portfolio Comparison Score or similar ratings.
- B. The Contractor shall provide information required by Section G.3.8, K.6.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.

**B.2 PRICING SCHEDULE**

Contractor: Optimum Technology  
100 E. Campus View Blvd, Suite  
Columbus, OH 43235  
 (Street address, city and zip code)

**B.2.1 Base Period**

The pricing listed herein is all-inclusive pricing on all services to be provided for this Contract.

The Department's requirement of the Contractor's proposed System shall consist of Development and Test systems that replicate the Production system.

User Interface (GUI)	Description of Product, Including Version	Cost					Warranty Terms
		Hardware	Software	Utilities	Personnel / Services	Hosting Fees	
Production System	Hosting comprises of data center fees and relevant Infrastructural charges including Microsoft system software license fees					\$18,000.00	\$18,000.00
SRS	Summary Reporting System based on Uniform Crime		\$24,000.00		\$3,000.00		\$27,000.00



	Reporting standards compliant with specifications						
SWIFT Repository	Optimum Technology's "SWIFT Repository" COTS Product - a Uniform Crime Reporting/National Incident Based Reporting System repository (compliant with the most recent version of the FBI Technical Specifications published in November, 2015). Includes (i) NIBRS Repository module, (ii) NIBRS compliance module, (iii) NIBRS Portal module, (iv) NIBRS Access module.		\$96,000.00		\$18,000.00		\$114,000.00
NIBRS – Analytics	Optimum Technology's "NIBRS Analytics" module- An adhoc querying and analytics solution		\$34,000.00		\$12,000.00		\$46,000.00
Test System	Test System for SRS and NIBRS					\$6,000.00	\$6,000.00
Development System	Development System for SRS and NIBRS						\$0.00
Texas Customization	Customizations specified in RFO response				\$36,000.00		\$36,000.00
Training	Training Services and Tools				\$6,000.00		\$6,000.00
<b>Subtotal for User Interface</b>							<b>\$253,000.00</b>

Database	Description of Product, Including Version	Cost					Warranty Terms
		Hardware	Software	Utilities	Personnel / Services	Hosting Fees	
Production System	Final SRS & NIBRS Repository Production Database deployed to Texas DPS					\$9,000.00	\$9,000.00
User Management	User Administrative Conditions				\$3,000.00		\$3,000.00
System Interfaces (XML / IEPD / Flat File)	XML & Flat File interfaces to accept agency data, and send data to the FBI				\$9,000.00		\$9,000.00
Real-Time Error Checking and Notification	Local Agency and FBI Validation Files				\$3,000.00		\$3,000.00



Reports	UCR Reporting				\$6,000.00		\$6,000.00
NIBRS Conversion	NIBRS-SRS System v1.0 Conversion of NIBRS data to Summary format, using FBI technical specifications				\$12,000.00		\$12,000.00
Test System	Test Database					\$3,000.00	\$3,000.00
Development System	Development Database						\$0.00
Texas Customization	Customization of TIBRS Section 8 Fields				\$6,000.00		\$6,000.00
<b>Subtotal for Database</b>							<b>\$51,000.00</b>

NIBRS Query Tool	Description of Product, Including Version	Cost					Warranty Terms
		Hardware	Software	Utilities	Personnel / Services	Hosting Fees	
Production System	Final NIBRS Query Tool deployed to Texas DPS						\$0.00
NIBRS Query Tool	The NIBRS Query Tool				\$12,000.00		\$12,000.00
Test System	NIBRS Query Tool Test Version						\$0.00
Development System	NIBRS Query Tool Development Version						\$0.00
<b>Subtotal for Query Tool</b>							<b>\$12,000.00</b>

Other	Description of Product, Including Version	Cost					Warranty Terms
		Hardware	Software	Utilities	Personnel / Services	Hosting Fees	
	All features, software, customizations and services are included in the tables in Section B.2.1, B.2.2 and B.2.3						\$0.00
<b>Subtotal for Other</b>							<b>\$0.00</b>
<b>GRAND TOTAL</b>							<b>\$316,000.00</b>

The Contractor's costs specified for the "NIBRS – Analytics" module under "User Interface (GUI)" is different from the personnel services cost specified under "NIBRS Query Tool".

- "NIBRS – Analytics" module, (i) \$34,000 is a one-time Software license fee for the data analytics solution including reports and ad-hoc querying, (ii) \$12,000 of Personnel/Services is estimated to be the configuration cost of this module.
- "NIBRS Query Tool", added \$12,000 of Personnel/Services specifically for customizing the query interface for Texas with NIBRS & TIBRS data and for use of the query tool in the outward facing portal.



**B.2.2 Hosting Services**

The Contractor's hosting fees are industry standard for hosting services. Apart from covering all hardware, servers, equipment costs as well as bandwidth and data center costs, the Contractor will be responsible for all Microsoft licenses including Windows and SQL Server.

The Contractor shall be responsible for all hardware, software, network installation and configuration tasks during initial setup. The Contractor shall routinely monitor and maintain all hardware, software and equipment including but not limited to OS updates, anti-virus updates, database updates, software updates, security updates, performance tuning on an ongoing basis.

**B.2.3 Customization Services considered part of Standard Maintenance and Support**

- A. All of the functionality including TIBRS customizations is included in the price.
- B. All future FBI and state mandated business rule modifications are included as part of the Contractor's support to this Contract.
- C. The Contractor's support also includes version control and change requests. After implementation, the Contractor shall provide eighty (80) hours per year of contract maintenance and support to accommodate change requests at no additional cost.
  - a. Option Renewal Periods 1 and 2 annual maintenance and support fee of \$3,500.00 per month or the discounted fee of \$40,000.00 per year to accommodate change requests.
  - b. Option Renewal Period 3 annual maintenance and support fee of \$4,000.00 per month or the discounted fee of \$46,000.00 per year to accommodate change requests.
- D. Should the Department submit Change Requests after the eighty (80) hours are fully exhausted, the total cost will be arrived based on the skill rates as identified in Section B.2.7 (refer to Section C.5.4).

**B.2.4 Training Services**

After System implementation, additional onsite trainings will be charged at a rate of \$6,000 per two-day training session. Webinar training will not exceed six (6) webinars per year at no additional cost.

**B.2.5 Warranty**

Warranty includes hardware and software replacement in the event there is a defect. Warranty is in place as long as Texas DPS utilizes the software application and continues to subscribe to the optional renewal periods.

**B.2.6 Standard Maintenance Services**

Standard Maintenance Services includes but is not limited to: preventive and remedial maintenance and services provided to support the daily operational and functional requirements of the System as specified in this Contractor, excluding Modification and Enhancement Services. A "discounted cost" for Standard Maintenance is available to the Department if the Department chooses to pay for Standard Maintenance Services in advance. Maintenance and support fees will not begin until all warranties have been exhausted.

<b>Standard Maintenance Services</b>	<b>Monthly Cost (Software Maintenance and Support)</b>	<b>Discounted Annual Cost - Payment in Advance (Software</b>	<b>Monthly Cost (Vendor Hosting Services)</b>	<b>Discounted Annual Cost - Payment in Advance</b>
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		<b>Maintenance and Support)</b>		<b>(Vendor Hosting Service</b>
Base Period (Date of Execution – 08/31/17)				
Option Renewal Period 1 (09/01/17 – 08/31/18)	\$3,500.00	\$40,000.00	\$4,000.00	\$46,000.00
Option Renewal Period 2 (09/01/18 – 08/31/19)	\$3,500.00	\$40,000.00	\$4,000.00	\$46,000.00
Option Renewal Period 3 (09/01/19 – 08/31/20)	\$4,000.00	\$46,000.00	\$4,500.00	\$52,000.00

**B.2.7 Modification and Enhancement Services**

Requests for Modification and Enhancement Services may be issued by the Department throughout the Contract term by issuing an approved Change Order Request Form as incorporated in Exhibit J.6 and stated in Section C.5.4, of this Contract.

A. Labor Pricing Schedule for Change Requests submitted after the annual 80 support hours are fully exhausted:

1. The Labor Pricing Schedule Rates below are Firm Fixed Hourly Rates for Modification and Enhancement Services and include, but are not limited to, customization, enhancements and other related services within the scope of this Contract.
2. The following technical staffing positions describe the titles and hourly fixed rates for services performed, 365 days a year, 24 hours a day seven (7) days a week excluding State and Federal holidays. The State's holiday schedule is available at <http://www.hr.sao.state.tx.us/Compensation/holidays.html>
3. Labor: The Department will not pay for normal phone and internet-based communications between the Contractor and the Department.
4. The Contractor's provided hourly rates for all necessary levels of staff to perform the services as required by this Contract are:

<b>Contractor and Subcontractor Company Name</b>	<b>Position Title and Description of duties</b>	<b>Hourly Rate</b>
Optimum Technology Inc.	Programmer / Analyst	\$95.00
Optimum Technology Inc.	Senior Programmer / Analyst	\$135.00
Optimum Technology Inc.	Systems Analyst	\$95.00
Optimum Technology Inc.	IT Business Consultant	\$225.00
Optimum Technology Inc.	Network Administrator	\$120.00
Optimum Technology Inc.	Project Manager	\$285.00
Optimum Technology Inc.	Database Administrator	\$135.00
Optimum Technology Inc.	Data Conversion Analyst	\$120.00
Optimum Technology Inc.	QA Analyst	\$95.00
Optimum Technology Inc.	Project Lead Technical	\$150.00
Optimum Technology Inc.	Technical Writer	\$70.00



## SECTION C - STATEMENT OF WORK

### C.1 INTRODUCTION

Optimum Technology ("Contractor") will create a new Uniform Crime Reporting System (UCR) that will process both Summary Reporting System (SRS) and National Incident-Based Reporting (NIBRS) data for the Texas Department of Public Safety (the Department), Law Enforcement Support Division (LESD), Crime Records Services (CRS). The System will include augmenting the current System to support the transition to NIBRS.

UCR gathers crime data from law enforcement agencies for statistical analysis. It is administered nationally by the FBI; the Department is the certified state management entity for Texas. UCR currently gathers data via two distinct methodologies: the original model built in 1927 known as "Summary" (aka the Summary Reporting System or SRS) and Incident Reporting (aka, the National Incident-Based Reporting System or NIBRS.) Both methods are based on monthly reporting of data.

SRS is a simple tallying of ten (10) offenses (Homicide, Rape, Robbery, Aggravated Assault, Burglary, etc.), property stolen, and adult and juvenile arrests that occurred within the month. The data set also includes Law Enforcement Officers Killed and Assaulted, Arsons, Hate Crimes, Cargo Thefts, Human Trafficking, and Texas-centric data: Sexual Assaults, Family Violence and Drug Seizures. SRS applies a "Hierarchy Rule" where multiple offenses within a single incident will be boiled-down to the highest offense on a hierarchy, and only that crime will be reported. Currently SRS is reported via paper, and online through an online database portal.

NIBRS looks at twenty three (23) offense types with forty nine (49) distinct offenses and is reported from the incident point of view with all data within the incident being included (all offenses, arrests, location, weapon, property, victim and offender data, etc.) These data sets are much more involved since they connect together all aspects of the reported incident. NIBRS data is submitted as an electronic flat file by agencies monthly to the Department.

Once the data has been submitted, vetted for accuracy and all error checking is complete, it is moved from the editing area to a final repository where it is locked down to only those with administrative privileges, and is staged and flagged for submission to the national program. Texas-centric data is not forwarded to the national program.

The System currently requires monthly multiple flat files (NIBRS, SRS, Hate Crime, Cargo Theft) as well as yearly Law Enforcement Employee survey to be submitted in paper format. The data is then extracted for submission to the FBI. The new System will integrate a National Information Exchange Model (NIEM) based model for direct connectivity with the federal program.

After submission of all data to the national program, NIBRS data is converted to SRS and migrated to the SRS side of the database. From the SRS side, end of year reports are run to inform the annual Crime in Texas publication.

The Contractor shall utilize the following:

<http://www.fbi.gov/about-us/cjis/ucr/user-manuals>

- Cargo Theft User Manual
- Hate Crime Data Collection Guidelines and Training Manual
- NIBRS User Manual
- SRS User Manual

<http://www.fbi.gov/about-us/cjis/ucr/technical-specifications>

- Cargo Theft Technical Specification
- Conversion of National Incident-Based Reporting System (NIBRS) Data to Cargo Theft Data
- Conversion of National Incident-Based Reporting System (NIBRS) Data to Hate Crime Data



- Conversion of National Incident-Based Reporting System (NIBRS) Data to Summary Reporting System (SRS) Data
- Hate Crime Technical Specification
- Hate Crime Data Collection Guidelines and Training Manual (Version 1.0)
- National Incident-Based Reporting System (NIBRS) Technical Specification
- Summary Reporting System Technical Specification

<https://it.ojp.gov/default.aspx?area=implementationAssistance&page=1108>

- All information regarding SRS and NIBRS IEPD

<http://www.asucrp.net/FBI%20Manuals%20and%20Addendums.html>

- An array of UCR related technical documentation

<http://www.txdps.state.tx.us/ucr/tibrsManual.pdf>

- NIBRS Texas specific information

## **C.2 SCOPE**

- A. The Contractor shall be responsive to the needs of the law enforcement community with regards to the collection, accessibility, speed and secure transmission of data. The Contractor shall ensure that the System electronically interfaces with the FBI, as well as with local and state entities' Records Management Systems (RMS), and with Department databases through the implementation of National standards.
- B. The Contractor's services for the System shall be an open solution to allow for the accurate and timely collection and transmission of data, as well as customization and enhancements to meet all CJIS security requirements and national standards regarding the exchange of data.
  1. The Contractor will customize the look of the SWIFT Repository product for the Department at no additional cost during the implementation phase. The Contractor shall conduct a deep dive during the requirements phase to ensure they fully understand all of the Department needs, such as, banner customization, removal of ORI from the sign-on screen, and allowing users to have access to multiple agencies will be implemented prior to go-live. The Contractor shall ensure that all the Department requested customizations are identified during the requirements phase.
  2. The Department reserves the rights to make a change request. A change request can be any additions or modification requests to the software that is requested after "Go-Live" and which was not identified during requirements session. Refer to Section B.2.3.
- C. The Contractor's services for the System shall include development of interfaces with local entities' RMS systems, other data exchange systems, i.e.: Texas Data Exchange/National Data Exchange (TDEx/NDEx), and regular Preventive Maintenance as well as Remedial Maintenance and future System modifications and enhancements.

## **C.3 GENERAL SYSTEM AND TECHNICAL REQUIREMENTS**

### **C.3.1 General System Overview**

#### **C.3.1.1 NIBRS Process:**

- A. Agencies will generate NIBRS data from their RMS and directly upload it into the Department NIBRS System utilizing one of the approved exchange methodologies (XML push or Flat File).
- B. Data validation occurs upon upload.



- C. If the data is error-free, it is ingested and forwarded directly to the Repository and an email is generated by the System to notify the user of the data's acceptance.
  - 1. If errors are identified in the validation process, the data is not ingested and is immediately deleted by the System. A detailed error report (including segment, field and data in error) is generated by the System and emailed to the user explaining the submission was rejected, and has been deleted.
  - 2. Once data failing validation has been deleted, corrections will only be accepted through the submission of a new file from the Agency.
- D. NIBRS data will be maintained independent of Summary data.
- E. NIBRS data will be promoted to the FBI in the NIBRS format.
- F. In order to create the annual Crime in Texas (CIT) publication, NIBRS data must be converted to Summary format and moved to the Summary database.

**C3.1.2 SRS Process:**

- A. Agencies will compile their SRS data either manually or by local RMS UCR output. RMS output shall incorporate either XML push or flat file format for ingestion. Manual entry is performed first by the agency compiling their data using PDFs of traditional paper forms provided by the Department from within the portal, and then manually entering that compiled data into the online portal Graphical User Interface (GUI).
- B. During data entry via the GUI, the System will perform validations on each field filled by the System user. Field-Level errors produce an immediate onscreen message showing the field in error and the type of error encountered. Each form can be saved prior to completion, however the submission as a whole will not be able to move forward until all data is entered and error-free.
- C. When a form is saved, a comparative validation is made against all saved forms for that agency/month. This process serves to find any errors that exist between forms. Errors will cause an immediate notification to the screen detailing the form(s) affected and the error type.
- D. Once all forms are entered and error-free, a "Submit" button will become active and the agency, by clicking the button, will move their monthly submission directly to the Department Repository. An automatic email will be sent by the System to the user confirming ingestion of the Agency's data.

**C.3.2 General Technical Requirements**

The current System will continue to provide services while the new System is being developed and tested. Once final approval of the new System has been given, the Contractor will migrate the Year-To-Date data resident in the legacy System to the new System. Year-To-Date Data submitted in the legacy System must be re-vetted with edits in the new System to ensure data quality continuity. All contributors will be transitioned to the new System. Final specifications for migration will be developed jointly by the Department and the Contractor.

Historical data in the legacy system will be migrated to the new system to ensure accessibility. This data will not need to be re-vetted.

**The Contractor shall:**



- A. Build and maintain a System which will include two distinct data portals (GUIs) and a back end data repository. The NIBRS portal will include a machine to machine based interface for NIBRS data (with GUI). SRS will include a form-based GUI (for manual entry and visual review). Both will share a common back end repository database.
- B. Adhere to all baseline technical specifications defined within the FBI Technical Specification manuals for NIBRS and SRS.
- C. Provide the ability to generate reports based upon user selectable criteria.
- D. Build long-term storage and retrieval capability.
- E. Maintain detailed transaction logs of all activity in the System.
- F. Provide browser-based GUIs for both systems that will be accessible by both external law enforcement users and in-house staff.
- G. Provide a scalable platform that will enable the Department to develop and maintain future requirements.
- H. Provide System Security consistent with Department policy as well as the CJIS security policy.
- I. Provide a State User Management component that will allow Department administrators to manage all System users.
- J. Provide a distributed User Management component that will allow Department administrators to delegate the administration of local users to local agency administrators. Through distributed management, local administrators will be able to manage their agency's user accounts (resetting passwords, etc.).
- K. Ensure development does not impact the existing test and production systems.
- L. The GUIs shall include a training component which provides at a minimum:
  - i. Editable manuals;
  - ii. A robust, online help file;
  - iii. Ability to host TXDPS generated video training modules.
- M. Data Ingestion: Both SRS and NIBRS will support data submissions formatted in NIEM based IEPDs and defined flat file formats. Flat file templates will be based on FBI technical specifications; submission files will be generated from local agency RMS systems. The development of local files is not within the scope of this Contract.
- N. Data Quality Checks: Both the SRS and NIBRS GUIs will have extensive real-time data quality checks as defined by links within Section C.1 of this Contract and/or as identified by the Department PM. The true heart of this System will be the application of these edits, as data will not be allowed to progress until complete and accurate.
  - 1. NIBRS edits will be applied at the time of receipt of the data by the NIBRS GUI. The data edits will be based upon the FBI NIBRS Technical Specification and the Department TIBRS Manual.
  - 2. SRS edits will be applied at the field level within each form, and referential edits will be performed across all saved forms for the reporting agency/month. Edits will be based on the FBI SRS Technical Specification and as identified by the Department PM.
- O. The System must support role based access controls. The roles will include but are not limited to: Department Administrator, Agency Administrator, and Agency Submitter.



- P. Interface with contributors and FBI: The System must have the capability to accept data in the approved formats from contributing agencies as well as facilitate the sharing of data with the FBI (and other Federal and State entities) utilizing the appropriate national standard.
- Q. NIBRS Conversion: NIBRS will be converted to Summary format, using FBI technical specifications. Once converted, the data is moved to the Summary database.
- R. Build and maintain an outward-facing analytical interface for queries against the database. This interface will include both canned report functionality for SRS and NIBRS data and an administrative query tool for in-house detailed search functionality of the NIBRS database. See links in Section C.1.

**The Contractor shall provide:**

- A. A Work breakdown structure (WBS) and other detailed requirements and firm fixed pricing, per Exhibit J.6, Change Order Request, for technical services that may include, but not be limited to, customizations and changes to federal or state data requirements.
- B. Test plan, test cases with test results, business process documentation, System documentation, and other documentation as requested by the Department.
- C. Training on System operations including data entry, system administration, interface management and report generation. Training materials for Contributing Agencies as well as documentation to support a Train-the-Trainer program.
- D. Dedicated resources including, but not limited to, any necessary technical personnel for fulfillment of the Scope of this Contract.
- E. A Project Manager responsible and accountable for the following:
  - 1. To ensure project activities are completed according to the Contractor's Implementation Project Plan.
  - 2. The performance of the Contractor's resources, staff, etc.
  - 3. To work with and report directly to the Department's Project Manager regarding technical project activities.
  - 4. To work directly with the Department's Contract Monitor and the Department's PM regarding this Contract's monitoring requirements.
  - 5. To report to the Department's Project Manager regarding compliance with specifications, business requirements, milestones and other related activities.
  - 6. To serve as liaison for activities between the Contractor's staff and the Department.
  - 7. To coordinate any need for Department staff support through the Department's Project Manager.
  - 8. To provide and maintain a list of the Contractor's staff assignments and identify the type of technical and functional staff support necessary to accomplish the implementation of this Contract.
- F. The detailed preliminary Implementation Plan that was submitted with the Contractor's Offer will be reviewed by the Department. A final version, if necessary, will be coordinated with the Department's Project Manager after the Project Kickoff meeting is held. The Implementation Plan, at a minimum, will identify the specific steps to be taken during the implementation.



- G. The detailed preliminary Project Plan that was submitted with the Contractor's Offer will be reviewed by the Department. A final version, if necessary will be submitted to the Department's Project Manager for final approval after the Project Kickoff meeting is held. The Project Plan, at a minimum, will consist of how and when all deliverables are to be achieved, by showing the major products, milestones, activities, and resources required and will describe the duration and completion of each task.
- H. The Implementation Plan and Project Plan will be acceptable to the Department's Project Manager and mutually agreed upon before work begins. If corrections or adjustments are required, the Contractor shall have five (5) business days to resubmit the Implementation Plan and Project Plan for Department review and mutual agreement.
- I. A Communication Plan, to be developed upon Award in coordination with the Department to include, but not limited to, the status of the development, implementation, and testing to ensure synchronized and updated information such as schedule, concerns, risks, issues, and upcoming activities are approved by the Department. The Contractor shall also provide details on the Department's notification to the Contractor in the event of a system outage. The Contractor shall provide its notification and escalation process as part of the Communication Plan.

#### **C.4 BUSINESS MAINTENANCE REQUIREMENTS**

The Contractor shall maintain the System to ensure system functionality and operational effectiveness. The maintenance requirements identified below will pertain to preventive and remedial maintenance services and be applicable to the System hardware, software, and networking components unless specifically identified otherwise. The Contractor shall provide at a minimum the following:

- A. All maintenance and support of the System hardware and software.
- B. Maintenance of the System per stated service levels, and provision of all reports as specified in this Contract.
- C. Support for all software licenses utilized by the Department, to include but not limited to identifying, verifying, reporting, and resolving problems associated with the software licensed to the Department (by the third parties as well as the Contractor) in order to maintain the System performance levels equal to the requirements established for the initial System acceptance tests.
- D. Full and incremental system backups as required by the Department. The Contractor shall perform backups on all system records to facilitate data and System restoration in the event of any failures, including but not limited to, hardware. The data backup schedule shall be mutually agreed upon by both the Contractor and the Department and shall be oriented around periods when the System is expected to have the lightest use.
- E. Contractor-initiated Hardware and Software refresh plan(s) to address end of support or end of life products. The plan(s) will also address hardware, software, application patches and implementation methodology and schedule. The Contractor shall provide copies of all refresh plans to the Department.
- F. System maintenance schedule that reflects preventive and remedial maintenance to ensure the System functions in good condition and working order. The maintenance schedule will be mutually agreed upon and set at time periods determined at the discretion of the Department.
- G. Active participation in planning exercises and technical reviews where there could be a potential impact to the System which will require Preventive or Remedial Maintenance, or System modifications.



## **C.5 SYSTEM HARDWARE AND SOFTWARE MAINTENANCE AND SUPPORT**

### **C.5.1 Software Maintenance**

The Contractor shall:

- A. Provide periodic software updates that will incorporate (i) corrections of any defects, and (ii) Contractor-initiated enhancements to the software with prior written approval from the Department's Project Manager or assigned designee.
- B. Manage support for the Software (to include software changes the Contractor develops for the Department under this Contract) through the Service Level Standards outlined in Section C.6.
- C. Provide installation of patches and upgrades of all application and operating system software associated with the System, and maintenance of the interface connectivity with written preauthorization of the Department to keep current with FBI CJIS Security Policy and Department IT Division standards. Updates to manuals resulting from System software updates will be supplied to the Department free of charge.
- D. Install, without charge outside Principal Period of Operation, all mandatory changes with written preauthorization from the Department.

### **C.5.2 Preventive Maintenance**

Preventive Maintenance will be defined as any task routinely performed as a part of the regularly scheduled or unscheduled program of maintenance, designed to keep the System in proper operating condition, with it being understood such services are to include both hardware, software and interface connectivity. The preventive maintenance schedule is to be based on the mutual agreement of the Contractor and the Department for the particular services required for each system component. This schedule will be oriented around periods when the System is expected to have the lightest use.

The Contractor shall:

- A. Perform preventive cleaning of the System hardware in accordance with written instructions prepared by Contractor and approved by the Department. Preventive cleaning will be incorporated in the maintenance schedule.
- B. Provide an advance notice reminder to the Department's Project Manager or assigned designee at least five (5) business days prior to scheduled preventive maintenance activities for those activities that impact System operation.
- C. Provide the Department's Project Manager or designee with email or phone notice of unscheduled preventive maintenance activities and receive approval from the Department prior to services being rendered.
- D. Notice of both scheduled and unscheduled maintenance shall include but not be limited to:
  - 1. Length of anticipated downtime
  - 2. Description and / or purpose of the maintenance
  - 3. Anticipated impact to current application functionality
  - 4. A listing of any TXDPS resources necessary for the maintenance
- E. Replace faulty, malfunctioning, or end-of-life System hardware and software to maintain the current level of System functionality and operational effectiveness.
- F. Provide and install replacement parts for worn or defective parts at no additional cost to the Department to maintain the current level of System functionality and operational effectiveness.



Provide replacement parts which will be either new parts or parts equivalent in performance to new parts when used with the System in accordance with Section B.1.2.C

Cost for preventive maintenance services will be included in the predetermined monthly maintenance cost.

### **C.5.3 Remedial Maintenance**

Remedial Maintenance is defined as maintenance performed during System component failure that is performed by the Contractor on an unscheduled basis.

The Contractor shall:

- A. Provide all necessary maintenance at no cost to the Department to remedy malfunctioning system hardware or software to regain full operability.
- B. If the Department gives notice to the Contractor of a System failure, notification will be considered approval to provide remedial maintenance. If the Contractor should discover a System failure, the Contractor shall notify the Department according to the terms defined in the Section C.6. The Contractor shall follow Critical Blocker procedures defined in Section C.6 for instances of remedial maintenance.
- C. Produce a notification banner for users attempting to access the faulty System. Such notification banner will indicate the System is down and will show an estimated time of System availability. The Contractor shall update the banner hourly, providing the current status and estimated time of System availability.

### **C.5.4 Future System Modifications and Enhancements**

System modifications and/or enhancements will be performed by the Contractor outside the scope of Preventive or Remedial Maintenance. Modifications/enhancements requested by the Department shall be at no additional cost to the Department if the services to be rendered total 80 hours annually or less. Coordination of the requested services will be mutually agreed upon in writing prior to services being rendered.

Modification/enhancement services will be governed by the issuance of task-specific Change Orders (Exhibit J.6, Attachment B, Exhibit 1), utilizing the pricing structure in B.2.3. Each Change Order included in the 80 support hours shall be negotiated and agreed to by both the Contractor and the Department. These Change Orders will be officiated by signatures of the Contractor and the Department PM, and will become part of the Contract. Each Change Order that is submitted once the 80 support hours are fully exhausted shall be negotiated and agreed to by both the Contractor and the Department. These Change Orders will be officiated by signatures of Contractor, the Department PM, and TXDPS Procurement & Contract Services (P&CS) Contract Administrator, and will become part of the Contract. The Department PM will initiate this process by providing Contractor with a draft Change Order for update and negotiations. Once the Department PM and Contractor have determined and agreed to all deliverables and updated the draft Change Order accordingly, the draft Change Order will be supplied to the Department Contract Administrator for scope and pricing verification. Change Order governed tasks shall include but not be limited to application enhancement, customizations, alterations of hardware and software, programming, etc.

The Contractor shall:

- A. Complete the work described in the Change Order Request incorporated through the modification issued by the Department.



1. Change Order Request Form is attached to this Contract (Exhibit J.6). The Department PM and Contractor shall complete applicable deliverable language, provide pertinent project information and background necessary to explain the project tasks and scope, and update all Change Order tables as the project progresses.
  2. Upon approval and signatures from the Contractor, the Change Order Requests in excess of the annual 80 support hours will be forwarded to the Contract Monitor, who will secure approval and issuance from the Contract Administrator. The Contract Administrator will not approve and issue the Change Order until such time as all appropriate Department signatories have reviewed and approved the Change Order request. No services will be rendered until the Contractor receives a fully executed Contract Modification and Change Order Request Form from the Contract Administrator.
  3. Ensure all services are within scope of this Contract and have been requested at the sole discretion of the Department.
  4. Abide by the terms and conditions under this Contract and will not add any contractual terms and conditions through the Change Order Request process.
  5. Any changes to Change Order deliverable dates shall be reviewed and approved by the Department PM before placed in effect. Once changes are approved, the affected Change Order governance table(s) will be updated and provided by the Contractor to the Department PM and Department Contract Monitor.
  6. The request for a revised schedule must include the impact on: related and / or dependent tasks, overall project, resolution methodology for correcting deficiencies, and change to specific and overall timeframes.
- B. Repair defects enumerated in the Change Order Request caused by the following: acts of God; the Department or its designated agent or users; neglect; misuse or abuse of the System; or use of non-recommended products or services.
- C. The Contractor shall deliver all agreed upon deliverables per the Contract Modification on the dates identified in the Change Order Request (Table #3 of each Change Order Request). If delays occur, the Contractor shall follow the stated requirements outlined in Section C.5.5 of this Contract. The Contractor shall provide a service credit to the Department equal to one-hundred dollars (\$100) for failure to meet any agreed upon deliverables as defined within this Contract. Service credits will apply on a per deliverable basis if the Contractor does not comply with stated requirements and fails to meet an agreed upon deliverable. Service credits are a price adjustment and do not mitigate the liquidated damages provisions. See below Service Level Standards for Maintenance and Support. The Contractor shall follow the Department's Change Control Board (CCB) processes outlined in Section C.11.5.

#### **C.5.5 Change Management for Change Order Request(s)**

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



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

## C.6 SERVICE LEVEL STANDARDS

The purpose of these Service Level Standards is to ensure the proper elements are in place to provide the Department with the optimal level of system performance. The Service Level Standards define the terms, conditions, requirements, responsibilities, and obligations of the Contractor.

### C.6.1 Outage Response Service Levels

The Contractor shall:

- A. Utilize a Department-approved "incident ticket process" for all issues requiring maintenance to the System.
- B. Assign a severity level to each incident ticket, and notify the Department of the severity level assigned. The Department reserves the right to adjust the assigned severity level for each incident ticket.
- C. Identify, verify, report, and resolve problems associated with contract-related software licensed to the Department in order to maintain system functionality and operational effectiveness.
- D. Provide Mean Time to Resolution (MTR):
  - 1. During the Principle Period of Operation, the Contractor shall report all issues encountered to the Department's Project Manager or designee by phone and/or email within fifteen (15) minutes of identification (outside of Principle Period of Operation, contact by email only). The Contractor shall provide notification to the Department's Project Manager or designee, of the status of incident issues with a response time of no more than two (2) hours after each incident is reported.
  - 2. Upon verbal or written notification of an issue, the Contractor shall provide the following MTR's for defect resolution:
    - a. Critical/blocker: System is down and non-usable (Severity 1); fix and deliver in four (4) hours or less.
    - b. High: System is functional but suffering significant operational impact (Severity 2); fix and deliver in twenty four (24) hours or less.
    - c. Medium: System is functional, some impact to operations (Severity 3); fix and deliver in seventy two (72) hours or less.
    - d. Low: minor issue, no impact to operations (Severity 4); fix and deliver based on prioritization of current workload.
  - 3. The Contractor shall obtain written approval from the Department PM to extend MTR fix and deliver timeframes with justifications and clear explanations.

### C.6.2 Optimal System Performance

- A. Basic Requirements



The Contractor shall maintain optimal System performance twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year at a rate of 98% (hereafter referred to as the "Rate") as calculated by the Rate Calculation below. Inability to meet or exceed the Rate in any twelve (12) month period may, at the Department's sole discretion, result in the following actions:

1. First Remedy: Verbal warning.
2. Second Remedy: Written warning added to the Contract File as stated in accordance with Section H.3, Further Opportunity to Cure, of this Contract.
3. Continuing Remedy: The Department may exercise Contract remedies, which may include termination as stated in accordance with Section H.4, Termination, of this Contract.

#### B. System Availability

It is the intention of the Department to provide end users with uninterrupted service. It is understood there may be an occasional need for complete System outages in order to perform System maintenance. Routine backups will not cause a total System outage. It is permissible to disallow use of some features during backups.

The Department requires the System be designed in such a way a total System outage will not occur for common changes.

#### C. Requirements

As CJIS System Agency (CSA) for the State of Texas, the Department has entered into an agreement with the FBI. The System currently accommodates approximately 1100 users simultaneously. The System must be scalable to accommodate future growth of the user base.

#### D. Rate of Calculation

The Contractor shall measure the rate of System performance by the amount of downtime during a calendar month. This metric gauges the System performance as a percentage of available hours tracked to the quarter of an hour (rounded). The rate of System performance will be measured and monitored as follows:

Available hours equal total number of hours in a month (24 hours x number of days in the month) minus the actual amount of time spent to the quarter of an hour for scheduled maintenance for the hosted application.

Downtime is the total number of hours (rounded to the quarter hour) during which the System is not in operation.

System Performance Rate equals available hours Downtime divided by available hours.

Example for the month of January:

Available time per month was 744 hours (31 days X 24 hours)

Downtime per month was 3.75 hours (start 1:00 am - end 4:40 am)

$744.00 - 15 = 729$

$729 \div 744 = 98\%$

### C.7 DATA BACKUP AND DISASTER RECOVERY

The Contractor shall perform backups of all applications daily, for the term of this contract.



- A. The data backups shall be performed outside the hours of 8:00 A.M. to 5:00 P.M. CT. Exceptions to this schedule require prior written consent from the Department PM with a copy of such communication provided to the Department Contract Administrator. The Department PM will have three business days to respond to exception requests.
- B. Contractor shall perform backups on all data once every twenty-four (24) hours, seven (7) days per week, three hundred sixty-five (365) days per year to facilitate data and System restoration in the event of any failures, including but not limited to hardware or network. The data backup schedule will be mutually agreed upon by both Contractor and the Department and will be oriented around periods when the System is expected to have the lightest use. Contractor shall ensure no more than twenty-four (24) hours of data are at risk.
- C. Contractor shall ensure data and application backups allow for the complete recovery of data and application functionality to no more than 24 hours prior to the time of failure. Recovery of data and application functionality will be achieved within four (4) hours of initial notification. Catastrophic disasters, where the physical infrastructure is lost, will be restored within five (5) business days, notwithstanding the aforementioned recovery time frames.
- D. Data backup failures shall be reported via email to the Department PM within ten (10) minutes of failure and shall be listed within the monthly incident report.
- E. Two consecutive failures within a forty-eight (48) hour or two (2) non-consecutive failures within a three (3) day period will be considered a Critical Blocker (see above).

The Contractor shall perform routine incremental System backups to provide the ability to timely restore the System to operational status in the event of a disaster. The Contractor shall submit a Disaster Recovery Plan (DRP) to the Department within thirty (30) business days of contract award. Contractor and the Department shall negotiate and agree to the initial DRP within 30 (30) business days of submission. The DRP shall be approved by the Department PM, Cyber Security, ITD, and Procurement and Contract Services Contract Administrator. Final acceptance of the DRP shall be communicated from Contract Administrator to Contractor via email. Such DRP will include but not be limited to the following:

- A. A procedure for delivering collocated backup copies of all Departmental data daily to an off-site, secured storage facility for use in the event of a disaster;
- B. Identified location of the secured storage facility;
- C. The ability, in the event of a disaster that incapacitates the Contractor's data center operations, to completely recreate services, with Department backed up data, within forty-eight (48) hours at a remote facility;
- D. No more than twenty-four (24) hours of data are at risk; and
- E. Allow for the complete recovery of data up to the point the last twenty-four (24) hour backup.

The Contractor shall update the DRP for any enhancement, and shall perform annual tests of its disaster recovery service capability. The Contractor shall provide the Department with the results of such tests within thirty (30) calendar days of test completion.

## **C.8 TRANSITION PLAN/PROCEDURES**

- A. The Contractor, with the assistance of the Department, as part of the application maintenance and support requirements, shall provide a detailed plan within thirty (30) business days of Contract award for transitioning all applications, data, software, and documentation ("Application Data"), in



- whole or part, to a subsequent contractor, the Department or other entity. The Contractor shall update the Transition Plan within fifteen (15) business days following any enhancement work that alters application or system design.
- B. The Contractor shall provide a detailed draft transition plan ("Transition Plan") for a ninety (90) calendar day transition period that meets industry and best practices standards and shall include, at a minimum, step by step processes, timelines, involved parties' responsibilities, knowledge transfer, training and functional requirements to ensure that transition of all Application Data includes without limitation:
1. Detail of all hardware (if applicable) and associated operating software requirements necessary to support all applications.
  2. Detail of all platform and development software necessary to support, maintain and administer all application test, application production, and application monitoring environments.
  3. Detail of all network hardware (if applicable) and software necessary to support, maintain and monitor all application test, application production, and application monitoring environments.
- C. The Contractor shall provide to the Department a finalized Transition Plan within thirty (30) business days of Contract award. The Department shall review the Transition Plan within fifteen (15) business days of submission, and shall discuss any issues, requirements or concerns with the Contractor.
- D. As directed by the Department as a result of such discussions, the Contractor shall modify the Transition Plan and return the Plan to the Department for review and written acceptance within fifteen (15) business days of receipt. The fifteen (15) business day cycle, at a maximum, shall continue between the Department and the Contractor until it is determined the Transition Plan achieves the Department's satisfaction. Upon determining that the Transition Plan meets the requirements of this Contract including these provisions, the Department shall notify the Contractor of its written acceptance of the Transition Plan and upon such written acceptance, the Transition Plan shall be incorporated by reference into this Contract. Notice to the Contractor will be provided by the Contract Administrator via email.
- E. The Department shall ensure cooperation on the part of any subsequent contractor, other entity or Department personnel, depending on the entity to which the Department directs that all or part of this Contract shall be transitioned; however, the Contractor shall maintain all responsibility for all tasks, deliverables and performances under this Contract during the transition period. At the end of the ninety (90) day transition period, or earlier depending on Department approvals, the subsequent contractor, other entity or the Department shall assume full responsibility for all tasks, deliverables and performances as directed by the Department.
- F. During the Contract term, additional revisions of the Transition Plan may be required due to information, processes or issues that originally were not included or addressed in the Transition Plan. Revisions to the Transition Plan shall be processed under the same procedures as the initial Transition Plan, including provision to the Department for review, comment, revision, written acceptance, and incorporation into this Contract. Any enhancement activities that alter application or system design shall necessitate an update to the Transition Plan.
- G. Knowledge transfer shall occur over the entirety of the ninety (90) day transition period. The knowledge transfer shall take place via various methods. The Contractor shall, at a minimum, coordinate and conduct two (2) formal classroom training sessions. These sessions shall focus on the specific Transition Plan requirements and any other tasks or activities identified by the Contractor and the Department as needed to ensure a successful transition of technology necessary to continue applications operations. Training sessions shall be completed no later than sixty (60) calendar days prior to the end of the transition period. The Contractor, the Department



and the subsequent contractor or other entity shall meet a minimum of once per week to determine if further training or knowledge transfer is required.

- H. The Department shall meet with the Contractor and the subsequent contractor or other entity to ensure all concerns and issues have been met and addressed appropriately. The Department shall make the determination, in its discretion, of when the transition is complete and shall provide the Contractor and the subsequent contractor or other entity with formal written acceptance indicating such transfer of responsibilities. The formal transfer of duties shall be documented, in writing, with a Contract Modification or Contract Amendment, to include acceptance signatures from the Department, the Contractor and the subsequent contractor or other entity.
- I. Activation of the Transition Plan approved by the Department under these provisions (the beginning of the ninety (90) day transition period), shall begin on the Contractor's receipt of written notification from the Department that this Contract, in whole or in part, is being transitioned. The Contractor shall comply with these provisions and the Transition Plan. The Contractor's failure to comply with these provisions and the Transition Plan shall constitute a material breach of this Contract.

## **C.9 REPORTS**

### **C.9.1 System Performance Reports**

The Contractor shall maintain and submit the following reports to the Department PM:

#### **A. Weekly Report/Files:**

- 1. UserID and ORI of all agencies accessing the SRS and NIBRS Systems.
- 2. Progress reports for all active change orders.

#### **B. Monthly Reports/Files:**

- 1. Completion Reports – These reports will reflect a count of records that have successfully passed edits and were applied to the database. Completion reports are to be generated by month (first day to the last day) including but not limited to:
  - a. Total number of reports ingested (both SRS and NIBRS)
  - b. SRS
    - i. Number of reports ingested
    - ii. Number of Family Violence reports ingested
    - iii. Number of Hate Crime reports ingested
    - iv. Number of Sexual Assault reports ingested
  - c. NIBRS
    - i. Number of reports ingested
    - ii. Number of Family Violence reports ingested
    - iii. Number of Hate Crime reports ingested
    - iv. Number of Sexual Assault reports ingested
- 2. Error Reports - These reports provide data regarding NIBRS submissions that were rejected due to not successfully passing System edits and were not applied to the NIBRS database:
  - a. SRS



- i. Number of days a submission remains in the staging area with errors
    - b. NIBRS
    - c. ORI, Date, Time, UserID and Error Details sent to the agency with rejection notice.
  - 3. Status of all incidents reported within the prior month
    - a. Incident reports shall detail: each issue encountered by incident ticket identifier, affected hardware, affected networking infrastructure, incident discovery method (e.g. infrastructure monitoring, technical support call / email, error discovered while performing maintenance, etc.), severity level, root cause analysis findings, detailed actions taken to resolve the issue, time expended in correcting the issue, name of person reporting the issue and report method, the Contractor's staff assigned to the issue, initial response time and method, and other report details requested by the Department PM.
- C. Change Order Reporting:
- 1. The Contractor shall provide the Department PM with a weekly written progress report for each in-process Change Order. Reports will be submitted by 5:00 pm CT the following Monday of each week throughout the life of an active Change Order. Email submission of the progress report is acceptable.
  - 2. Progress reports will cover all work performed and completed during the previous week for which the progress report is provided and shall present the work to be performed during the subsequent week .
  - 3. Progress reports will identify any problems encountered, outstanding issues with an explanation of the cause, resolution methodology, and updated Change Order governance tables.

### **C.9.2 Statistical Data Reports**

These reports are defined within the links provided in Section C.1.

- 1. SRS, This data is a simple tally of monthly offenses, property stolen and arrests. There is no interconnectivity between those data elements.

To extract statistics from the data, SRS uses a series of static reports (based on the form type) built with set general parameters like "By County", "By ORI", or "State Totals". Reports will also include limited variable parameters such as Reporting Year, Start/End Date, and/or a specified ORI, etc.

- 2. NIBRS, This data is submitted as "incidents", which means all the data within the incident is interconnected. NIBRS is able to query the data with a higher level of granularity to include all data elements within the data set.

This level of detail requires an extensive query tool. This tool will be able to generate a custom response from multiple specific criteria including but not limited to: Age, Sex, Race, Ethnicity of Victims, Offenders and Arrestees, weapons, property stolen, offense type, relationship, drug seized, date, location, etc.

### **C.10 INFORMATION TECHNOLOGY (IT) REQUIREMENTS**

The Contractor shall comply with the following standards and requirements wherever they are applicable to this Contract. The Department shall have the sole right to waive specific requirements if in its sole judgment doing so would mitigate costs or risks or significantly improve the installed and configured solution.



### C.10.1 Environment Standards

The COTS Software will be hosted within the Contractor's computing infrastructure or within the Departments' IT infrastructure. The Contractor shall provide with its Offer a complete hardware and software inventory including any servers required, an architectural diagram, security diagram, network diagram, network usage assessment, and communications port diagram of the complete overall system and narrative describing requested diagrams and any API and Web service components, and the recommended workstation configuration if any. The Contractor shall also itemize all assumed capabilities and minimum hardware and software requirements of any Department IT related systems required to access or support the Contractor's product or system. The Contractor shall provide copies of the 508 compliance VPAT documentation for all components of the proposed system as stated in Texas Administrative Code 213. (1 TAC 213.18).

#### A. Contractor Hosted COTS Software:

1. Any applicable server hardware will identify:
  - a) The processor requirements;
  - b) The memory requirements;
  - c) Operating system details and dependencies; and
  - d) Data storage requirements.
2. All workstation recommendations will identify:
  - a) The processor requirements;
  - b) Display requirements;
  - c) The memory requirements;
  - d) Operating system details and dependencies;
  - e) Data storage requirements; and
  - f) Any support applications required such as Internet Explorer, Adobe PDF Reader etc.
3. Peripherals required:
  - a) Printers;
  - b) Scanners; and
  - c) Fax.

#### B. The System shall support the following:

1. Department issued desktop or laptop PCs:
  - a) Windows 7
  - b) Internet Explorer 8 or greater
  - c) Firefox 27 or greater
2. Department issued Mobile Devices
  - a) IOS version 7 or greater
  - b) iPhone 4s or greater
  - c) iPad 3 or greater
3. Publicly owned desktop or laptops PCs
  - a) Windows 7 or greater
  - b) Mac OS X 10.6.8 or greater
  - c) Internet Explorer 8 or greater
  - d) Safari 10.6.4 or greater



- e) Firefox 27 or greater
- f) Google Chrome 37 or greater

4. Publicly owned mobile devices, phones and tablets

- a) Using IOS 7 or greater
- b) Using Android 4.1 or greater

#### **C.10.2 Communication Standards**

The COTS Software will support integration with other Department systems utilizing standard web services or provide API tools that can be incorporated into the Department's applications or secure file transfer protocol with data encryption.

#### **C.10.3 Network Topography**

- A. The Department utilizes a combination of public and private TCP/IP network resources. All internal communications between client resources, other systems, and system services will be through this network.
- B. The Contractor's system will use standard TCP/IP network access ports. The system will be accessible on Port 80 for standard Web Browser access and Port 443 for Secure Web Browser support.

#### **C.10.4 Workstation Installed Software**

If the software solution is client based and needs to be installed on each computer, the Contractor shall provide the client software in a MSI format so that the install can be packaged to operate as a silent install for Windows based systems. OS X applications will support Apple Application installation package standards. Any software required for mobile devices will be available from the appropriate App store based on the device operating system. Mobile device software will also be compatible with Mobile Device Management software distribution tools.

### **C.11 MAINTENANCE AND SUPPORT**

#### **C.11.1 Contractor Hosted COTS Software Services**

The Contractor shall provide COTS Software that includes and may not be limited to all hardware and software maintenance and support, upgrades to equipment to meet and maintain performance service levels, backup hardware and Internet connections in accordance within Section I.10.2, Cloud Security.

#### **C.11.2 Department Hosted COTS Software**

The Contractor shall provide a software maintenance solution to include, but not limited to the following:

- A. Support for the COTS Software to include software changes that the Contractor develops for the Department under this Contract that will be managed through Section C.6.
- B. Preventative scheduled and unscheduled system diagnosis and correction of faults as well as modification of the software to maintain the service level performance of the COTS Software.
- C. Web-based support portal for the Department to report minor problems will be available twenty-four (24) hours per day, seven (7) days per week, and three-hundred-sixty-five (365) days a year with a researchable knowledge base for known issues. Response to reported problems will be managed as defined in Section C.6.



- D. Maintenance services to resolve usability problems to include but not limited to bugs, security issues, and installation of software updates and major software releases.
- E. New software versions or releases at no additional cost to the Department occurring in the normal maintenance yearly support as offered in Section B.2, Pricing Schedules.

### **C.11.3 Software Updates**

The Contractor shall provide periodic system software updates that will incorporate corrections of any defects, and enhancements to the system's software.

- A. COTS Software updates released by the Contractor will be installed by the Contractor during periods during the maintenance window mutually agreed upon by the Department and the Contractor as defined in Section C.6.
- B. Updates to Documentation or manuals resulting from system software updates will be provided or made available on demand to the Department.

### **C.11.4 Hardware**

- A. The Contractor shall provide maintenance services for hardware equipment owned by the Contractor installed to support a Contractor's Hosted COTS Software.
- B. The Contractor shall provide notice to the Department a minimum of five (5) business days prior to scheduled maintenance including length of anticipated downtime plus the description or purpose of scheduled maintenance. The Contractor shall provide notice to The Department and its employees prior to unscheduled maintenance where possible including length of anticipated downtime plus the description or purpose of unscheduled maintenance.

#### **1. Preventive Maintenance**

The Contractor shall provide preventive maintenance services in order to maintain the system in good condition and working order on a mutually agreeable scheduled basis. The preventive maintenance schedule is to be based on the Contractor's and the Department's mutual agreement of the particular service required for each system component, it being understood that this schedule will be oriented to avoid periods when the system is expected to have the heaviest use.

During the term of this Contract, the Department may, by providing five (5) calendar days prior written notice, select any alternative period of maintenance coverage whether or not such alternative represents an increase or decrease in service.

#### **2. Remedial Maintenance**

The Contractor shall provide remedial maintenance to the system on a twenty-four (24) hour per day, seven (7) day per week basis, with a response time of no more than two (2) hours for each incident.

### **C.11.5 Change Control Participation**

The Contractor is hereby advised that changes to the System will be subject to the Department's Change Control Board (CCB) process. This requirement is mandatory for the Contractor hosted and the Department hosted packages. The Department shall initiate and manage the change control process. The purpose of the Department's IT Change Management (CM) is to ensure that Change Requests (CRs) to the Department's IT systems are properly reviewed, authorized, implemented and tracked with minimum disruption to service levels. The purpose of the Department's change management policy is to ensure accountability, communication, transparency and visibility between IT



and the Business. The Contractor shall be required to submit a change request to the CCB detailing what is changing and where it is changing, along with test plans, test results, and communication processes for before and after a change. There are two types of change requests:

A. Standard CR

Standard CRs follow the 'normal' change request process. This means these changes will be approved by the CCB prior to being released to a production environment.

B. Emergency CR

Emergency CRs will follow an abbreviated version of the CCB process. The following are considered emergency CRs:

1. Production system down;
2. Multiple users/sites affected ;
3. Misprocessing data; and
4. Security risk.

**C.11.6 Service Outage Escalation and Communication**

The Contractor shall provide upon award a detailed communication plan that specifies how the Contractor shall be contacted in the event of a system outage. If the solution is hosted by the Contractor, the Contractor shall provide its notification and escalation process as part of the communication plan.

**C.12 IT SERVICE LEVEL STANDARDS**

The purpose of these Service Level Standards is to ensure that the proper elements are in place to provide the Department employees with the optimal level of system performance. The Service Level Standards define the terms, conditions, requirements, responsibilities, and obligations of the Department, employees, and the Contractor.

**C.12.1 System Production Control**

The Contractor shall schedule production management such as batch processing, job scheduling, automated import/exports, etc. at a minimum of once every twenty-four (24) hours, seven (7) days per week and three hundred sixty-five (365) days per year. The production control schedule will be mutually agreed upon by both the Contractor and the Department and will be oriented around periods when the system is expected to have the lightest use.

**C.12.2 System Support**

The Contractor shall support all software licensed to the Department for use during the term of this Contract. The Contractor shall provide toll-free telephone, or e-mail accessibility to the Department for the system, during the Principle Period of Maintenance, excluding State or federal holidays. A list of the Departments holiday schedule is available upon request. These days and times may change at the discretion of the Department. The Contractor shall provide the capability for the Department and employees to leave a message for occasions outside of that time period.

A. System support for the Department and its employees includes responsibilities such as:

1. Department or new employee training;



2. System configuration;
3. Record contribution methodologies or practices;
4. System navigation;
5. Data query or export procedures;
6. Search criteria, best practices, parameters, etc.; and
7. Troubleshooting for system hardware, system software, network, etc.

B. System support for the Department and its employee excludes responsibilities such as:

1. Record content;
2. Record quality;
3. Record interpretation;
4. Employee administration (including new accounts, password creation or resets);
5. Non-system software owned, purchased, installed, developed or utilized by the Department or the Department's hardware; and
6. The Departments/User's ISP or other internal method of access.

**C.13 SYSTEM PERFORMANCE**

**C.13.1 Response Time**

The Contractor shall maintain a real-time or near-real-time Response Time for Index Searches not to exceed a maximum of twelve (12) seconds per Index Search. Response time will be reported as the average of the total Response Time for the total quantity of Index Searches submitted by the Department's employees. Time period used in calculating the Rate will be used to calculate the Response Time average.

Example for the month of January:

Total Index Searches = 510

Total Response Time = 6,108 seconds

$6,108 \div 510 = 11.98$  seconds

The Contractor shall provide adequate system resources and network capacity that will ensure a minimum two (2) second system response time for all Department Users and External Users through the Contractor's internet connection point. The Contractor shall provide monitoring tools and reports the Department can access to verify this capacity and throughput.

**C.13.2 Contact Persons**

The Contractor's point of contact for maintenance and service levels will be the Department's PM. The Departments' primary point of contact will be the Department's Contract Administrator in accordance with this Contract in the Contract Administrator section.

**C.13.3 Recovery Points**

- A. System crashes will be resolved within twenty-four (24) hours of initial notification. Catastrophic disasters where the physical infrastructure is lost will be restored within five (5) business days.
- B. Data and system backups will be scheduled so that no more than twenty-four (24) hours of data are at risk.



#### **C.13.4 Hardware and Software Refresh**

The Contractor shall provide hardware and software refresh plans to address end of support or end of life products. The plan will also address system and application patches and implementation methodology and schedule. Refresh of hardware and software will be at the sole discretion of the Department.

#### **C.13.5 ADA Compliance**

The Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA) to include the State web accessibility standards outlined in Texas Administrative Code Chapter 206, which is in alignment with federal regulations outlined in Section 508 of the Rehabilitation Act of 1973, as amended in 1998.

#### **C.14 TRAINING**

A. The Contractor shall provide detailed training plan for the Department's users to acquire the necessary skills and proficiencies. All training programs will be conducted at Department Headquarters, located in Austin, Texas. Training will be interactive with an emphasis on all appropriate development skills, and users shall have the ability to ask questions of the trainer during the sessions. The schedule of training sessions will be coordinated with the Department Project Manager. The requirements of the training programs are as follows:

1. Train the Trainer:

- a. The Train the Trainer training will be offered to selected Department users to acquire the necessary information, skills, and proficiencies of the Software Solution to allow those users to train other typical Department users how to use the Software Solution to its fullest potential.
- b. The training will include advanced user techniques, basic technical troubleshooting skills, and server side support.
- c. It is estimated that the Department will receive a minimum of no less than two (2) training session during the Base and Renewal Option Periods.

2. Developer Training (Department Hosted Solution):

- a. The developer training will be provided to Department personnel who shall be responsible for the daily operation and maintenance of the software.
- b. The developer training will provide Department personnel with the skills needed to integrate new data into the software and to program the software to develop new capabilities.
- c. The developer training will include knowledge and skills required to understand how the software architecture handles various data types, how the platform scales with users and data, and how the software features interact with the security model.
- d. The developer training will include data integration training designed for Department personnel to be able to interface with internal and external data sources.
- e. The developer training course will include overviews of the entity model, importing an SQL database, multi-level security related to data sources and analysis outcomes, and entity resolution.



- f. The developer training will include the use of APIs to perform common workspace tasks such as connecting to the software database programmatically, searching, creating entities, and deploying helper applications.
  - g. It is estimated that the Department will receive a minimum of no less than two (2) developer training sessions during the Base and Renewal Option Periods.
  - h. If a Contractor hosted solution, developer training is not required.
- B. The Contractor's training programs will allow the Department and the Contractor to jointly alter the proportion of train the trainer, analyst, developer, and certified training programs so as to maximize the overall effectiveness of the training for Department. All training sessions including any web-based sessions, will be live and/or interactive.
  - C. The Contractor shall scale, detail, and tie training to match the Software Solution.
  - D. The Contractor shall provide to the Department's Project Manager copies of the curricula and associated User Guides for trainees for acceptance by Department no less than fifteen (15) business days prior to the first training program for each type of training.
  - E. The Contractor shall provide to Department video recorded training for each training program as a review/refresher resource for Department personnel who have already completed the live training.
  - F. The Contractor will be available for training and shall offer up to three (3) additional on-site training periods not to exceed two (2) days each during the first year of the contract, if needed.
    - 1. The Contractor will provide webinar trainings and shall not-to-exceed (NTE) six (6) webinar per year at no additional cost.
    - 2. Should an eight (8) hour training session be necessary, the Contract will accommodate the number of hours.

**C.15 TESTING REQUIREMENTS, IMPLEMENTATION AND ACCEPTANCE**

All testing activities will include the following but not limited to:

**C.15.1 Implementation and Acceptance**

The Department shall work closely with the Contractor to insure each phase of this project is complete; however, completion of any one phase specified in this RFO does not constitute full completion and acceptance of the project's requirements.

**C.15.2 Unit Testing:**

- A. The Contractor shall provide a listing of test cases based on the requirements of this solicitation, the Implementation Plan, Project Plan and Schedule and in direct coordination with the Department Project Manager.
- B. The Contractor shall also provide the Department with the results of the Unit test cases that were executed to completion.
- C. Based on the outcome of successful unit testing, the Contractor shall advance to the next step of System Testing. Successful unit testing will be defined as 100% pass rate of all defined unit test cases with no outstanding issues/defects. The Contractor shall perform all these tests in a development environment.



### **C.15.3 System Testing:**

- A. The Contractor shall provide to Department for review and approval by Department QA testing staff, documented test cases that will be performed during the Contractor system testing to validate the successful migration and installation of the software package before any System Testing begins.
- B. The Contractor shall be responsible for performing system testing in the Contractor QA Environment and provide test results to Department.
- C. The Contractor shall log all defects found during the System Testing in the agreed upon defect tracking application.
- D. The Contractor shall investigate any defects found during System Testing and participate in Defect Triage meetings with Department to determine defect outcome and resolution.
- E. The Contractor shall provide defect fixes in the timeframe as defined in SLA.
- F. The Contractor shall demonstrate all components of the Application Software are performing as defined in the System Test cases and Business Requirements, including interfaces with other systems (Baseline Interfaces), in the specified System Hardware, Operating Software and Network Environment (System Environment).

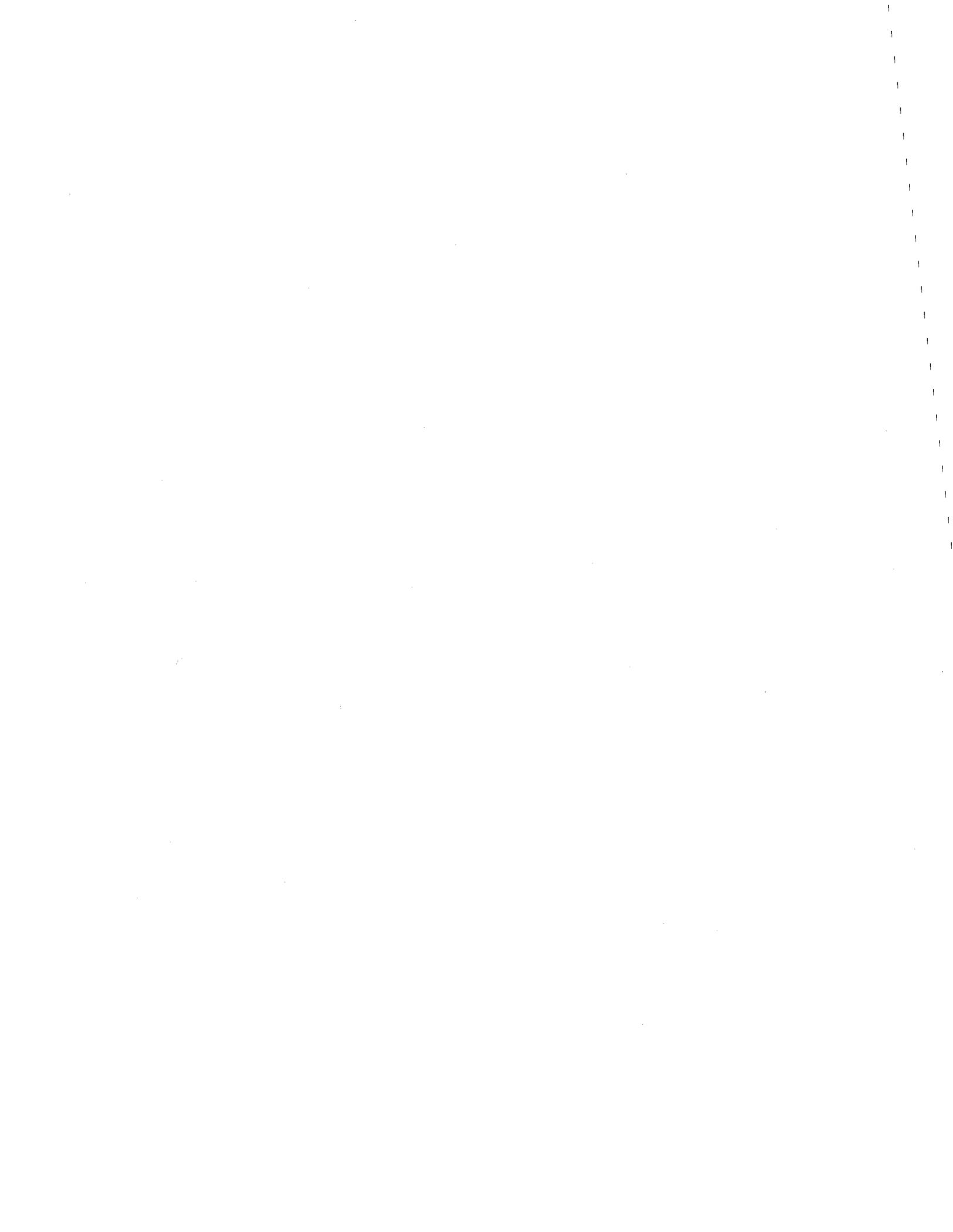
### **C.15.4 Performance/Load Testing:**

Performance/Load Testing will be performed by the Department in coordination with the Contractor in instances where internal metrics (network load, etc.) cannot be captured by the Contractor. The Department shall also help coordinate internal resources to provide oversight and assistance when necessary.

- A. The Contractor shall provide documented test cases to Department that will be performed during the Contractor performance and load testing to validate the successful performance of the software package.
- B. The Contractor shall capture the average data throughput for solution and the maximum number of concurrent users before service degradation to ensure user traffic does not have an adverse effect the Department network and provide these results to the Department.
- C. The Contractor shall conduct performance and load testing that will demonstrate their system is capable of meeting metrics as defined by the Department.
- D. The Contractor shall provide performance and load test results to the Department for review and approval.
- E. Based on the outcome of successful performance and load testing, the Contractor shall advance to the next step of System Integration Testing. Successful performance testing will be defined as 100% pass rate of all defined test cases with no outstanding issues/defects. The Contractor shall perform all these tests in a production-like environment.

### **C.15.5 System Integration Testing:**

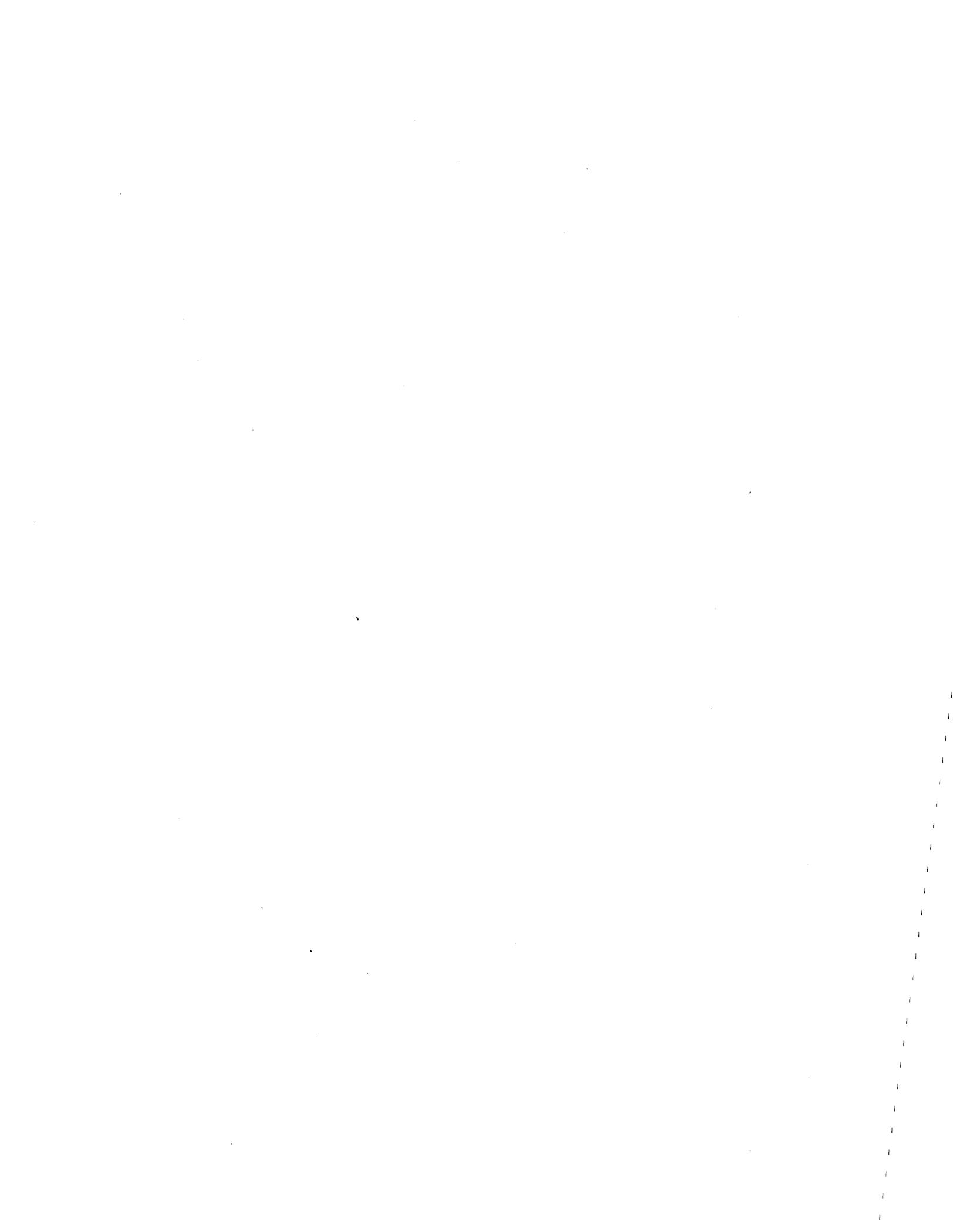
The Department shall perform System Integration Testing independently or jointly with the Contractor, following successful completion and documentation of the Contractor and the Department System Testing. Successful completion is defined as 100% pass rate of all defined System Test cases with no outstanding issues/defects.



- A. The Contractor shall provide assistance during the System Integration Testing process by providing technical and QA resources that will answer questions and provide clarifications and/or fixes to any issues encountered during the System Integration Testing cycle. This support will be performed remotely or in person at the Department facility. Remote support will consist of, but is not limited to, remote server control mechanisms, WebEx review sessions, telephone conference calls and email exchanges. System Integration Testing will focus on the integration and interaction with other Department systems, external systems, or third party components and will be based on the Department requirements as well as the Contractor's System Design Specification.
- B. The Contractor shall provide a User Acceptance Testing environment upon successful completion of System Integration Testing.
- C. The Department shall log all defects found during the System Integration Testing in the agreed upon defect tracking application.
- D. The Contractor shall investigate any defects and participate in Defect Triage meetings with the Department to determine defect outcome and resolution.
- E. The Contractor shall provide a documented response to the documented defect in the agreed upon defect tracking application.
- F. The Contractor shall provide defect fixes in the timeframe as defined in the SLA.
- G. The Contractor shall provide Release Notes containing an open issues log for each test iteration.
- H. At the Department's sole discretion, test cases may be modified or added to ensure completeness, accuracy and quality of the delivered software package as defined in business and technical documentation.
- I. Based on the successful outcome of System Integration Testing, the Department shall advance to User Acceptance Testing (UAT). Successful System Integration Testing will be defined in the Test Plan documentation created by the Department.
- J. System Integration testing will not be considered successful if outstanding Severity one (1) or Severity two (2) defects pending resolution remain.

**C.15.6 User Acceptance Testing (UAT):**

- A. Following successful completion of the System Integration Testing, or System Test for Contractor Hosted systems, the Department shall coordinate and execute UAT in the Contractor's (UAT) environment.
- B. UAT shall be performed by Department end users based on UAT test cases created by the Department.
- C. The Department shall notify the Contractor of any defects found during User Acceptance Testing of the Software Solution.
- D. The Contractor shall investigate any defects and participate in Defect Triage meetings with the Department to determine defect outcome and resolution.
- E. The Contractor shall provide defect fixes in the timeframe as defined in the SLA.
- F. If the number of defect failures prevents all systems from operating as described above, the Department may reject the entire final software package.



- G. If all criteria are not met as defined in the Department Quality Assurance Entry and Exit Criteria document (Exhibit J.9), or the Contractor's solution does not meet the defined business requirements, the Department may reject the final software solution.

**C.15.7 Final Acceptance:**

Final acceptance of the System will not occur until ninety (90) business days after the review period, to include thirty (30) business days failure free operation of the system and delivery of all required documentation.

**C.15.8 Failure Resolution:**

Upon failure of any test within the control of the Contractor, the Contractor shall submit a report describing the nature of the failure and the actions to be taken to remedy the situation prior to any modification or replacement of the system, within ten (10) business days. The Department shall provide written approval or denial within five (5) business days. If a system requires modification, the fault will be corrected and the test repeated until successfully completed.

- A. Major discrepancies that will substantially delay receipt and acceptance of the system will be sufficient cause for rejection of the system. Failure to satisfy the requirements of any test is considered a defect and the system will be subject to rejection by the Department. Any rejected software package may be offered again for retest provided all noncompliance has been corrected.
- B. Resolution of System Integration Test Failure. If the software package fails the System Integration Test, the Contractor shall correct the fault and then the Department shall repeat the Systems Integration Test until successfully completed.
- C. Resolution of Final Acceptance Test Failure. If a defect within the system is detected during the Final Acceptance Test, the Department shall document the failure. The Contractor shall be required to research, document and correct the source of failure. Once corrective measures are taken, the Department shall monitor the point of failure until a consecutive thirty (30) calendar day period free of defects is achieved.

**C.15.9 Retest**

The Contractor and the Department shall mutually agree to re-test per Section C.15 Testing Requirements, Implementation, and Acceptance, as determined by the environment where the issue is to be addressed. If the system downtime exceeds seventy-two (72) hours or system has not operated for thirty (30) consecutive business days free of defects within the ninety (90) business day period, the Department may extend the test period by an amount of time equal to the greater of the downtime in excess of seventy-two (72) hours or the number of days required to complete the performance requirement of an individual point of failure.

**C.16 DEPARTMENT RECORDS AND DATA RETENTION**

- A. Upon conclusion of this Contract, including management transition to the Department or another Contractor, all agency data and reports and the complete, certified set of fully, properly documented, and commented application programming files and logs developed by the Contractor specifically for this Contract shall revert to the Department. This shall include customized code, data and images, data and images indices, data and image indexing or analysis, and logging tools and information not present in the Contractor's product as normally initially delivered to other clients.
- B. Agency records shall be labeled and delivered in a manner satisfactory to the Department. The Contractor shall comply with additional instructions pertaining to Department records as detailed in Section H.55, Books and Records, of this Contract.



- C. In the event the Contractor requires copies of any records after conclusion of this Contract or this Contract's expiration and Facility management transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- D. Records shall be maintained in accordance with the Department's Records Retention schedule as detailed in Section E.2, Inspection by State Employees.

**C.17 THIS SECTION IS INTENTIONALLY LEFT BLANK**



## SECTION D – REPORTS AND DATA

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

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

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Monthly	5 <sup>th</sup> business day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Exhibit J.2
Other	Prior to Execution of Contract and upon renewal or replacement	Insurance Requirements	Contract, Section I.1
Annual	Prior to Execution of Contract and again within one-hundred twenty (120) calendar days after the end of Contractor's fiscal year	Financial Ratings	Contract, Section G.3.8.A
Other	Application Reports	As Stated	Contract, Section C
Other	Within ten (10) calendar days of receipt of audit report	Corrective Action for Items of Non-Compliance identified	Section E.1.F



## **SECTION E - INSPECTION AND ACCEPTANCE**

### **E.1 INSPECTION OF SERVICES**

- A. Acceptance criteria for all deliverables under this Contract may be found in Section C.
- B. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.
- C. If any deliverables do not conform to this Contract's requirements, the Department shall require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.
- D. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.
- E. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3 of this Contract.
- F. If any services are non-compliant with this Contract's requirements, the Contractor will be notified describing specific areas of non-compliance. The Contractor shall have a ten (10) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

### **E.2 INSPECTION BY STATE EMPLOYEES**

- A. The Contractor shall provide and maintain all documentation pertaining to quality testing, acceptance of deliverables, maintenance and warranty records, inventories of equipment per location, and all reports necessary as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this Contract's performance and for a period of four (4) years after the termination of this Contract.
- B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/agent for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, will be admitted to monitor the delivery of deliverables.



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

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



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

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

This Contract will have a Base Period from Date of Execution through August 31, 2017 with three (3) one (1) year Option Period Renewals: September 1, 2017 through August 31, 2018; September 1, 2018 through August 31, 2019; and September 1, 2019 through August 31, 2020.

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

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



## SECTION G - CONTRACT ADMINISTRATION DATA

### G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR

#### G.1.1 Authorized Representative

A. In reference to the Contractor, it's 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 Contract requirements, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event 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 Department Contract Administrator

A. The Contract Administrator for administration of this Contract is Mr. Kenneth Maze, CTPM

B. The telephone number for the Contract Administrator is (512) 424-7347.

C. The e-mail address is [kenneth.maze@dps.texas.gov](mailto:kenneth.maze@dps.texas.gov).

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

#### G.1.3 Department Contract Monitor

A. The Contract Monitor for this Contract is Ms. Jennifer Norton.

B. The telephone number for the Contract Monitor is (512) 424-7793.

C. The e-mail address is [Jennifer.Norton@dps.texas.gov](mailto:Jennifer.Norton@dps.texas.gov).

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.



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.

If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

#### **G.1.4 Department Project Manager**

- A. The Project Manager for this Contract is Ms. Michelle Farris.
- B. The telephone number for the Project Manager is (512) 424-7659.
- C. The e-mail address is [michelle.farris@dps.texas.gov](mailto:michelle.farris@dps.texas.gov).

The Department 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 for the Department. The Project Manager shall have full authority to act for the Department in the performance of this Project. The Project Manager or a designated representative shall meet with the Contractor Project Manager to discuss problems as they occur.

#### **G.1.5 Contractor Project Manager**

- A. The Contractor Project Manager for this Contract is Mr. Frank Xavier, PMP.
- B. The telephone number for the Contractor Project Manager is (614) 547-1110 (ext. 120).
- C. The e-mail address is [frank.xavier@otech.com](mailto:frank.xavier@otech.com).

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 State. The Contractor Project Manager shall report to the Department Project Manager or their designee. The Contractor Project Manager shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Project Manager or a designated representative shall meet with the Contract Monitor and Department Project Manager to discuss problems as they occur. The Contractor Project Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

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

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

- A. The Contractor's Invoice will include the following:
  - 1. This Contract number;
  - 2. Remittance Address; and
  - 3. Prompt Payment Discount (the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).



- B. An invoice copy will be sent electronically to [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov), and [jennifer.norton@dps.texas.gov](mailto:jennifer.norton@dps.texas.gov). An original, hard-copy invoice, if required by Contractor, shall 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 award, the Contractor shall submit a completed authorization form.
- B. This Section is Intentionally Left Blank.
- 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 their eleven (11) digit Texas Identification Number (TINS) previously provided to Contractor by the Texas Comptroller of Public Accounts.

TINS: 13112310811

- D. This Section is Intentionally Left Blank.
- E. The Contractor is electing to participate in direct deposit.

#### **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. Transition and Implementation: Notwithstanding anything else to the contrary in this Contract, the Department will not make any payments of any amount to the Contractor or any other entity or person, and the Contractor will not submit any invoices, until the Contractor has received from the Department a written Final Acceptance Document, (Exhibit J.7) signed by the Department's Contract Monitor specifically stating that the Department accepts the work and Contractor is authorized to submit an invoice.
- C. Standard Maintenance and Support: The Contractor shall bill the Department for each calendar month, one (1) calendar month in arrears for the amount due for the monthly service accepted in writing by the Contract Monitor. Each invoice is subject to the Department's usual auditing and accounting procedures. The Contractor compensation may be subject to proration or reimbursement for unforeseen situation at the discretion of the Department.
- D. 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.



- E. 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.
- F. Future Change Orders for Special Maintenance and Support: The Contractor shall invoice the Department upon final acceptance of each completed COP. Copies of hardware and equipment invoices, related to any such COP, will be submitted as documentation of costs. The executed Change Order Acceptance Document will also be submitted with the itemized invoice. Failure to include such required documentation will result in rejection of the Contractor's invoice.

### **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 specified in or any money determined to be due as specified in Section E.1.E.
- B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

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

Any amount owed to the Contractor more than one (1) calendar 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 in Section D.1 Contract Compliance Reports Required from the 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 for thirty (30) consecutive calendar days.



- 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 Reports**

- A. The Contractor shall submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.3 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.
- C. Notwithstanding anything else in this Section G.3.8 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including, but not limited to, the audits described in Section H of this Contract.



## **SECTION H – TERMS AND CONDITIONS**

Subcontractors shall also comply with these provisions.

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

- A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Department's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.
- B. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.
- C. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.
- D. The Department may, upon thirty (30) calendar days written notice to 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.
  - 1. 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) calendar 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 may, at its discretion, allow the Contractor to pursue such plan of cure.
- C. The Department's decision will be communicated in writing to the Contractor.
- D. The Department may not exercise its remedies hereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. The ten (10) calendar day time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

#### **H.4 TERMINATION**

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

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

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

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

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

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

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

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

This Contract may be terminated upon mutual written agreement.

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

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



#### **H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor 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 Contractor list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; 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 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 been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.
- E. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. The Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Department.
- F. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.



- G. The Department reserves the right to cancel this Contract without notice and either re-solicit or re-award this Contract to the next best responsive and responsible Contractor if the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department will determine the period of suspension based on the seriousness of the default.
- H. The Department and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

## **H.5 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:
  - 1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall 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, 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 78752.
  - 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 SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### H.6.2 Infringements

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



EXPENSE; (I) PROCURE FOR THE DEPARTMENT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT THE DEPARTMENT'S USE IS NON-INFRINGEMENT.

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

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

#### **H.7 NO WAIVER OF DEFENSES**

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

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

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



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

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

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

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

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

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

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

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

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

- A. In the performance of this Contract, the Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following:
- B. The Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.
- C. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.
- D. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.
- E. 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 THE CONTRACT**

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

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

- A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new Contract, and 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.

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

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

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

By entering into this Contract, the Contractor certifies and ensures that it utilizes and 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 the Contract; and
2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the 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 Department and at no fault to the Department, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the Department must undertake to replace 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) will receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

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

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

#### **H.21 STRICT COMPLIANCE**

Time is of the essence in the delivery of deliverables as set forth in this Contract. 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 be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.



- B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.
- C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor personnel shall comply with all relevant Department policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS) Security Policy and Security Addendum, as they now exist and as they may thereafter be amended.
- D. The Department shall have the right to require the Contractor to remove any of the Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

#### **H.24 FORCE MAJEURE**

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement contained herein caused by force majeure. The existence of such causes of delay or failure 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.

In the event the Contractor and the Department are unable to mutually agree to a contingency plan for the continuation of the Contractor's obligations under this Contract, within fifteen (15) business days of such force majeure event, the Department shall have the right to terminate this Contract upon thirty (30) days written notice.

#### **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. The Contractor must have a separate Production, Quality Assurance (QA) and User Acceptance (UAT) testing environment. Updates shall be tested and approved by the Department prior to deployment to Production. Reference Exhibit J.9, Department Testing Entry/Exit Criteria.

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

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

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

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

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

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

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

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



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

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

### **H.33 ROLLING ESTOPPEL**

- A. The Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.
- B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

### **H.34 SALES AND USE TAX**

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

### **H.35 NOTICES**

Any notice required or permitted under this Contract will be directed to the Contractor's Project Manager as specified in Section G.1.6 and the Department's Contract Administrator as specified in Section G.1.2 and will be deemed received:

- A. When delivered in hand and a receipt granted;
- B. Three (3) days after it is deposited in the United States mail by certified mail, return receipt requested; or
- C. When received if sent by confirmed facsimile or confirmed electronic mail.

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

### **H.36 MOST FAVORED CUSTOMER**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

#### **H.43 ATTACHMENTS**

The Department reserves the right, in its sole discretion, to reject any of the Contractor's 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, issuance of a Contract, will constitute an acceptance of conflicting terms and conditions or attachments, if any, in the Contractor's Offer, however, this lack of acceptance by the Department will not apply to the negotiated 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 indemnify the Contractor;
- E. Requirements that the Contractor's documents control in case of conflict;
- F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and
- G. Disclaimer of warranties.

#### **H.45 RECALL NOTICE**

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

#### **H.46 COMPETENCY ACKNOWLEDGEMENT**

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

#### **H.47 MULTIPLE CONTRACTS**

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

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

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



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

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

**H.50 FALSE STATEMENTS**

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

**H.51 PUBLIC INFORMATION ACT**

- A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. 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. Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

**H.52 APPROVAL OF EMPLOYEES**

- A. The Contractor shall retain no upper level management personnel for administration of this Contractor without the prior approval of each selection by the Department's Authorized Representative or his designee whose 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 will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.



- C. The Contractor shall assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract. The Department shall have the right to approve the assignment and replacement by the Contractor of all personnel assigned to provide deliverables or to provide on-site representation of the Contractor.
- D. The Contractor shall notify the Department before assigning a replacement individual for any of the personnel commitments identified in the Contractor's Offer. The Contractor shall notify the Department of the proposed assignment, shall introduce the individual to the appropriate representatives of the Department, shall provide a transfer of knowledge validation and shall provide to the Department a resume and any other information about the individual reasonably requested by the Department. The Department reserves the right to interview the individual before granting approval. The Contractor shall obtain prior written approval for any replacement personnel before beginning any work assignments.

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

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

#### **H.53.3 Unauthorized Removal of Personnel**

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

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

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

#### **H.55 BOOKS AND RECORDS**

All records and documents pertinent to the services contracted hereunder will be kept for a minimum of four (4) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from



which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

#### **H.56 ORGANIZATIONAL AND NAME CHANGE**

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

#### **H.57 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor's Authorized Representative shall provide the following to the Department's Program Manager within twenty-one (21) calendar days of executing this Contract:
  - 1. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and
  - 2. Acceptable fingerprints for all proposed personnel.
- B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. The Department has the right to prevent the Contractor's personnel from gaining access to the Department building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.9 entitled "Criminal History Background Checks" for details on this requirement.
- C. The Department issued identification cards will be worn at all times and will be worn in a visible location.

#### **H.58 INFORMATION TECHNOLOGY**

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

#### **H.59 WARRANTIES**

##### **H.59.1 Third Party Warranties**

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

##### **H.59.2 Contractor Warranties**

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



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

#### **H.60 DRUG-FREE WORKPLACE**

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

#### **H.61 AUTHORITY TO AUDIT**

- A. The Contractor understands that acceptance of funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor shall cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract.
- B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.



- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.
- E. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments to the contractor.

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

- A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.

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 provide an electronic copy of the Contractor's Offer 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 biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.
- B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.
- C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access the System and the Contractor's pre-existing software or other intellectual or



proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.

**H.66 NOTE TO CONTRACTOR**

Any terms and conditions attached to the Contractor's Offer will not be considered unless specifically referred to in the Contractor's Offer and may result in disqualification.

**H.67 NOTICE UNDER GOVERNMENT CODE 2261.252**

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

**H.68 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.

**H.69 DISCLOSURE OF RESTRICTED EMPLOYMENT**

Pursuant to Government Code 572.069. The Contractor certifies that it has not employed and will not employ a former TXDPS or state officer who participated in a procurement or contract negotiation for TXDPS 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.



## SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

Subcontractors shall also comply with these provisions.

### I.1 INSURANCE REQUIREMENTS

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

1. **Workers' Compensation and Employers' Liability:** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.

**Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state the Contractor's employee resides in.**

**Coverage B – Employer's Liability (EL) \$1,000,000 each accident limit / \$1,000,000 Disease Policy / \$1,000,000 Disease each employee limit.**

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

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

If 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 coverage that will include, but not be limited to, premises/Operations,



Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

1. \$1,000,000 each occurrence
  2. \$2,000,000 General Aggregate limit
  3. \$2,000,000 Products and Completed Products
  4. \$1,000,000 Personal/Advertising injury
  5. \$50,000 Damage to Premises
  6. \$5,000 Medical Payments
- a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.
  - b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.
  - c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.
  - d. The Department will be named as an additional insured by using endorsement CG2026 or broader.
  - e. The Contractor's coverage will include an endorsement for waiver of subrogation and a 30 Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.
- F. Professional Liability: The Contractor shall maintain Professional Liability insurance coverage (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:
1. \$1,000,000 per occurrence,
  2. \$2,000,000 annual aggregate.
- 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 twenty-four (24) 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.
- 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 shall 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. No Contract will be entered into between the Contractor and the Department unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the effective date of this Contract.
- H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated "A" or better by A.M. Best or equivalent rating by a similar insurance rating service.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.



- K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

### **I.1.2 Subcontractor's Insurance**

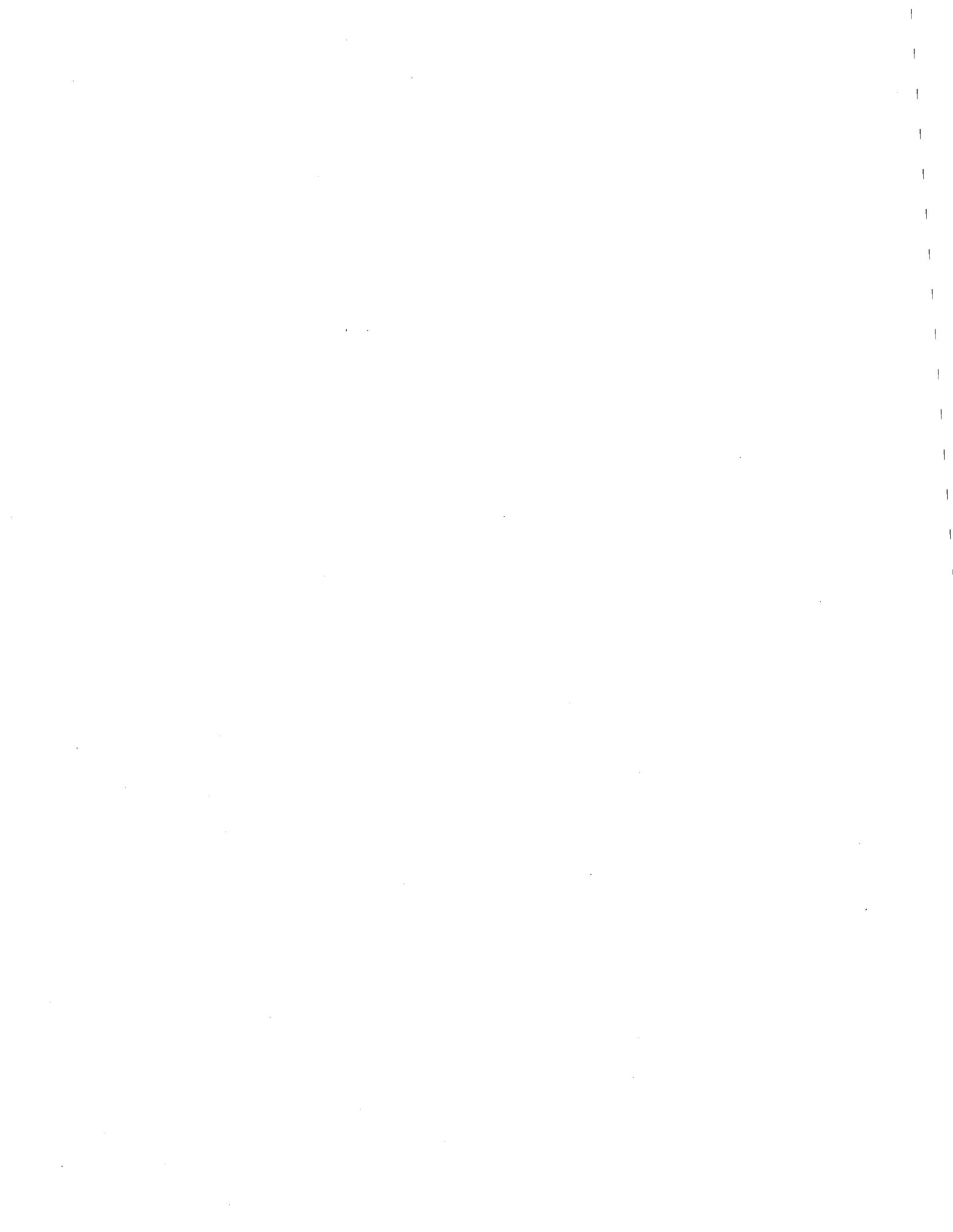
The Contractor's insurance policies will provide coverage for the Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

### **I.2 SUBCONTRACTS**

- A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.
- B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.
- C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- D. The Contractor will 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 2161 and administrative rules, if applicable. Contractor shall also comply with the attached HUB Subcontracting Plan.
- B. The Contractor shall submit a HUB Subcontracting Plan (HSP) submitted as part of its Offer submission and shall comply with implementation of the HSP. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.
- C. A detailed description of the HSP and required forms shall be submitted with the Offer submission which is included as Exhibit C, HUB Subcontracting Plan (HSP). HSP Forms, if not completed in full or missing from the Contractor's original Offer, shall be disqualified.
- D. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, the Department's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity



the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) business days after the effective date of this Contract.

E. 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 as Exhibit C, HUB Subcontracting Plan.

F. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

### **I.3.1 Introduction**

The Department is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. The Department encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means.

Pursuant to Texas Government Code §2161.181 and §2161.182, and the Department's HUB policy and rules, the Department is required to make a good faith effort to increase HUB participation in its contracts. The Department may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

### **I.3.2 Department's Administrative Rules**

The Department has adopted the CPA's HUB rules as its own. The Department's HUB rules are located in Title 37, Part 1, Chapter 1, Subchapter U, Rule §1.261 of the Texas Administrative Code, and the CPA rules are located in Title 34, Part 1, Chapter 20, Subchapter B. If there are any discrepancies between the Department's administrative rules and this RFO the rules shall take priority.

### **I.3.3 HUB Participation Goal**

The CPA has established statewide HUB participation goals for different categories of contracts in 34 T.A.C. §20.13. In order to meet or exceed the HUB participation goals, the Department encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This Contract is classified as an Other Services contract under the CPA rule, and therefore has a HUB Annual Procurement Utilization Goal of 26% per fiscal year.

### **I.3.4 Required HUB Subcontracting Plan (HSP)**

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under this Contract.

In accordance with 34 T.A.C. §20.14(a)(1)(C) of the HUB Rules. State agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under this Contract. If an agency determines that subcontracting is probable on only a portion of this Contract, it shall document its reasons in writing for the procurement file.

The Department has determined that subcontracting opportunities are probable for this Contract. As a result, the Contractor must submit an HSP with its Offer. The HSP is required whether a Contractor intends to subcontract or not.



In the HSP, the Contractor must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt the Contractor from completing the HSP requirement.

The Department shall review the documentation submitted by the Contractor to determine if a good faith effort has been made, in accordance with solicitation and HSP requirements. During the good faith effort evaluation, the Department may, at its discretion, allow clarifications or enhancements to information submitted with the HSP.

If the Department determines that the Contractor's HSP was not developed in good faith, the HSP shall be considered non-responsive and shall be **rejected** as a material failure to comply with the advertised specifications. The reasons for rejection shall be recorded in the procurement file.

### **I.3.5 CPA Centralized Master Bidder's List**

Contractors may search for HUB subcontractors in the CPA's Centralized Master Bidders List (CMBL) HUB Directory, which is located on the CPA's website at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>. For this procurement, the Department has identified the following class and item codes for potential subcontracting opportunities:

NIGP Class/Item Code:

204 – 29  
208 – 37  
209 – 37  
209 - 43  
915 – 28  
920 – 23  
920 - 41  
920 - 66  
990 – 48  
992 – 39

Contractors are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

The Department does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so Contractors are encouraged to refer to the CMBL often to find the most current listing of HUBs.

### **1.3.6 Minority & Women Organization**

The Contractor's subcontracting must provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. You must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

### **I.3.7 Post-award HSP Requirements**

The HSP shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of this Contract.

After contract award, the Department will coordinate a post-award meeting with the Contractor to discuss HSP reporting requirements. The Contractor shall maintain business records documenting compliance with the HSP, and shall submit monthly subcontract reports to the Department by



completing the HUB "Prime Contractor Progress Assessment Report." This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency's Contract Manager and/or HUB Program Office within 10 calendar days of the contract award.

During the term of this Contract, if the parties in this Contract amend this Contract to include a change to the scope of work or add additional funding, the Department shall evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor shall submit an HSP change request for the Department's review.

When making a change to an HSP, the Contractor shall obtain prior written approval from the Department before making any changes to the HSP. Proposed changes shall comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

Failure to meet the HSP and post-award requirements shall constitute a breach of contract, and will be subject to remedial actions. The Department may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program (see 34 T.A.C. §20.108 relating to Debarment) and (see 34 T.A.C. §20.105 relating to Procedures for Investigations and Debarment).

#### **I.4 LIQUIDATED DAMAGES**

- A. The Department reserves the right to assess liquidated damages at an amount up to \$5,000.00 per day for each business day the Contractor fails to meet the standards set out in the Service Level Standards or misses the deadline for each deliverable or Change Order Plan, with such deadlines designated in this Contract or the deployment of Change Order Plans under Section(s) C of this Contract. The parties acknowledge that the harm that will be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.
- B. The Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department's Project Team, as long as the Contractor timely files its deficiency report as required by the Section H.33 herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.
- C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to 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 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.6 OTHER CONTRACTS**

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



## **I.7 SUSPENSION OF WORK**

- A. The Department may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Contract Monitor determines appropriate for the convenience of the Department.
- B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:
  - 1. By an act of the Contract Monitor in the administration of this Contract, or
  - 2. By the Contract Monitor's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.
- C. A claim under this clause will not be allowed:
  - 1. For any costs incurred more than twenty (20) calendar days before the Contractor will have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order; and
  - 2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

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

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



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

## **I.9 WORK MADE FOR HIRE**

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

## **I.10 SYSTEM SECURITY AND ACCESS**

### **I.10.1 Information Technology Standards**

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

## **I.11 CLOUD SECURITY**

The Contractor shall comply with the current Cloud Security Alliance's (CSA) Cloud Control Matrix (CCM) (Exhibit J.8) security requirements for Contractor hosted services or applications that are included as part of Contractor's solution. Information pertaining to CSA <https://cloudsecurityalliance.org/> and CCM information may be found at <https://cloudsecurityalliance.org/research/ccm/>.

## **I.12 USER SECURITY**

- A. Account Management: Establish and administer user accounts in accordance with role-based scheme and shall track and monitor role assignment.
- B. Account Management: Automatically audit account creations, modifications, disabling and termination actions with notification to the Department's personnel.



- C. Prevent multiple concurrent active sessions for one user identification.
- D. Enforce a limit of no more than three (3) consecutive invalid access attempts by a user.
- E. Automatically lock the account/node for a fifteen ten (15) minute time period unless released by the Department's Administrator.
- F. Prevent further access to the system by initiating a session lock after a maximum of thirty (30) minutes of inactivity, and the session lock shall remain in effect until the user reestablishes access using appropriate identification and authentication procedures.
- G. Ensure all users shall be uniquely identified.
- H. Force users to follow the secure password attributes, below, to authenticate a user's unique ID. The secure password attributes shall:
  - 1. Be a minimum length of twelve characters;
  - 2. Not be a dictionary word or proper name;
  - 3. Not be the same as the User ID;
  - 4. Expire within a maximum of ninety (90) calendar days;
  - 5. Not be identical to the previous ten (10) passwords;
  - 6. Not be transmitted in the clear text outside the secure location;
  - 7. Not be displayed in clear text when entered; and
  - 8. Never be displayed in clear text on the screen.
  - 9. Must contain two number, two symbols, two upper and two lower case characters.



### I.13 SYSTEM SECURITY

- A. Provide audit logs that enable tracking of activities taking place on the system.
- B. Audit logs must track successful and unsuccessful system log-on attempts.
- C. Audit logs must track successful and unsuccessful attempts to access, create, write, delete or change permission on a user account, file, directory or other system resource.
- D. Audit logs must track successful and unsuccessful attempts to change account passwords.
- E. Audit logs must track successful and unsuccessful actions by privileged accounts.
- F. Audit logs must track successful and unsuccessful attempts for users to access, modify, or destroy the audit log.
- G. Provide the following content to be included with every audited event:
  - 1. Date and time of the event;
  - 2. The component of the information system (e.g. software component, hardware component) where the event occurred;
  - 3. IP address;
  - 4. Type of event;
  - 5. User/subject identity; and
  - 6. Outcome (success or failure) of the event.
- H. Provide real-time alerts to appropriate Department officials in the event of an audit processing failure. Alert recipients and delivery methods must be configurable and manageable by the Department's System Administrators.
- I. Undergo vulnerability scan/penetration testing conducted by the Department or the Texas Department of Information Resources. The Contractor shall remediate legitimate vulnerabilities and system/application shall not be accepted until all vulnerability issues are resolved at no cost to the Department.
- J. Notifications shall display an approved system use notification message or banner before granting access to the system. The notification shall state:
  - 1. Users are accessing a Department system;
  - 2. System usage shall be monitored, recorded and subject to audit;
  - 3. Unauthorized use of the system is prohibited and subject to criminal and civil penalties; and
  - 4. A description of the authorized use of the system.
- K. The Contractor shall implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for endpoints, servers and mobile devices. This must include mechanisms to identify vulnerabilities and apply security patches.



- L. The Contractor shall establish and maintain a continuous security program as part of the Services. The security program must enable the Organization (or its selected third party) to:
  - 1. Define the scope and boundaries, policies, and organizational structure of an information security management system;
  - 2. Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Organization due to the Services, subject to the terms, conditions and procedures;
  - 3. Implement appropriate mitigating controls and training programs, and manage resources; and
  - 4. Monitor and test the security program to ensure its effectiveness. The Contractor shall review and adjust the security program in light of any assessed risks.

#### **I.14 PHYSICAL ACCESS CONTROLS**

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

#### **I.15 DATA SECURITY**

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



- F. In the event of any impermissible disclosure, loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

## I.16 ENCRYPTION

The system shall protect the confidentiality of the Department's information. All data transmitted outside or stored outside the secure network shall be encrypted. When cryptography (encryption) is employed within information systems, the system shall perform all cryptographic operations using Federal Information Processing Standard (FIPS) PUB140-2 validated cryptographic modules with approved modes of operation. The system shall 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. Bcrypt shall be used to mitigate against brute force attacks.

- A. Wireless: The following requirements specifies the minimum set of security measures required on WLAN-enabled portable electronic devices (PEDs) that transmit, receive, process, or store PII or confidential information:
  - 1. Personal Firewall: WLAN-enabled PED shall use personal firewalls or run a Mobile Device Management system that facilitates the ability to provide firewall services.
  - 2. Anti-Virus Software: Anti-virus software shall be used on wireless ECMs-capable PEDs or run a Mobile Device Management System that facilitates the ability to provide anti-virus services.
  - 3. Encryption of PII or confidential data-in-transit via WLAN-enabled PEDs, systems and technologies will be implemented in a manner that protects the data end-to-end. All systems components within a WLAN that wirelessly transmit PII or confidential information shall 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 shall be a minimum of 128 bit.
  - 4. Data-at-Rest: Data at rest encryption shall be implemented in a manner that protects PII and confidential information stored on WLAN enabled PEDs by requiring that the PED must be powered on and credentials successfully authenticated in order for the data to be deciphered. Data-at-rest encryption shall 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 shall be provided for data-at-rest on all WLAN enabled PEDs that is validated as meeting FIPS 140-2.
  - 5. WLAN Infrastructure: WLAN infrastructure systems may be composed of either stand-alone (autonomous) access points (AP) or thin APS that are centrally controlled by a WLAN controller.
  - 6. Validated Physical Security: APs used in the WLANS should not be installed in unprotected environments due to an increased risk of tampering and/or theft.
- B. Mobile Device Management Requirement. Mobile Device Management (MDM) facilitates the implementation of sound security controls for mobile devices and allows for centralized oversight of configuration control, application usage, and device protection and recovery. MDM shall include the following core features:
  - 1. The ability to push security policies to managed devices;



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

**I.17 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.) shall 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.18 DATA CENTER LOCATION REQUIREMENTS**

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

**I.19 ACCESS TO INTERNAL DEPARTMENT NETWORK AND SYSTEMS**

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

- A. Remote access technologies provided by the Contractor shall be approved by the Department's CISO.
- B. Individuals who are provided with access to the Department network may be required to attend or review the Department's Security Awareness Training on an annual basis.
- C. The Contractor shall secure its own connected systems in a manner consistent with Department requirements.



- D. The Department reserves the right to audit the security measures in effect on the Contractor's connected systems without prior warning.
- E. The Department also reserves the right to immediately terminate network and system connections not meeting such requirements.

**I.20 FBI CJIS SECURITY ADDENDUM**

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

**I.21 CRIMINAL HISTORY BACKGROUND CHECKS**

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

**I.22 DEPARTMENT INFORMATION PROTECTION POLICIES, STANDARDS & GUIDELINES**

- A. 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
  - 1. submitted to Contractor by or on behalf of the Department,
  - 2. obtained, developed, produced by the Contractor in connection with this Contract,



3. communicated verbally whether intentionally or unintentionally, or
  4. to which the Contractor has access in connection with the services provided under this Contract.
- B. Such Department Information may include taxpayer, contractor, and other state agency data held by the Department.
  - C. As used herein, the terms "Sensitive" and "Confidential" information shall have the meanings set forth in the Department's Information Protection Policies, Standards & Guidelines.
  - D. All waiver requests shall be processed in accordance with the Department's Information Protection Policies, Standards & Guidelines Waiver Policy.
  - E. The Department reserves the right to audit the Contractor's compliance with the Department's Information Protection Policies, Standards & Guidelines
  - F. The Department reserves the right to take appropriate action to protect the Department's network and information including the immediate termination of system access.
  - G. 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.
  - H. 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.
  - I. No later than sixty (60) days from contract 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.23 CONFIDENTIALITY AND SECURITY REQUIREMENTS**

### **I.23.1 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 shall not be used by the Contractor or disclosed to any person or entity, unless such use or disclosure is required for the Contractor to perform work under this Contract. The obligations of this section do not apply to information that the Contractor can demonstrate:
  1. Is publicly available;
  2. The Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act;



3. The Contractor independently developed without regard to the Department confidential information; or
  4. Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that the Contractor shall furnish prompt written notice of such required disclosure and shall reasonably cooperate with the Department at the Department' cost and expense, in any effort made by the Department to seek a protection order or other appropriate protection of its confidential information.
- B. The Contractor shall notify the Department in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of such unauthorized release.
  - C. The Contractor shall notify sub-recipient in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of any unauthorized release of confidential information obtained from sub-recipient(s).
  - D. The Contractor shall maintain all confidential information, regardless whether obtained from the Department or from sub-recipient(s) in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.
  - E. If the Contractor has any questions or doubts as to whether particular material or information is confidential information, the Contractor shall obtain the prior written approval of the Department prior to using, disclosing, or releasing such information.
  - F. The Contractor acknowledges that the Departments' 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 Departments' request.

### **I.23.2 Sensitive Personal Information**

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

- A. "Sensitive personal information" is defined as follows:



1. An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
    - a. Social security number;
    - b. Driver's license number or government-issued identification number; or
    - c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
  2. Information that identifies an individual and relates to:
    - a. The physical or mental health or condition of the individual;
    - b. The provision of health care to the individual; or
    - c. Payment for the provision of health care to the individual.
- B. Sensitive personal information does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.
- C. "Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information the Contractor maintains under this Contract, including data that is encrypted if the Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.
- D. The Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the Contractor under this Contract.
- E. The Contractor shall notify the Department, any affected sub-recipient and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, the Contractor shall delay providing notice to the affected people and sub-recipients at the Departments' request, if the Department determines that the notification shall impede a criminal investigation. Notification to the affected people shall be made as soon as the Department determines that it shall not compromise any criminal investigation.
- F. The Contractor shall give notice as follows, at the Contractor's expense:
1. Written notice;
  2. Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;
  3. Notice as follows:
    - a. If the Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, the Contractor may give notice as follows:



- i. Electronic mail, if the Contractor has an electronic mail address for the affected people;
    - ii. Conspicuous posting of the notice on the Contractor's website;
    - iii. Notice published in or broadcast on major statewide media; or
  - b. If the Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," the Contractor may provide notice in accordance with that policy.
- G. If this subsection requires the Contractor to notify at one time more than 10,000 people of a breach of system security, the Contractor shall also notify, without unreasonable delay, each consumer reporting agency (as defined by 15 U.S.C. Section 1681a) that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.
- H. In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, the Department is authorized to assess liquidated damages in the amount of (\$1,000.00 per day) against the Contractor for the following damages, assessment of breach and any labor costs associated with such an assessment; however, the Department reserves the right to claim actual damages for any damages other than the following: limited to the initial assessment and review of lost or compromised data. This amount is a reasonable estimate of the damages the Department shall suffer as a result of such breach and is enforceable.
- I. The Contractor shall not be responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than the Contractor, the Contractor's subcontractor, or the Contractor's agent. (This clause is not to be interpreted that the Contractor is absolved of liability with any other sections pertaining to cyber security or data protection).
- J. Any liquidated damages assessed under this Contract may, at the Departments' option, be deducted from any payments due the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

#### **I.24 DISCLOSURE OF SECURITY BREACH**

Without limitation on any other provision of this Contract regarding information security or security breaches, the Contractor shall provide notice to the Department's Project 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").

- A. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the CISO detailing the circumstances of the incident, which includes at a minimum:
  - 1. A description of the nature of the Security Incident;
  - 2. The type of Department information involved;
  - 3. Who may have obtained the Department information;
  - 4. What steps the Contractor has taken or shall take to investigate the Security Incident;



5. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
  6. A point of contact for additional information.
- B. Each day thereafter until the investigation is complete, the Contractor shall provide the CISO with a written report regarding the status of the investigation and the following additional information as it becomes available:
1. Who is known or suspected to have gained unauthorized access to the Department's information;
  2. Whether there is any knowledge if the Department information has been abused or compromised;
  3. What additional steps the Contractor has taken or shall take to investigate the Security Incident;
  4. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
  5. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- C. The Contractor shall confer with the CISO regarding the proper course of the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall cooperate fully by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s).
- D. Subject to review and approval of the CISO, the Contractor shall, at its own cost, provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice 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.25 REPRESENTATIONS AND WARRANTIES RELATED TO SOFTWARE**

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

- A. The Contractor has sufficient right, title, and interest in the Software to grant the license required.
- B. Contract terms and conditions included in any "clickwrap", "browsewrap", "shrinkwrap", or other license agreement that accompanies any Software, including but not limited to Software Updates, Software Patch/Fix, or Software Upgrades, provided under this Contract are void and have no effect unless the Department specifically agrees to each licensure term in this Contract.
- C. The Software provided under this Contract does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right;
- D. Software and any Software Updates, Software Maintenance, Software Patch/Fix, and Software Upgrades provided under this Contract shall not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt,



disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and

- E. Software provided under this Contract does not and will not contain any computer code that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanism (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or that would permit the Contractor to access the Software to cause such disablement or impairment (sometimes referred to as "trap door" devices").

**I.26 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)**

- A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract 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 shall 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 turnkey solution during the term of the lease, the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.



## SECTION J - LIST OF EXHIBITS

EXHIBIT	TITLE	NUMBER OF PAGES
J.1	Terms and Conditions rev. 12/10/14	4
J.2	HUB Sub-Contracting Plan	10
J.3	Intentionally Left Blank	
J.4	Intentionally Left Blank	
J.5	Intentionally Left Blank	
J.6	Change Order Request Form	4
J.7	Final Acceptance Document	1
J.8	Cloud Security Alliance's (CSA) Cloud Control Matrix (CCM)	7
J.9	Department Testing Entry/Exit Criteria	6
J.10	Optimum's Technical Offer	130

