

CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS, RESPONSE PREFERENCES AND EXECUTION OF OFFER

- A. Defined Terms:** As used in this Attachment B, the following capitalized terms have the meanings specified below.
1. *Comptroller* means the Texas Comptroller of Public Accounts.
 2. *Contract* means the document entered into between TEA and Contractor, including all attachments (for the avoidance of doubt, including, but not limited to the General Provisions and the Special Provisions), appendices, exhibits, schedules, amendments and extensions of or to the Contract.
 3. *Contract Project* means the purpose intended to be achieved through the Contract.
 4. *Contractor* means the party to this Contract who is providing the contracted goods or services to TEA.
 5. *EIR* means electronic information resources.
 6. *FERPA* means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99).
 7. *General Provisions* mean the provisions contained in this Attachment B – Contract Terms, Conditions and Affirmations, Response Preferences and Execution of Offer.
 8. *HSP* means a HUB subcontracting plan.
 9. *HUB* means an entity certified by the Comptroller as a Historically Underutilized Business as defined in [Texas Government Code Section 2161.001](#).
 10. *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
 11. *Major Contract* means any contract that has a value of at least \$1 million. See [Texas Government Code Section 2262.001\(4\)](#).
 12. *Project Manager* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project.
 13. *Response* is what a Respondent submits in response to the following specific competitive solicitations: a request for proposals (RFP); a request for qualifications (RFQ); or an invitation for bids (IFB).
 14. *Respondent*, identifies a person or entity who responds to the following specific competitive solicitations; a RFP; a RFQ, and an IFB. Respondent infers pre-solicitation award status and Contractor infers post-award status, but otherwise refer to the same person or entity.
 15. *Special Provisions* means any provisions contained in Attachment to the Contract labeled “Special Provisions.”
 16. *State* means the State of Texas.
 17. *TEA* means the Texas Education Agency.
 18. *TEA Confidential Information* means information that is confidential under the provisions of the FERPA, the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver’s license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (e) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee’s choice of insurance carrier or choice to contribute money to a 401(k); (f) biometric identifiers such as fingerprints; (g) information about security vulnerabilities in TEA systems; and (h) SAS data sets.
 19. *WCAG* means web content accessibility guidelines.
 20. *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract. “Works” includes but is not limited to computer software, data, metadata, source code, concepts, systems, methodologies, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc. “Works” does not include any pre-existing materials of Contractor, or any licensed third-party materials provided by Contractor.
- B. Excess Obligations Prohibited:** This Contract is subject to termination or cancellation, without penalty to TEA, either in whole or in part, subject to the availability of State funds. TEA is a State agency whose authority and appropriations are subject to actions of the Texas Legislature. If TEA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TEA’s or Contractor’s delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this provision, TEA will not be liable to Contractor for any damages, that arise out of or are related to such termination or cancellation, and TEA will not be required to give prior notice of such termination or cancellation.
- C. Indemnification:** For the avoidance of doubt, the TEA shall not indemnify Contractor or any other entity under the Contract.

General

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RELATING TO ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND THE TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Intellectual Property

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, ARISING OUT OF OR RELATING TO: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE TEA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE TEA BY CONTRACTOR OR OTHERWISE TO WHICH THE TEA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND THE TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, CONTRACTOR WILL REIMBURSE THE TEA AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE TEA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF THE TEA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE TEA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF THE TEA'S COUNSEL.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR 'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, 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, ARISING OUT OF OR RELATING TO PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

For local educational agencies (LEAs), regional education service centers (ESCs), public institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract.

- D. Signature Authority and Binding Effect:** By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any Contract that may result from the submission of this Response. The Contract shall be binding upon and shall inure to the benefit of the TEA and Contractor and to their respective permitted successors, and assigns

- E. Limitation on Authority:** Contractor shall have no authority to act for or on behalf of TEA or the State of Texas except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of TEA or the State of Texas.
- F. Final Expression, and Superseding Document:** The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.
- G. Amendments:** All amendments to this Contract are subject to Paragraph B of these General Provisions, will be executed on the AMENDMENT TO TEA STANDARD CONTRACT form, and will follow TEA's internal contracting process. All amendments will be initiated by TEA Purchasing and Contracts staff. An amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the amendment document whichever is later. All amendments must be signed by both parties.

If the solicitation documents and contract documents for a TEA contract submitted to the Comptrollers' Contract Advisory Team (CAT) (contracts with a value of at least \$5 million pursuant to Texas Government Code Section 2262.101(1)) substantially changes, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 20% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. Written amendments are required for the following Contract changes:
 - a. Any revision which would result in the need for additional funding;
 - b. Revisions or additions to the scope of work, deliverables, or objectives of the Contract (regardless of whether there is an associated budget revision requiring prior approval). Increases of 20% or more for major contracts must be approved by the Comptroller;
 - c. A request to extend the period of the Contract;
 - d. Any reduction of funds or reduction in the scope of work;
 - e. Whenever a line item within a class/object code is added;
 - f. An increase in the quantity of capital outlay item(s) requested; and
 - g. An increase or decrease in the number of positions charged to Contract.

- H. Assignment of Contract and Subcontracting:** Contractor may not assign, sell, transfer, substitute or delegate its rights or obligations under the Contract without the express written consent of TEA. Any attempted assignment after Contract award without TEA approval is void and without effect and will constitute a material breach of Contract. Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TEA. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.
- I. No Third-Party Beneficiaries:** This Contract is made solely and specifically among and for the benefit of the parties named herein and their respective permitted successors and assigns. No other person shall have any right, interest, or claims under this Contract or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.
- J. Personnel Assignments, Transfers, HUB Subcontracting and Substitutions:** TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HSP must be approved by TEA HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of TEA Project Manager. Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PAR's are due no later than the 10th day of the following month. The PAR is required to be submitted monthly, even if no reportable activity occurred for the month. Reports shall be submitted electronically to the HUBOffice@tea.texas.gov. In addition to the PAR, Contractor shall also create and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- K. Interpretation:** The terms, conditions, and assurances, which are stated in the competitive solicitation, in response to which Contractor submitted a Response, are incorporated herein by reference. Contractor's Response that was furnished to TEA in response to the competitive solicitation is incorporated herein by reference. In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, appendices, General Provisions, Special Provisions, exhibits, and attachments or other documents making part of this Contract, this Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this Contract. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.

- L. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- M. Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project in accordance with applicable State of Texas requirements. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than 7 years from the date of completion of the Contract Project, the date of the receipt by TEA of Contractor's final claim for payment or the date of the receipt by TEA of Contractor's final expenditure report in connection with this Contract, whichever is latest. If an audit, claim, or litigation matter has been announced, the records shall be retained until such audit, claim, or litigation matter has been completed.

Pursuant to [Section 2262.154](#) of the Texas Government Code, the state auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards.

Contractor further agrees that acceptance of funds under this Contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this Contract shall cooperate fully with TEA in the conduct of the audit or investigation, including making available at reasonable times and upon reasonable notice, and for a reasonable period, work papers, reports, books, records, supporting documents and any other records kept current by them pertaining to the Contract.

- N. Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of TEA. Contractor and its officers, directors, employees, agents, representatives and subcontractors shall have no rights therein. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including, but not limited to, the Intellectual Property Rights, in the Works, all works based upon, derived from or incorporating the Works, all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, all causes of action, either in law or in equity for past, present, or future infringement based on the Intellectual Property Rights, and all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as TEA may deem necessary to secure for TEA or its designee the rights herein assigned, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

In the event that Contractor has any rights in and to the Works that cannot be assigned to TEA, Contractor hereby grants to TEA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, publicly perform and publicly display the Works, prepare derivative works to the Works, and to make, have made, use, sell and offer for sale any products developed by practicing such license rights, and to otherwise use such license rights, with the right to sublicense such rights through multiple levels of sublicenses.

Contractor represents and warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest in the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These representations and warranties will survive the termination of the Contract.

If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

For School Districts and Nonprofit Organizations: The foregoing Intellectual Property Ownership provisions also apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors.

For Education Service Centers (ESCs): The foregoing Intellectual Property Ownership provisions also apply to an ESC and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from TEA's Office of Legal Services.

For Colleges and Universities: The foregoing Intellectual Property Ownership provisions also apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA's Office of Deputy Commissioner for Finance.

- O. Social Security Numbers (SSNs) Withheld:** TEA will not provide SSNs to any Contractor under this Contract unless specifically stated as part of the Contract Project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA and will destroy or return all student-identifying information in accordance with the terms in Section Q on Confidential Information, FERPA, and Information Security Requirements hereof.
- P. Nondisclosure and Press Releases:** Respondent shall not use TEA's name, logo, or other likeness in any press release, marketing material, or other announcement without TEA's prior written approval. TEA does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without TEA's prior written consent, and then only in accordance with explicit written instructions from TEA. All information gathered, produced, derived, obtained, analyzed, controlled or accessed by Contractor in connection with this Contract shall be and remain confidential and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the information, data, or materials requested and the audience for the release of information.
- Q. Confidential Information, FERPA, and Information Security Requirements:**

Access to TEA Confidential Information

Contractor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA Confidential Information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of TEA Confidential Information, additional TEA confidentiality forms will need to be signed by each individual who requires access to or may be exposed to that information. Contractor shall access TEA's systems or TEA Confidential Information only for the purposes for which it is authorized. TEA expects all partners, consultants, and Contractors to abide by TEA information security policies. TEA reserves the right to review Contractor's security policy to ensure that any data that is on Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this contract. Electronic media used for storing any TEA Confidential Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must 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.

No later than 60 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA documentation that the sanitization has been completed. An authorized agent of the company must certify the completion of the destruction of data and sanitization.

Contractor must be compliant with rules pertaining to information technology security standards found at 1 Texas Administrative Code, Chapter 202 ([https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202)).

If Contractor is providing a Cloud-hosted deliverable, Contractor must complete paperwork documenting compliance with the Cloud Security Alliance's (CSA) Cloud Controls Matrix (CCM) found at <https://cloudsecurityalliance.org/group/cloud-controls-matrix>.

FERPA

Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within 60 days of project completion. Contractor also agrees not to disclose any information to which it is privy under this Contract without the prior consent of TEA. [The National Institute of Standards and Technology \(NIST\)](#) provides in-depth guidance and best practices for the implementation of effective methods of data destruction in their [Guidelines for Media Sanitation](#).

Information Security Requirements

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. The off-site downloading, transfer, and/or storage of sensitive and protected data is strictly prohibited unless such acts are specifically allowed in the Contract's scope of work.

TEA is required to comply with Texas Government Code, Sec. 2054.516, requiring all state agency websites or mobile applications that process sensitive personal information or confidential information be subjected to vulnerability and penetration testing, and to address any vulnerability identified. Websites shall be accessible through a secure connection (HTTPS-only, with HTTP Strict Transport Security (HSTS)), utilizing Transport Layer Security (TLS) version 1.2 or higher. TEA reserves the right to scan websites for vulnerabilities and to audit the security measures in effect on Contractor's connected systems without prior warning, and request remediation of identified issues in a timely manner not to exceed three months. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

If Contractor is providing TEA software goods or services and/or data processing goods or services, Contractor agrees to provide secure configuration guidelines that fully describe all security relevant configuration options and their implications for the overall security of the software. The guideline shall include a full description of dependencies on the supporting platform, including operating system, web server, and application server, and how they should be configured for security.

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive data or TEA Confidential Information or any breach or denial of service attack (each such event, a "Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

1. Description of the nature of the Security Incident;
2. The type of TEA information involved;
3. Who may have obtained the information;
4. What steps Contractor has taken or will take to investigate the Security Incident;
5. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
6. A point of contact for additional information.

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer 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 TEA information;
2. Whether there is any knowledge if TEA information has been abused or compromised;
3. What additional steps Contractor has taken or will take to investigate the Security Incident;
4. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
5. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Further, Contractor will notify TEA within 12 hours of any new report of any security vulnerability that affects their platforms directly or indirectly, that is published in sources including but not limited to the CVE and US-CERT (each such event, a "Security Vulnerability").

Furthermore, Contractor will provide a roadmap for final resolution of such Security Incident or Security Vulnerability within one week of the date of such Security Incident or Security Vulnerability and complete remediation of such Security Incident or Security Vulnerability must be completed at Contractor's expense.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall 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 TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If

Contractor does not reimburse such costs within 30 days of TEA's written request, then TEA shall have the right to collect such costs.

- R. Electronic and Information Resources Accessibility Standards:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in [1 TAC Chapter 213](#) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Regulations updating the accessibility requirements for entities covered by Section 508 of the Rehabilitation Act of 1973 have been adopted in FY 2015. Therefore, all current and potential contractors are hereby notified of the changes. The current technical requirements for accessibility contained within this regulation form the basis for our TAC rules on EIR accessibility.

This refresh of 508 uses the [WCAG 2.0 AA Accessibility Guidelines](#) (also ISO/IEC standard 40500) as the new technical standard that federal agencies are required to meet when procuring products and services. The Texas Department of Information Resources is modifying the TAC rules to align with it.

Given this change, all Texas agencies and institutions of higher education must begin using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:

1. It is technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later.
2. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

[WCAG 2.0 AA at a glance](#)
[IBM Developer Guidelines Web Checklist](#)
[Webaim.org Accessibility Checklist](#)

All websites must follow Federal 508 accessibility requirements and WCAG 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the Contractor must contract with a third party with expertise and a proven track record in accessibility testing. This company must evaluate the site and produce a report that verifies the site is compliant to WCAG 2.0 AA.

The awarded Contractor must employ real users with disabilities for manual testing. Contractor must provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Contractor shall validate, by title, if all accessibility requirements have been met.

- S. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- T. TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- U. Use of State Property:** Contractor is prohibited from using State Property for any purpose other than performing services authorized under the Contract. State Property includes, but is not limited to, TEA's office space, identification badges, TEA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TEA-issued software, and the TEA Virtual Private Network (VPN client)), and any other resources of TEA. Contractor will not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States. Contractor will not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor will be responsible for all charges attributable to Contractor's use of State Property that exceeds the contract scope. Contractor will fully reimburse such charges to TEA within ten (10) calendar days of Contractor's receipt of TEA's notice of amount due. Use of State Property for a purpose not authorized by Contract will constitute

breach of contract and may result in termination of the Contract and the pursuit of other remedies available to TEA under Contract, at law, or in equity.

- V. Governing Law and Venue:** Subject to and without waiving any of TEA's rights, including sovereign immunity, this Contract is governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless a specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the TEA.
- W. No Waiver:** Nothing in this Contract shall be construed as a waiver of TEA's or the State of Texas's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TEA or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TEA or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TEA does not waive any privileges, rights, defenses, or immunities available to TEA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.
- X. Applicable Law and Conforming Amendments:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Any alterations, additions, or deletions to the terms of this contract which are required by changes in federal or state law or regulations are automatically incorporated into this contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- Y. Federal Rules, Laws, and Regulations that apply to all Federal Programs:** Contractor represents and warrants its compliance with all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
 2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
 3. Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
 4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105;
 5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
 6. The Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments;
 7. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
 8. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
 9. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
 10. General Education Provisions Act, as amended.

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

The Code of Federal Regulations (CFR) annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. Website: http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

- Z. Equal Employment Opportunity:** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
- AA. E-Verify Program:** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:
1. All persons employed by Respondent to perform duties within Texas; and
 2. All persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.
- BB. Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Contractor represents and warrants that it has acquired all applicable licenses, certifications, permits and any other documentation to perform this Contract. For the entire duration of the Contract, Contractor

shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.

- CC. Legal and Regulatory Actions:** Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response including a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. In addition, Respondent represents and warrants that it shall notify TEA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TEA shall constitute breach of contract and may result in immediate termination of the contract.
- DD. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure to so comply. Pursuant to 34 TAC §201.281-298 and Texas Government Code, Chapter 2161, Contractor shall maintain business records documenting compliance with the HSP and shall submit a compliance report to TEA monthly, in the format required by TEA. The compliance report submission is required as a condition for payment. If Contractor subcontracts any part of the Contract in a manner that is not consistent with its HSP, the Contractor must submit a revised HSP before subcontracting any of the work under the Contract. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law.
- EE. No Exclusivity:** The Contract is not exclusive to the Contractor. TEA may obtain products and related services from other sources during the term of the Contract. TEA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.
- FF. Antitrust:** By signing this Contract, Contractor represents and warrants that, in accordance with [Texas Government Code Section 2155.005](#) neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated any provision of the [Texas Free Enterprise and Antitrust Act of 1983](#), [Texas Business and Commerce Code Chapter 15](#), or the federal antitrust laws; or (2) communicated directly or indirectly the Response to any competitor or any other person engaged in the same line of business as Contractor.
- GG. Unfair Business Practices:** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit. Respondent represents and warrants that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practices in an administrative hearing or court suit.
- HH. Child Support Obligation Affirmation:** Under Section 231.006 of the Texas Family Code, Contractor certifies that Contractor is not ineligible to receive the specified grant, loan, or payment under this Contract and acknowledges that this Contract may be terminated, and payment may be withheld if this certification is inaccurate. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
- II. Public Information:** Respondent understands that the TEA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation, this Response or any resulting Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted 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.

TEA Project Manager will provide the specific format by which Contractor is required to make the information accessible by the public.

TEA is subject to the provisions of the [Texas Public Information Act](#). If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to TEA under this Contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to

disclosure, TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Act.

- JJ. Lobbying Prohibition:** Contractor represents and warrants that TEA's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- KK. Prohibition of Text Messaging and Emailing while Driving during Official Federal Grant Business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under [Executive Order 13513](#), "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.
- LL. Liability for and Payment of Taxes:** Purchases made for the State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. TEA will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- MM. Conformance:** Contractor represents and warrants that all goods and services furnished will conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and will be free from any defects in materials, workmanship, or design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- NN. Buy Texas Affirmation:** In accordance with [Texas Government Code, Section 2155.4441](#), Contractor agrees that during the performance of a contract for services, Contractor shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state. This provision does not apply if Contractor receives any federal funds under this Contract.
- OO. Discounts:** Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Contractor to the TEA herein are at least as favorable as the benefits, pricing and hourly rates granted by Contractor to any previous client of Contractor for services and/or products similar to those provided hereunder. If Contractor enters into any subsequent agreement with any other client during the term of this Contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this Contract, Contractor shall notify the TEA promptly of the existence of such more favorable benefits, pricing and/or hourly rates and the TEA shall have the right to receive the more favorable contractual terms immediately. If requested in writing by the TEA, Contractor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
- PP. Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Payment for goods or services purchased with state-appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.x.cpa.state.tx.us/fm/payment/index.php>. Invoices must be submitted to TEAAccountsPayable@tea.texas.gov and TEA Project Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the latest of:
1. Date on which TEA received the goods;
 2. Date the performance of the service under the Contract is completed; or
 3. Date on which TEA received the complete and correct invoice for goods or services.

Payment for service(s) described in this Contract is contingent upon satisfactory completion of the deliverables or services.

The TEA project manager may also utilize a Deliverables and Services Review and Acceptance Process written procedures. When the formal procedures are to be utilized, the TEA project manager will provide to the selected Contractor a copy of the Handbook. TEA will review each deliverable, including test items, submitted by Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process" provided by the Project Manager, located in the Service Level Agreement or the Contract Monitoring Tool. Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. TEA reserves the right to reject and withhold payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the Contract.

Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version. Additional costs incurred by Contractor that result from repeated

submissions and revising of substandard deliverables will be borne solely by Contractor and not charged against the Contract or to TEA. This does not preclude an arrangement that allows Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by Contractor.

Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees must be stated in the competitive solicitation and documented in the Contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall be requested in the final invoice.

Unless otherwise stated, payment under this Contract will be made upon delivery of goods and performance of services based upon submission of an invoice, properly prepared and certified, outlining expenditures by deliverable. Include the Contract number, purchase order number, and the Comptroller Texas Identification Number (TIN) on all invoices. The Deliverables / Tasks and Activities in the invoice must coincide with the Deliverables / Tasks and Activities detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the invoice. The final invoice is due within 45 days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract. All costs must be reasonable, allowable and allocable to the project.

An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due.

Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the Contract may be applied toward any debt Respondent owes the State of Texas until the debt is paid in full, regardless of when the debt or delinquency was incurred. These provisions are effective at any time Respondent owes any such debt or delinquency. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the Federal Government. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify its account status by accessing the Comptroller's website at https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

- QQ. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- RR. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- SS. Contractor Performance and Past Performance:** TEA is required to submit Contractor Performance reports under Texas Government Code, [§2155.089](#), and 34 Texas Administrative Code (TAC), [§20.509](#) and [§20.115](#). The Comptroller's Vendor Performance Tracking System (VPTS) provides the state procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract awarding process. Historic reports submitted prior to February 10th, 2017 will be displayed as "Legacy Satisfactory" or "Legacy Unsatisfactory."

TEA may conduct reference checks with other entities regarding past performance of Respondent or its subcontractors. In addition to evaluating performance through the VPTS, TEA may examine other sources of contractor performance, including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of contractor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, TEA may initiate such examinations of contractor performance based upon media reports. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in a non-award to Respondent. The VPTS is located on Comptroller's website at: <http://www.txsmartbuy.com/vpts>.

- TT. Time Delays, Suspension, and Sanctions for Failure to Perform:**
Time is of the Essence.
Contractor's timely performance is essential to this contract.

Suspension

If this Contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this contract prior to suspension shall be determined by TEA and paid to Contractor as soon as

reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this Contract.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- UU. Abandonment or Default:** If Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by TEA based on the seriousness of the default.
- VV. Dispute Resolution:** The dispute resolution process provided for in [Chapter 2260](#) of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- WW. Protests:** Any actual or prospective Respondent or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this Contract by TEA may submit a formal protest to the Director of TEA's Purchasing and Contracts Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules ([19 TAC Section 30.2002](#)).

If the protest procedure results in a final determination by TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the contract and no remedies under the law against TEA.

- XX. Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract.
1. **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 15 calendar days' advance written notice to Contractor. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for payments limited only to the portion of work TEA authorized in writing and which Contractor has completed, delivered to TEA, and which has been accepted by TEA. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TEA shall have no other liability, including no liability for any costs associated with the termination.
 2. **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under the Contract. TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

Following any termination for cause/default, Contractor shall remain liable for all covenants and indemnities under the Contract and shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.
 3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this contract.
 4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all Works and associated documentation and materials obtained from Contractor under the Contract.

5. **Survival of Terms:** Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, ownership of intellectual property or other property rights, dispute resolution, rights and remedies upon termination, invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a new contractor, Contractor shall hand-over to the new contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the new contractor within 10 days of announcement of award at the new contractor's expense for data processing and production, packing and shipping. Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the new contractor. Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Project Manager shall approve the transition plan prior to its implementation. The transition plan must minimize the impacts on continuity of operations and maintain communication with TEA Project Manager and the new contractor.

7. **Return of Works:** Subject to paragraph 6 above, upon the request of TEA, but in any event upon termination or expiration of this Contract or a statement of work, Contractor shall surrender to TEA all Works pertaining to the Contract Project, any and all documentation or other products or results of the services, and all other documents or materials (and copies of same) furnished by TEA to Contractor, including all materials embodying the Contract Project, regardless of form or whether complete or incomplete. Failure to timely deliver such Work and any and all documentation or other products and results of the services will be considered a material breach of this Contract.

Following confirmation by TEA that the copies of such materials are acceptable and the completion of any Contract Project activities for which such materials are required, Contractor will sanitize or destroy all other copies of such material in Contractor's possession and cease using such materials and any information contained therein for any purpose. An authorized officer of Contractor must certify that ALL records have either been properly cleared, purged, destroyed or returned to TEA in order to close out the Contract.

YY. Insurance: Contractor represents and warrants that it will, within five business days of being requested by TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage:

Minimum Required Amounts of Insurance Coverage	
Type of Insurance	Each Occurrence/Aggregate
<i>Workers Compensation</i>	Statutory Limits
<i>Employers Liability</i> Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 each Accident \$1,000,000 each Employee \$1,000,000 Policy Limit
<i>Commercial General Liability</i> (Occurrence based)	Bodily Injury and Property Damage \$1,000,000 each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expenses each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented
<i>Automobile Liability</i> All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
<i>Umbrella/Excess Liability</i>	\$1,000,000 per Occurrence

All required insurance coverage must (1) be in a form satisfactory to TEA, (2) be written on a primary and non-contributory basis with any other insurance coverages Contractor currently has in place, (3) include a Waiver of Subrogation Clause and (4) issue from a company or companies that: (a) have both a Financial Strength Rating of "A" or better from A.M. Best Company, Inc.; (b) have a Financial Size Category Class of "VII" or better from A.M. Best Company, Inc., and (c) are authorized to do business under the laws of the State of Texas; and.

All certificates of insurance for required coverage other than workers compensation and professional liability must name the State of Texas and its Officers, Directors, and Employees as additional insureds.

Contractor shall:

1. provide written documentation to TEA Purchasing and Contracts by email at TEAContracts@tea.texas.gov and by U.S. First Class Mail at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;
2. ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under the Contract; and
3. deliver to TEA by e-mail at TEAContracts@tea.texas.gov and by U.S. First Class Mail all renewal policies at least ten calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth in the Contract.

Contractor represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least 30 days' prior written notice to TEA, that it will maintain the above insurance coverage during the term of this contract, and that it will provide TEA with an executed copy of the policies immediately upon request.

ZZ. Force Majeure: Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure 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 must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as a defense.

AAA. Drug Free Workplace Policy: 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 Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

BBB. TEA No Smoking Policy: TEA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TEA.

CCC. Performance Measurement: Contractor shall use OMB-approved standard information collections when providing financial and performance information. Contractor must be able to relate financial data to performance accomplishments of the project. Contractor must also provide cost information to demonstrate cost effective practices (e.g. through unit cost data). Contract performance should be measured in a way that will help to improve program outcomes, share lessons learned, and spread adoption of promising practices. Contractor must have effective control over, and accountability for, all funds, property, and other assets. The Contractor must adequately safeguard all assets and assure that they are used solely for authorized purposes.

DDD. Boycott Israel: Contractor represents and warrants that, pursuant to Section [2270.002 of the Texas Government Code](#), Contractor does not boycott Israel and will not boycott Israel during the term of the Contract

EEE. Disaster Recovery Plan: In accordance with 13 TAC Section 6.94(a)(9), Contractor must provide to TEA the descriptions of its business continuity and disaster recovery plan.

FFF. Computer Equipment Recycling Program: If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in Compliance [with Subchapter Y, Chapter 361 of the Texas Health and Safety Code](#) related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in [30 TAC Chapter 328](#).

GGG. Television Equipment Recycling program: If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

HHH. Secure Erasure of Hard Disk Capability: All equipment provided to TEA by Respondent 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 § Chapter 202.

III. Electrical Items: All electrical items purchased under this Contract must meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

JJJ. Independent Contractor: Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor, Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers are not employees of the TEA or the State of Texas. Contractor shall have no claim against the TEA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and the TEA.

- KKK. Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- LLL. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees, agents or representatives, including any subcontractors and employees, agents or representative of such subcontractors assigned to TEA projects, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- MMM. Criminal Background Checks:** If during the term of this Contract, Contractor and/or Contractor's staff, or subcontractor and/or subcontractor's staff have either (1) access to Texas public school campuses, or (2) access to TEA Confidential Information or TEA data systems, all Contractor and/or Contractor's staff and/or subcontractor and/or subcontractor's staff must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor, Contractor's staff, subcontractor or subcontractor's staff is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
1. Contractor, Contractor's staff, subcontractor or subcontractor's staff will not meet eligibility standards and be permanently disqualified from serving on TEA assignments if an initial review of criminal history records indicates:
 - a. Felony conviction or deferred adjudication;
 - b. Offense on conviction of which the defendant is required to register as a sex offender;
 - c. Conviction or deferred adjudication of a Class A Misdemeanor; or
 - d. Offense under the laws of another state or federal law that is equivalent to an offense specified above, or their criminal record indicates an unresolved Felony or Class A misdemeanor.
 2. Educator Certification Required: If the individual is a certified educator, the educator's certificate(s) must currently be valid and in good standing. If the certificate(s) is/are not in good standing (inactive, invalid, revoked, suspended or surrendered) the individual is not eligible for TEA appointments, assignments, contract, or grant awards or to provide services to school entities on behalf of TEA.
- NNN. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by TEA or another state agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with TEA or the other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- OOO. No Conflicts of Interest:** Pursuant to Texas Government Code §2261.252, TEA may not enter into a contract for the purchase of goods or services with a private Contractor if members of TEA or certain positions within TEA including the Executive Director, the General Counsel or the Procurement Director or their covered family members have a financial interest in the Contractor. Any contract found to violate Texas Government Code §2261.252 is void. Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- PPP. Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's Response is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- QQQ. Suspension and Debarment:** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
- RRR. Financial Participation Prohibited:** Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004, the Respondent certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.
- SSS. Foreign Terrorist Organizations:** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- TTT. Former TEA Employees:** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the TEA during the twelve (12) month period immediately prior to the date of execution of the Contract. In the case of professional services contracts as described by Chapter 2254 of the Texas Government Code, Respondent represents and warrants that if a former employee of the TEA was employed by Respondent within one year of the employee's leaving the TEA, then such employee will not perform services on projects with Respondent that the employee worked on while employed by the TEA.

UUU. Restricted Employment of Certain State Personnel: Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TEA involving Respondent within two (2) years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

VVV. Dealings with Public Servants: Pursuant to Section 2155.003 of the Texas Government Code, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.

WWW. Prior Disaster Relief Contract Violation: Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.

XXX. Executive Head of State Agency Affirmation: Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the TEA. Respondent must provide the following information in the Response.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Respondent: _____ Date of Employment with Respondent: _____

YYY. Point of Contact and Escalation: All notices, reports and correspondence required by this Contract shall be in writing and delivered to individuals listed below or their successors in office. Within 30 days of execution of this Contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

<u>TEA</u>	<u>Contractor</u>

Respondent will provide its nine-digit Federal Employer's Identification Number (FEIN) to TEA. If Respondent does not have a FEIN, Respondent shall next provide Respondent's 14-digit State of Texas Payee Identification Number (TIN). If Respondent neither has a FEIN or a TIN, Respondent shall provide a Social Security Number (SSN) if Respondent is an individual. If Respondent is incorporated, Respondent shall also provide to TEA the corporation's charter number issued by the Texas Secretary of State's office. Information provided by Respondent will be verified by TEA and kept confidential to the fullest extent allowed by law.

Contractor's FEIN	
Contractor's SSN	
Contractor's TIN	
Contractor's charter #	

Respondent has read, understands, and agrees to be bound to the terms and conditions stated in the solicitation if a contract is awarded to Respondent pursuant to this solicitation. By signature hereon, the Respondent represents and warrants that:

All statements and information prepared and submitted in the response to this document are current, complete, true and accurate. Submitting a document with a false statement or material misrepresentations made during the performance of a Contract is a material breach of contract and may void the submitted Response and any resulting Contract.

The undersigned is an authorized official for the Respondent and certifies that the Response submitted with this "Contract Terms, Conditions and Affirmations, Response Preferences and Execution of Offer" instrument is in full compliance with the provisions expressly

stated above. I further certify that the Response submitted with this instrument is allowed to claim any of the Chapter 2155 Texas Government Code preferences checked below.

RESPONDENT/CONTRACTOR:

BY: _____
Name:
Title:

The Texas Government Code and Family Code sites referenced in this document may be viewed at:

<http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code site referenced in this document may be viewed at:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

RESPONSE PREFERENCES

The Respondent if selected as the Contractor, will be required to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside of Texas ([Texas Government Code § 2155.4441](#)).

Check below if claiming a preference included in [Texas Government Code Chapter 2155](#)

<input type="checkbox"/>	§ 2155.441	Products of persons with mental or physical disabilities
<input type="checkbox"/>	§ 2155.442	Energy efficient products
<input type="checkbox"/>	§ 2155.443	Rubberized asphalt paving
<input type="checkbox"/>	§ 2155.444	Texas and United States products and Texas services
<input type="checkbox"/>	§ 2155.4441	Preference under service contracts.
<input type="checkbox"/>	§ 2155.445	Recycled, remanufactured, or environmentally sensitive products
<input type="checkbox"/>	§ 2155.446	Use of Paper containing recycled fibers
<input type="checkbox"/>	§ 2155.447	Recycled oil
<input type="checkbox"/>	§ 2155.449	Products and services from economically depressed or blighted areas
<input type="checkbox"/>	§ 2155.450	Products of facilities on formerly contaminated property
<input type="checkbox"/>	§ 2155.451	Vendors that meet or exceed air quality standards.
<input type="checkbox"/>	§ 2155.452	Contractors providing foods of higher nutritional value.

EXECUTION OF OFFER

In compliance with this solicitation, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the Response.

Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

RESPONDENT/COMPANY NAME:
STREET ADDRESS:
CITY/STATE/ZIP:
TELEPHONE #:
FACSIMILE #:
EMAIL ADDRESS:
NAME OF RESPONDENT'S AUTHORIZED AGENT:
TITLE OF RESPONDENT'S AUTHORIZED AGENT:
SIGNATURE OF AUTHORIZED AGENT:

ATTACHMENT "B" MUST BE SIGNED AND RETURNED WITH YOUR RESPONSE

Respondent acknowledges that under state law and TEA policy, they may not disclose any information during the solicitation process (upon opening the Response and during negotiations). The solicitation process must remain confidential and is exempt from open records until such time that a contract is awarded. Failure to abide to this requirement will result in disqualification.