



## **Appendix 9**

### **Contract Terms**

#### **Alphabetical Order**

Information about contract terms and examples of contract provisions is provided below. The agency's attorney should be involved in the development of contracts so that required contract terms and those drafted to achieve the agency's desired outcomes, are included in the contracts.

#### **9.1 Abandonment or Default**

If the contractor defaults on the contract, [agency name] 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 the agency based on the seriousness of the default.

#### **9.2 Amendments**

Except as provided in Section 11.12 of this Contract, this Contract may be amended only upon written agreement between {Insert agency name here} and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

#### **9.3 Antitrust**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

#### **9.4 Applicable Law; Venue**

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

#### **9.5 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. {Insert agency name here} reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for {Insert agency name here} or Contractor's compliance with all applicable State and federal laws, and regulations.

#### **9.6 Assignments**

Without the prior written consent of {Insert agency name here} Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

#### **9.7 Buy Texas**

In accordance with Texas Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

## **9.8 Certification Concerning Hurricane Relief**

Sections 2155.006 and Section 2261.053, Texas Government Code, prohibit state agencies from awarding a contract to any 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 Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, the Respondent certifies that the individual or business entity named in its Proposal is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

## **9.9 Confidentiality and Public Information Act**

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that *{Insert agency name here}* will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. *{Insert agency name here}* agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with *{Insert agency name here}* in the production of documents responsive to the request. *{Insert agency name here}* will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify *{Insert agency name here}* General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

## **9.10 Debts or Delinquencies to State**

The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

## **9.11 Deceptive Trade Practices; Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

## **9.12 Default**

If Contractor is found to be in default under any provision of this Contract, *{Insert agency name here}* may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to *{Insert agency name here}* including but not limited to re-procurement costs, and any consequential damages to the State of Texas or *{Insert agency name here}* resulting from Contractor's non-performance. 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 is significantly changed.

## **9.13 Dispute Resolution**

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by *{Insert agency name here}* and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the

individual identified in the Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the {Insert agency name here} if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the {Insert agency name here} nor any other conduct of any representative of the {Insert agency name here} relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the {Insert agency name here} and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the {Insert agency name here} and the Respondent within fifteen (15) days after written notice by one them demanding mediation under this Section. The Respondent shall pay all costs of the mediation unless the {Insert agency name here} in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the {Insert agency name here} and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the {Insert agency name here} and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The {Insert agency name here} participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the {Insert agency name here} of (1) any rights, privileges, defenses, remedies or immunities available to the {Insert agency name here} as an agency of the State of Texas or otherwise available to the {Insert agency name here}; (2) the {Insert agency name here} termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the {Insert agency name here} the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **9.14 Drug Free Work Place**

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

#### **9.15 Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

#### **9.16 Eligibility**

Under Texas Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Texas Government Code, Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

### **9.17 Equal Opportunity**

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

### **9.18 Family Code**

Under Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

### **9.19 False Statements; Breach of Representations**

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and *{Insert agency name here}* may terminate or void this Contract for cause and pursue other remedies available to *{Insert agency name here}* under this Contract and applicable law.

### **9.20 Federal, State, and Local Requirements**

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

### **9.21 Felony Criminal Convictions**

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised *{Insert agency name here}* as to the facts and circumstances surrounding the conviction.

### **9.22 Financial Interests; Gifts**

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from *{Insert agency name here}* or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

### **9.23 Force Majeure**

Neither Contractor nor *{Insert agency name here}* shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP 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 (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

#### **9.24 HUBs**

Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Texas Government Code, Chapter 2261. A HUB Subcontracting Plan form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

#### **9.25 Immigration**

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

#### **9.26 INDEMNIFICATION**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND [INSERT NAME OF AGENCY HERE], ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY [INSERT NAME OF AGENCY HERE]. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR [INSERT NAME OF AGENCY HERE] FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF [INSERT NAME OF AGENCY HERE] OR ITS EMPLOYEES.**

#### **9.27 Independent Contractor**

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFP. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of *{Insert agency name here}*. Should Contractor subcontract any of the services required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), *{Insert agency name here}* is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

#### **9.28 Insurance and Other Security**

Contractor represents and warrants that it will, within five (5) business days of executing this agreement, provide *{Insert agency name here}* with current certificates of insurance or other proof acceptable to *{Insert agency name here}* of the following insurance coverage:

Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract;

Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate.

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to *{Insert agency name here}*. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide *{Insert agency name here}* with an executed copy of the policies immediately upon request.

#### **9.29 Liability for Taxes**

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. *{Insert agency name here}* shall not be liable for any taxes resulting from this Contract.

### **9.30 Limitation on Authority; No Other Obligations**

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

### **9.31 Merger**

This Contract contains the entire agreement between Contractor and *{Insert agency name here}* and supersedes any prior understandings or oral or written agreements between *{Insert agency name here}* and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by *{Insert agency name here}* and Contractor.

### **9.32 No Conflicts**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

### **9.33 No Liability Upon Termination**

If this Contract is terminated for any reason, *{Insert agency name here}* and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

### **9.34 No Waiver**

Nothing in this Contract shall be construed as a waiver of the state'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 the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. *{Insert agency name here}* does not waive any privileges, rights, defenses, or immunities available to *{Insert agency name here}* by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

### **9.35 Note to Respondent**

Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Proposal and may result in disqualification of the response.

### **9.36 Notices**

Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested, to *[Insert appropriate agency name and mailing address here]*. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

### **9.37 Partially Completed Work**

No later than the first calendar day after the termination of this Contract, or at *{Insert agency name here}* request, Contractor shall deliver to *{Insert agency name here}* all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the *{Insert agency name here}*.

### **9.38 Patent, Trademark, Copyright and Other Infringement Claims**

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify *{Insert agency name here}* of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without *{Insert agency name here}* prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

### **9.39 Payments**

Prior to authorizing payment to Contractor, *{Insert agency name here}* shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract. Contractor shall provide invoices to *{Insert agency name here}* for Commodities/Services provided/performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, *{Insert agency name here}* must make all payments in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon *{Insert agency name here}* receipt of funds appropriated by the Texas Legislature.

### **9.40 Prohibited Use of Appropriated or other Funds Under Control of State Agency; Lobbying**

The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Texas Government Code, Section 556.005 or Section 556.008.

### **9.41 Severability Clause**

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then 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.

### **9.42 Signatories**

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

### **9.43 Strict Compliance**

Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

### **9.44 Substitutions**

Substitutions are not permitted without written approval of *{Insert agency name here}*

### **9.45 Supporting Documents, Retention; Right to Audit; Independent Audits**

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in paragraph 11.30 of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit.

Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by *{Insert agency name here}* and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the *{Insert agency name here}* and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code, Section 2262.003 the acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an 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.

#### **9.46 Survival of Terms**

Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

#### **9.47 Term and Termination**

This Contract shall become effective on the date signed by the appropriate official of *{Insert agency name here}* and shall expire on \_\_\_\_\_ unless otherwise sooner terminated as provided in this Contract. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. *{Insert agency name here}* may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Contractor's receipt.

##### **(a) Convenience**

*{Insert agency name here}* may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date.

##### **(b) Cause/Default**

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract. *{Insert agency name here}* may, upon written notice of default to the Respondent, 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 as provided in equity, by law or under the Contract. *{Insert agency name here}* 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. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless *{Insert agency name here}* notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by *{Insert agency name here}* with respect to the enforcement of any of the remedies listed herein.

##### **(c) Rights upon Termination or Expiration**

In the event that the Contract is terminated for any reason, or upon its expiration, the *{Insert agency name here}* and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

#### **9.48 Testing and Inspection**

{Insert agency name here} may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The {Insert agency name here} may also test and inspect goods and services before they are purchased under the Contract.

Authorized {Insert agency name here} personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the {Insert agency name here} inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax/mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

#### **9.49 Work Made for Hire**

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

#### **Affirmation Clauses**

These clauses are usually included in the Execution of Proposal (see Appendix 1) which is a part of the solicitation document. If the solicitation document does not contain an Execution of Proposal, then these clauses should be included in the contract document. All of these provisions are not required for every type of contract. Agencies should evaluate each of the following provisions for applicability to individual procurements.

#### **By signature hereon, the respondent certifies that:**

All statements and information prepared and submitted in the response to this RFP are current, complete and accurate.

He/she has not given, offered to give, not intends to give at anytime 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.<sup>lxxxv</sup>

Failure to sign the Execution of Proposal or signing it with a false statement shall void the submitted offer or any resulting contracts.

Neither Respondent nor firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

When a Texas business address show hereon that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.

Under Texas Government Code, 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If the Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Texas Government Code, the vendor [Respondent] certifies that the individual or business entity named in this bid 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."

Under Family Code § 231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the names and social security numbers of person or entity holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal.

<b>Name:</b>	<b>Social Security Number:</b>
<b>Name:</b>	<b>Social Security Number:</b>
<b>Name:</b>	<b>Social Security Number:</b>

Under Government Code §669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the *{Insert agency name here}* or any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of *{Insert agency name here}* or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

*{Insert agency name here}* is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor 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 the Respondent 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, the Respondent 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. Respondent will

ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

**Revised 06/24/2011**

