

ATTACHMENT 1 – TWC VR SA Only Terms & Conditions (06/2023)

By responding to the solicitation or fulfilling the awarded Service Authorization (SA), the Vendor agrees to the terms and conditions below, which apply to and become a part of every Texas Workforce Commission (TWC) purchase. Only mutual written exceptions will be valid. Where a purchase is made without the Invitation for Bids (IFB), Request for Offers (RFO) or Request for Proposals (RFP) process, IFB/RFO/RFP/Proposal, equates to "Service Authorization" or "Contract" and "Bidder/Offeror/Proposer/Respondent/Contractor" equates to "Vendor." Any specification in the solicitation that conflicts with these standard terms and conditions takes precedence. All references to "days" shall be calendar days unless specified otherwise.

*****NOTE TO VENDORS: Any terms and conditions attached to a Vendor's response will not be considered unless the terms and conditions are made part of the agreement as evidenced by written, mutual agreement signed by representatives from both parties.**

*****WARNING: Such terms and conditions may result in disqualification of the submitted Vendor's response (e.g., responses with a requirement to apply the laws of a State other than Texas.)**

1. BID RESPONSE REQUIREMENTS

- 1.1. Written Specifications:** TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the informal bid, if applicable.
- 1.2. Freight:** Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.
- 1.3. Firm Pricing:** "Discount from list" offers are not acceptable unless specifically requested. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the

term of the PO/contract.

- 1.4. Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax. Excise Tax Exemption Certificates are available upon request.
- 1.5. Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract performance for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the agreement.
- 1.6. No Travel:** TWC will not reimburse a Vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.

2. GENERAL CONDITIONS

2.1. Texas Public Information Act:

- 2.1.1.** Information, documentation, and other material in connection with purchase or any resulting SA may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the "Public Information Act").
- 2.1.2.** All information submitted in response to an informal bid request is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the purchase, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the Vendor must clearly identify any

confidential or proprietary information on the page on which it appears in the purchase response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by the Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.

- 2.1.3.** All information, documentation and other material in connection with the purchase process or any resulting SA will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the Vendor who submitted it during the retention period time.
- 2.1.4.** In accordance with Texas Government Code § 2252.907, Vendor is required to make any public information created or exchanged with the State pursuant to any contract with TWC, 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 TWC.

2.2. Award of Contract:

- 2.2.1.** Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted, and an award is made by TWC Procurement and Hub-Services and a SA or a fully executed contract is issued to the Vendor.
- 2.2.2.** TWC reserves the right to negotiate price and terms

with any and all Vendors, to accept or reject all or any part of a Vendor's response, waive minor technicalities, and make an award that represents Best Value to the agency or the State.

2.2.3. TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.

2.2.4. TWC reserves the right to make an award on the basis of low line-item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.

2.3. Vendor Assignments: No assignment is permitted by the Vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code § 2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment.

2.4. TWC Assignments: TWC may sub-lease or assign equipment and related services provided via the contract to other entities which contract with TWC to provide agency support or services.

2.5. INDEMNIFICATION:

2.5.1. ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL

LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND/OR ANY SERVICE AUTHORIZATIONS ISSUED. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. IF CONTRACTOR IS A PHYSICIAN OR PSYCHIATRIST, THE STATE OF TEXAS SHALL INDEMNIFY CONTRACTOR IN PURSUANT TO TEX. CIV. PRACT. & REM. CODE, CHAPTER 104.

- 2.5.2. INFRINGEMENTS: VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TWC AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL 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, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER**

SERVICE PROVIDED HEREUNDER; AND/OR (3) TWC'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TWC BY VENDOR OR OTHERWISE TO WHICH TWC HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL(OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, VENDOR WILL REIMBURSE TWC 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 TWC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TWC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TWC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TWC'S COUNSEL.

2.5.3. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY:

2.5.3.1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS

CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TWC SHALL NOT BE LIABLE TO THE VENDOR, 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.

2.5.3.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN

TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 2.6. Vendor Performance:** In accordance with Texas Government Code §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.7. Force Majeure:** TWC may grant relief from performance of an awarded contract or SA, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.
- 2.8. Dispute Resolution Procedures:**
- 2.8.1. Procurement Disputes:** In accordance with Texas Government Code, § 2155.076, TWC has adopted rules for resolving vendor protests relating to the solicitation, evaluation, or award of a contract for goods and/or services. See 40 TAC, Chapter 800, subchapter H. Such protests must be made via email to twcvendor@twc.texas.gov and/or mail and received in the Director of Business Operations' office within ten (10) business days from the date the protestant knew

or should have known of the occurrence of the action that is protested, but not later than ten (10) business days of the date of the announcement of the award. The protest must be in writing and contain: (1) the identifying name and number of the Solicitation being protested; (2) identification of the specific statute or regulation that the Protestant alleges has been violated; (3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in (2) above; (4) a precise statement of the relevant facts including: (A) sufficient documentation to establish that the protest has been timely filed; and (B) a description of the resulting adverse impact to the Protestant; (5) a statement of the argument and authorities that the Protestant offers in support of the protest; (6) an explanation of the action the Protestant is requesting from the Agency; (7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant; and (8) the protest must be signed by an authorized representative for the Protestant and the signature notarized. TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law.

TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The Director will issue the final written decision to the protestor. TWC may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.

2.8.2. Contract Disputes: Disputes arising under this Contract shall be resolved in accordance with the

dispute resolution process provided in Chapter 2260 of the Texas Government Code.

2.9. Debt to the State: Vendor 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.

2.10. Records Retention: Vendor and any subcontractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents relevant to showing that any payments under this Contract 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. Vendor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor agrees to provide at no cost to TWC all contracting information related to the Contract that is in the custody or possession of Vendor or any of its subcontractors.

2.11. Agency's Right to Audit: Vendor and any subcontractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this Contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and any subcontractors shall provide TWC with any information that TWC deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC. For the purpose of this section, TWC's right to audit extends to any agency of the Federal government or

State of Texas authorized by law or TWC, including an investigation or audit by the State Auditor or the Comptroller General of the United States.

2.12. State Auditor: Pursuant to Texas Government Code §2262.154, the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the 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, 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.

Vendor and any subcontractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all requested information and materials. Vendor's failure to comply with this section shall constitute a material breach of contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure.

Vendor shall ensure that this provision concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

2.13. Limitation on TWC's Liability: TWC will not be liable for any incidental, indirect, special, or consequential damages under contract, Tort, (including negligence), or other legal theory. TWC's liability to Vendor under the contract will not exceed the total charges to be paid by TWC to Vendor under the contract.

2.14. State Ownership: The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, source and object code and documentation developed by the Vendor in connection with the contract.

2.14.1. All work products including deliverables, source and object code and documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.

2.14.2. To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.

2.14.3. Vendor will assist TWC or its nominees (including but not limited to the State of Texas) to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.

2.14.4. Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by Vendor on such copies, in

whole or in part, or on any form of the work products or deliverables.

2.15. License: In accordance with 2 C.F.R. §200.315, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including but not limited to those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system.

2.16. Governing Law and Venue: The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.

2.17. Survival: Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

2.18. Severability: If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.

2.19. Block Terrorism: TWC and the Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>

2.20. No Waiver: Nothing in this contract shall be construed as a waiver of the TWC's or 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 TWC 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 TWC or 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. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this contract or by its conduct prior to or subsequent to entering into this contract.

2.21. American Recovery and Reinvestment Act (ARRA or the Recovery Act): Buy American Requirements for Construction Material prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

2.22. Build America, Buy America Act (BABAA):

2.22.1. Vendor acknowledges that it understands and agrees

that the infrastructure goods it is providing or acquiring under this Agreement are supported with Federal funds subject to the Build America, Buy America Act (BABAA). See Section 70912, the Build America, Buy America Act, the "Infrastructure Investment and Jobs Act" (IIJA; P.L. 117-58). Under that provision, BABAA applies where Federal funding supports an infrastructure project as defined in Section 70912 of BABAA. BABAA requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by Vendor pursuant to this Agreement. Vendor hereby represents and warrants to TWC (a) Vendor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) Vendor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by TWC. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by Vendor shall permit TWC to recover as damages against Vendor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from TWC or any damages owed to

TWC).

- 2.22.2. Waiver:** The Head of the funding Federal Agency or designee may issue a waiver to the Buy America requirements in limited circumstances including (i) compliant iron, steel, manufactured products, and or construction materials are not available; (ii) utilizing compliant iron, steel, manufactured products, and or construction materials will increase the cost of the overall project by more than 25 percent; (iii) for a reason determined to be in the public interest based on criteria established by the funding Federal agency; or (iv) to address exigent circumstances.

Vendors seeking a waiver from the BABAA Buy America preference must submit a waiver request along with written justification to TWC. Waivers requested will be considered on a case-by-case basis. TWC will inform the Vendor if there is already a waiver in effect covering Vendor's waiver request along with the existing waiver's parameters. If TWC agrees with the waiver request, TWC will submit the request to the responsible federal agency. Upon receiving the federal agency response, TWC will inform the Vendor whether the request was rejected or granted in whole or part.

- 2.22.3. Certification:** Vendor certifies that it will comply with the provisions of BABAA (Public Law 117-58, §§ 70901-70952) for Infrastructure Projects.
- 2.22.4. Pass-Through Requirement:** Vendor must pass BABAA compliance obligations to any subcontractors for Infrastructure projects paid for with federal funds. Vendor shall require the subcontractor to certify compliance as a condition of any applicable subcontract.

- 2.23. Whistleblower Protection:** Pursuant to 41 U.S.C. § 4712,

Vendors may not discharge, demote, or discriminate against employees for reporting information that employee reasonably believes is evidence of gross mismanagement of a federal grant or contract, gross waste of federal funds, abuse of authority relating to a federal grant or contract, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation relating to a federal contract or grant. Employees subject to adverse action in violation of this section may file a complaint with the Office of the Inspector General no later than three years from the date of the adverse action. Vendors must provide written notification of these whistleblower protections to employees performing on covered contracts.

2.24. Background Check: Vendors must submit criminal background checks on all key personnel assigned to the services related to this solicitation, as authorized by Texas law, and at Vendor expense. Key personnel are defined as personnel whose oversight and guidance is essential to the subject services. TWC may provide any finalist for a contract position a Contractor Criminal History Report Investigation Request form P33c which Vendor must complete and submit back to TWC as required on the form. To obtain a facility access badge, Vendor must provide TWC with either a completed form P-33c or a recent criminal background check within fifteen (15) days of contract award. If applicable, TWC will not issue a Purchase Order until the criminal background check has been completed and passed.

2.25. To the extent that Vendor's staff are provided access to and workspace within TWC buildings, Vendor's staff will abide by TWC policies and procedures expressed in Chapter 1 of the Texas Workforce Commission Personnel Manual in existence and as amended from time to time.

2.26. Privacy: Vendor who has access to sensitive personally identifiable information ("Sensitive PII"), including anyone who views, contracts, collects, uses, maintains, stores, or destroys

Sensitive PII of TWC employees, job seekers, employers, customers, or partners (including any employees of the State of Texas), must safeguard that information.

2.26.1. Sensitive PII is anything that alone or in combination with available information can identify an individual, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

2.26.2. Awarded Vendor must have a Non-Disclosure Agreement (NDA) on file with TWC prior to handling Sensitive PII

2.26.3. In order to safeguard Sensitive PII, Awarded Vendor must:

2.26.3.1. Collect Sensitive PII only as authorized.

2.26.3.2. Limit the use of Sensitive PII.

2.26.3.3. Minimize the proliferation of Sensitive PII.

2.26.3.4. Secure Sensitive PII both physically and in electronic form.

2.26.3.5. Report suspected privacy incidents within twenty-four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at CISO@twc.texas.gov.

2.26.3.6. Not transmit or store Sensitive PII in a server or storage device that is located in a foreign country.

2.26.3.7. Awarded Vendor will not transmit Sensitive PII via email or store on CDs, DVDs, thumb drives and the like without prior review and encryption

protocol approved by TWC.

2.26.3.8. Failure to follow these requirements will constitute a breach of contract.

2.27. Change in Law: 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.

2.28. Disaster Recovery Plan: In accordance with 13 TAC § 6.94(a)(9), Vendor shall provide to TWC the description of its business continuity and disaster recovery plans.

2.29. Media Releases: Vendor shall not use TWC's name, logo, or other likeness in any press release, marketing material, or other announcement without TWC's or the relevant state agency's prior written approval. TWC does not endorse any vendor, commodity, or service. Vendor shall not make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response, or the services to which they relate without the prior written consent of the relevant state agency, and then only in accordance with explicit written instruction from the relevant state agency. Vendors must obtain written approval from the TWC Contract Manager not more than fifteen (15) business days and not less than five (5) business days prior to any media release related to this Contract.

2.30. Specific Conditions for Disclosing Federal Funding in Public Announcements: The parties agree that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, the parties shall clearly state:

2.30.1. the percentage of the total costs of the program or

project which will be financed with Federal money;

2.30.2. the dollar amount of Federal funds for the project or program; and,

2.30.3. the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

2.31. Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business: The parties and their employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official contract business, or from using government supplied electronic equipment to text message or email when driving. The parties must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

2.32. All work performed and Services provided under this Contract shall be performed in the United States.

3. REQUIRED CERTIFICATIONS

By responding to this solicitation and accepting the award of a contract or Service Authorization, Vendor certifies to the following:

3.1. Vendor represents and warrants that all statements and information prepared and submitted in this Proposal are current, complete, true, and accurate. Submitting a Proposal 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 Proposal and any resulting contract.

3.2. All Terms and Conditions Met: that all terms and conditions listed in the solicitation will be met.

- 3.3.** Vendor represents and warrants that the individual submitting this document is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract or service authorization that may result.
- 3.4.** U.S. Department of Homeland Security's E-Verify System: By entering into this Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of:
- 3.4.1.** All persons employed to perform duties within Texas, during the term of the Contract; and
 - 3.4.2.** All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
 - 3.4.3.** The Vendor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.
 - 3.4.4.** **If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**
- 3.5. Inducements/Dealings with Public Servants:** Pursuant to Texas Government Code § 2155.003, the Vendor affirms 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 solicitation response.

- 3.6. Lobbying:** that the Vendor will not and has not used any federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendor certifies that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. Further, Vendor certifies that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.
- 3.7. Not Ineligible:** Vendor certifies that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in this contract by any state or federal agency.
- 3.8. Non-Discrimination:** The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Vendor certifies compliance with Sections 504 and 508 of the Rehabilitation Act(29 U.S.C. §§ 794, 794d); the Housing and Urban Development Act § 3 (12 USC §1701u); Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); Executive Order 11246, "Equal Employment

Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 C.F.R. Part 60, “Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor.”; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.

- 3.9. Drug-Free Workplace:** The Vendor agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C., Chapter 81, Subtitle IV).
- 3.10. Franchise Tax:** The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
- 3.11. Child Support:** The Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code § 231.006 (relating to child support) and acknowledges that the contract may be terminated, and payment may be withheld if certification is inaccurate. Pursuant to Texas Family Code § 231.006(c), Vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.
- 3.12. Certain Bids and Contracts Prohibited:** Under Texas Government Code §2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.13. Fair Business Practices:** The Vendor has not been found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The Vendor further affirms that no officer of the Vendor has served

as an officer of any company found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year.

3.14. Antitrust Affirmation: Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.

3.15. No Compensation: The Vendor has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.

3.16. Conflict of Interest: Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.

3.17. Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita: Under Texas Government Code § 2155.006 and § 2261.053, the Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.

3.18. Independent Contractor: Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and Vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC or the State of Texas. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC or the State of Texas are in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.

3.19. Insurance Requirements: (The default insurance requirements in this section may be superseded by specific insurance requirements in the solicitation or in other parts of the contract). Vendor certifies it maintains insurance coverage in accordance with statutory limits and these requirements:

Workers Compensation: Statutory Limits

Employers Liability: Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

Commercial General Liability:

Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000

Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

Personal Injury and Advertising Liability: \$1,000,000

Products/Completed Operations Aggregate Limit: \$2,000,000

Damage to Premises Rented to You: \$50,000.

NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

3.20. Felony Criminal Convictions: Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.

3.21. Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069: Vendor certifies that it has not employed and will not employ a former TWC or state officer or employee who participated in a procurement or contract negotiations for TWC or the State of Texas involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

3.22. Vendor certifies that both of the following statements are true and correct, and that the Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:

3.22.1. Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.

3.22.2. Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.

3.23. Prohibition on Contracts or Other Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure in this State, Texas Government

Code, Chapter 2274: If this contract involves Vendor accessing critical infrastructure as defined in Texas Government Code § 2274.0101, Vendor certifies that Vendor is not:

- (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia or a designated country as defined in § 2274.0101(4); or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or other designated country as defined in § 2274.0101(4); or
- (2) headquartered in China, Iran, North Korea, Russia, or other designated country as defined in § 2274.0101(4).
- (3) This provision applies regardless of whether the Vendor's or its parent company's securities are publicly traded, or the Vendor or its parent company is listed on a public stock exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

3.24. Foreign Terrorist Organizations: Vendor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

3.25. COVID-19 Vaccine Passport Prohibition: Under Section 161.0085 of the Texas Health and Safety Code, Vendor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract.

3.26. Executive: Vendor certifies it is in compliance with Texas Government Code §669.003, relating to contracting with the executive head of a State agency. If applicable, Vendor will complete the following for TWC evaluation:

Former Executive Name: _____

State Agency Name: _____

Date Separated from Agency: _____

Position with Vendor: _____

Date employed with Vendor: _____

3.27. Buy Texas: Vendor agrees to comply with Texas Government Code §2155.4441, pertaining to purchasing products and materials produced in the State of Texas.

3.28. Texas Bidder Affirmation: Vendor certifies that if a Texas address is shown as the address of the Vendor on this solicitation response, Vendor qualifies as a Texas Bidder as defined in Texas Government Code § 2155.444(c).

3.29. Human Trafficking: Under Texas Government Code §2155.0061, Vendor 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. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the contract, TWC may immediately terminate the contract without further obligation to Vendor.

3.30. Trafficking in Persons: The parties acknowledge the requirements of 2 C.F.R., Part 175, including the U.S. Department of Education's modifications to these requirements, and agree to comply with the requirements regarding trafficking

in persons.

3.31. Disclosure of Prior State Employment: In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the previous employment with TWC or the other agency; (b) the date employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.

3.32. Former Agency Employees: In accordance with Texas Government Code § 2252.901, Vendor 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 TWC during the twelve (12) month period immediately prior to the date of execution of the contract. If the contract is for professional services as described by Texas Government Code Chapter 2254, Vendor represents and warrants that if a former employee of TWC was employed by Vendor within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Vendor that the employee worked on while employed by the TWC.

3.33. Vendor represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Texas Government Code §2252.908.

3.34. Cybersecurity Training: Vendor represents and warrants that it will comply with the requirement of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee of subcontractor employee has

access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code §2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.

3.35. Changes to Financial Condition: Vendor warrants it will notify TWC in writing of a change in financial condition during the contract term and any renewal thereof at the time the change occurs or is identified. For the purposes of this section, examples of a substantial change in financial condition are events such as insolvency, bankruptcy, or receivership.

3.36. Prohibited Technologies: Vendor represents and warrants that neither Vendor, Vendor's employees, nor Vendor's contractors will use personal devices for conducting state business. Vendor represents and warrants that it will prohibit its employees or contract workers from using any device to conduct state business that contains, accesses, or consists of any prohibited technology. Vendor represents and warrants that no device that contains, accesses, or consists of any prohibited technology will be in the vicinity of a device conducting state business on behalf of the Vendor.

- (1) Vendor shall implement a written policy banning the prohibited technology as described in this section and present a copy of said policy to TWC within thirty (30) days after Contract execution and within ten (10) days after any amendment to the Vendor's prohibited technology policy.
- (2) For the purpose of this section, personal device means a device that is (1) not owned or controlled by the

vendor or TWC; or (2) not used primarily for business purposes. State business means the same as in the TWC Prohibited Technologies Security Policy: https://twc.texas.gov/files/policy_letters/attachments/29-22-ch1-att2-twc.pdf. Prohibited Technology means the software and hardware products listed on the Department of Information Resources (DIR) webpage located at: <https://dir.texas.gov/information-security/prohibited-technologies>. Vendor is responsible for periodically checking this list and remaining in compliance with additions.

4. SPECIFICATIONS

- 4.1.** Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive) and is used to indicate type and quality desired. Submitted responses containing other brands that are functionally equivalent will be considered unless TWC has advertised the solicitation as proprietary under Texas Government Code §2155.067. If Vendor takes an exception to the solicitation's specifications and Vendor's response contains equivalent product, Vendor is required to include additional information such as manufacturer, brand or trade name, illustrations, and specifications for the equivalent product as part of their response to the solicitation. If Vendor takes no exception to the specifications, the Vendor must furnish the item(s) as specified in the solicitation.
- 4.2.** Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.
- 4.3. No Substitutions:** Vendor will not make any substitution to the specifications of any solicitation or SA, unless the substitution is (1) proposed to TWC in writing by the Vendor, and (2) supported

by the expressed written prior approval of TWC.

- 4.4. Replacement Parts Available:** The Vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.
- 4.5.** All electrical items must meet all applicable standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 4.6.** Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.
- 4.7. Projects Using Iron or Steel Products:** Pursuant to Texas Government Code §2252.202, iron or steel products produced through a manufacturing process and used in the project must be produced in the United States.

5. DELIVERY

- 5.1.** Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.
- 5.2.** If delay is foreseen, Vendor shall give written notice to TWC who

reserves the right to extend delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting Vendor.

- 5.3.** Delivery shall be made on State business days between 8:00 am and 5:00 pm, unless prior approval has been obtained from TWC.

6. VALIDATION, INSPECTION & TESTS

- 6.1.** Vendor agrees to provide TWC with information necessary to validate any statements made in the Vendor's solicitation response, if requested by TWC. This may include, but is not limited to, allowing access for on-site observation, granting permission for TWC to verify information with third parties, allowing inspection of Vendor's records, and allowing inspection of plans for compliance.
- 6.2.** All goods will be subject to inspection and test by TWC to the extent practicable at all times and places. Tests may be performed on samples called for, or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used, and the cost of the testing shall be borne by the supplier. Goods that have been delivered and rejected in whole, or in part may, at TWC's option, be returned to the Vendor or held for disposition at Vendor's risk and expense. Latent defects may result in revocation of acceptance.

7. INVOICING INSTRUCTIONS

- 7.1.** Invoices must be submitted to TWC according to the instructions

on the SA.

7.2. Invoices must include:

- 7.2.1.** Vendor's name; mailing address and e-mail (if applicable); telephone number and correct remittance address, including city, state, and zip code;
- 7.2.2.** the name and telephone number of a person designated by the Vendor to answer questions regarding the invoice;
- 7.2.3.** TWC's name, agency number, and delivery address;
- 7.2.4.** TWC SA number;
- 7.2.5.** contract number or other reference number, if applicable;
- 7.2.6.** a valid Texas identification number (TIN) issued by the comptroller;
- 7.2.7.** an itemized description of the goods or services, in sufficient detail to identify the order or authorization, which relates to the invoice;
- 7.2.8.** unit numbers corresponding to the amount of the invoice, unit cost, and total amount being billed;
- 7.2.9.** discounts, if applicable, must be stated, extended, and deducted to arrive at a Net Total for the invoice;
- 7.2.10.** if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor;
- 7.2.11.** other relevant information supporting and explaining the payment requested, if necessary; and
- 7.2.12.** any other information required by applicable state and

federal laws, rules, and regulations.

- 7.3.** TWC is not liable for any payments due under this Contract which have not been invoiced to TWC within ninety (90) days following the service date or expiration of the State Fiscal Year in which goods or services were rendered, whichever is later.

8. PAYMENT

- 8.1.** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 governs remittance of payment and remedies for late payment and non-payment.
- 8.2.** TWC will incur no penalty for late payment if payment is made within thirty (30) days of acceptance of goods or services, or within thirty (30) days of receipt of an uncontested invoice submitted according to the instructions on the SA, whichever comes last.
- 8.3.** In no event shall use of the product by TWC, for any purpose during any phase of the acceptance testing, constitute acceptance of any product by TWC.
- 8.4.** Prior to any payment being made, the goods or services being invoiced must have been received and accepted by TWC.
- 8.5.** The vendor must be notified of an error or disputed amount in an invoice submitted for payment not later than the 21st day after receipt of the invoice. Notification to the vendor must include the following: (1) Detailed statement of the amount of the invoice, which is disputed, (2) TWC may withhold payments no more than 110 percent of the disputed amount.

9. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

- 9.1.** Vendor represents that it has determined what licenses, patents

and permits are required under this contract and has acquired all such licenses, patents and permits.

- 9.2.** Vendor agrees that for the exclusive use by TWC or the State of Texas for State business, TWC and the State of Texas are free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

10. TERMINATION PROVISIONS

- 10.1.** The contract shall not be construed as creating a debt on behalf of TWC in violation of Article III, § 49a of the Texas Constitution. Vendor understands that all obligations of TWC under the contract are subject to the availability of state funds.

- 10.2. Termination for Cause:** TWC reserves the right to immediately terminate any SA or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty, for breach of contract by the Vendor.

- 10.3. Termination for Convenience:** TWC reserves the right to terminate any SA or contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) days' advance written notice, if TWC determines that such termination is in the best interest of the state.

- 10.4.** In the event of such termination under 10.2 or 10.3, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC and the State of Texas shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC and the State of Texas shall have no other liability, including no liability for any costs

associated with the termination.

10.5. TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Vendor.

10.6. TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the Vendor shall transfer title and deliver to the TWC any partially completed work products, deliverables, source and object code, or documentation that the Vendor has produced or acquired in the performance of the contract.

11. ADDITIONAL TERMS

11.1. Abortion Provider and Affiliate Transactions Prohibited:

Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Texas Government Code § 2273.003 and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by General Appropriations Act Article IX, § 6.24.

11.2. Binding Effect: The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

11.3. Federal Occupational Safety and Health Law: Respondent 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).

11.4. Immigration: Respondent represents and warrants that it shall

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

11.5. Legal and Regulatory Actions:

11.5.1. Respondent represents and warrants that it is not aware of and has received no notice of any threatened or pending material civil or criminal litigation involving the Respondent or the individuals or entities included in the Response, nor has Respondent or the individuals or entities included in the Response received any final judgment, entered into any settlement agreement, or been placed under consent decree stemming from material civil or criminal litigation within the five (5) calendar years immediately preceding the submission of the Response. "Material Litigation" means any action, suit, proceeding, inquiry, or investigation—including civil investigative demand—against Respondent or the individuals or entities included in the Response by or before any arbitrator, court, tribunal, or governmental authority that a reasonable person knowledgeable of the applicable industry would believe would or could (i) impair Respondent's performance under the contract, (ii) relate to the solicited or similar goods or services, (iii) result in a substantial change in Respondent's financial condition, or (iv) otherwise be relevant to Agency's consideration of the Response.

11.5.2. 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 a complete disclosure of any such threatened, pending, or resolved Material Litigation.

11.5.3. Respondent represents and warrants that it shall notify

Agency of any threatened or commenced Material Litigation in writing within five (5) days of its occurrence and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

11.6. Limitation on Authority: Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.

11.7. No Third-Party Beneficiaries: The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

11.8. Refund: Vendor will promptly refund or credit within thirty (30) days any funds erroneously paid by TWC which are not expressly authorized under the contract.

11.9. Subcontractors: Vendor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the TWC. Subcontracts, if any, entered into by the Vendor shall be in writing and be subject to the requirements of the contract. Should Vendor subcontract any of the services required in the contract, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

12. Background Checks

12.1. Background checks by Vendor of all personnel who

interact with VR customers: Vendors, that will provide goods or services directly to VR customers, must run a criminal background check on each of its employees who will interact with any VR customer in accordance with the minimum requirements for conducting background checks contained in Chapter 3, Basic Standards of the VR-Standard for Providers Manual. In this context, “interact” means any communication or other contact whether in person, on paper, by voice, by sign language, electronically or any other method. All provider staff must have a background check. The only exception is for staff who never communicate with or are physically present with a VR customer. Background checks must be completed by the Vendor before the employee interacts with any VR customer. An employee who fails the criminal background check must never interact with any VR customer. If a provider chooses not to do a background check on a staff member, then the provider must demonstrate that the staff member has never interacted with any VR customer in any way on any subject.

12.2. No de minimus exception: Vendor employees are covered by this requirement regardless of how short or rare the interaction may be, and regardless of the subject matter or context of the interaction. Vendors who comply with this requirement will never have any employee interact with any VR customer unless and until the employee passes a criminal background check.

12.3. Credentialing, documenting, and renewing: For purposes of complying with this section, an employee’s criminal background check expires after 3 years. The Vendor must run a new check before the 3 years expires or must remove the employee from interacting with VR customers on and after the date the background check expires. An employee whose criminal background check has expired must not interact with VR

customers. The Vendor will maintain records of all criminal background checks showing that the checks have been completed and that the employees have not failed the criminal background check. For the purpose of this section, documentation means a completed Background Check Attestation and Release Form for each applicable individual showing the name of the individual checked, dates of background checks, whether the individual passed the background check, and any other information required in the procedures contained in the VR-Standards for Providers Manual, Chapter 3, Basic Standards. Documentation of a current and passing criminal background check is both a "qualification" and a "credential" within the meaning of 40 TAC § 858.3(a)(1) and any successor regulation.

12.4. Employee self-reporting: In addition to the background check, the Vendor will require all of its employees to self-report to the Vendor the employee's conviction, incarceration, criminal fine, probation, community service, or deferred adjudication.

12.5. Record keeping and access to records: For each covered employee the Vendor must maintain documentation of the passing background checks for a minimum of 6 years. Vendors must maintain the Background Check Attestation and Release Form ("log") showing the name of the individual checked, dates of background checks, whether the individual passed the background check, and any other information required in the procedures contained in the VR-Standard for Providers Manual, Chapter 3, Basic Standards. Vendors must maintain a record of the payment for the background check, as applicable. Upon written request, the Vendor must provide access to, or copies of all background check logs, payment records, and other required documentation to any VR counselor, contract management staff, contract monitoring staff, or other TWC staff.

12.6. Subcontractors: All provisions in this section apply equally to

any subcontractor, and this term will be included in any subcontract.

12.7. Standards for passing the background check; exceptions:

TWC has adopted a list of criminal offenses which disqualify Vendor employees from interacting with VR customers. The list is posted on the [VR Providers' Resources Page](#). TWC will consider exceptions in some cases to offenses included under subsections (b) and (c) of the list. Vendors are responsible for seeking an exception.

12.8. Guidance or Exceptions:

If a Vendor is unclear on the process to conduct a background check, or unclear about how to interpret the results, the Vendor shall ask VRD for technical assistance. TWC may grant exceptions to (i) remove the exclusion of an employee who failed a background check based on offenses contained in subsection (b) of the disqualifying offenses list or (ii) grant blanket exceptions to the requirement to conduct background checks on certain types of entities, procurements, services, or goods. Any exception granted by TWC must be supported by (a) a determination by TWC that the need for the exception outweighs the likely risk, and (b) written, dated documentation that TWC agreed to the exception. TWC retains the right to place time limits or other restrictions on any granted exceptions.