

**Texas Department of Motor Vehicles
Contract Terms and Conditions**

A. Defined Terms:

- 1) Contract – any contract that the Texas Department of Motor Vehicles awards to a vendor under the solicitation.
- 2) Contractor – the vendor that is awarded the contract under the solicitation.
- 3) Deliverables – any goods or services that must be provided under the Contract.
- 4) Parties – the Contractor and the Texas Department of Motor Vehicles.
- 5) Party – the Contractor or the Texas Department of Motor Vehicles.
- 6) Respondent – a vendor that submits a proposal, offer, or response to the solicitation for the procurement that resulted in this Contract.
- 7) Response – the Contractor’s response to the solicitation.
- 8) Solicitation – the document used by the Texas Department of Motor Vehicles, such as a Request for Proposals or a Request for Offers, to request proposals, offers, or responses for the purposes of procuring deliverables.
- 9) TxDMV – the Texas Department of Motor Vehicles, which is a state agency.

B. Compliance with Permitting and Purchasing Laws: Contractor must comply with all applicable permitting and purchasing laws that Texas state agencies must address before conducting business with a vendor. Contractor agrees that payments under this Contract will be applied towards any of Contractor’s debts to the State of Texas, including, but not limited to, any child support or delinquent taxes, until paid in full.

C. Compliance with State, Federal, and Local Laws, Rules and Ordinances: Contractor must comply with all applicable state, federal and local laws, rules and ordinances in performing under this Contract. Without limiting the generality of the foregoing, Contractor must be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. Contractor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. Contractor must comply with all federal and state tax laws and withholding requirements. The TxDMV will not be liable to Contractor/subcontractor(s) or its employees for any unemployment insurance, workers' compensation coverage, or federal or state tax withholding requirements. Contractor may be required to demonstrate compliance with such laws at the written request of the TxDMV.

Except as stated otherwise in this Contract, Contractor must provide all labor and equipment necessary to furnish the deliverables under this Contract. All of Contractor’s personnel must be a minimum of 17 years of age and experienced in the type of work to be performed. Absent prior, written permission from the TxDMV, no visitors or relatives of Contractor’s employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of Contractor performing work under this Contract.

Contractor agrees that at all times its personnel must observe and comply with all laws, regulations and rules pertaining to state facilities, including, but not limited to, parking and security regulations. Additionally, Contractor and Contractor personnel will comply with all relevant Texas rules, policies, and requirements that relate to the security of data and confidentiality of information, including, but

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not limited to, 1 TAC 202.1 *et seq.* (Information Security Standards), and including any amendments to such rules, policies, and requirements that are implemented during the term of this Contract and any renewals of the Contract.

In the event that any of Contractor’s personnel fail to comply with such laws, rules, ordinances, or regulations, the TxDMV has the right to require Contractor to remove such person from any involvement in this Contract.

D. Conflict of Law, Choice of Law, U.N. Convention on Contracts and Venue: This Contract is governed by the substantive and procedural laws of the State of Texas. The following do not apply to this Contract: a) the conflicts of law principles and rules of Texas or any other jurisdiction; b) the United Nations Convention on Contracts for the International Sale of Goods; and c) the Uniform Computer Information Transactions Act.

Except as provided by Chapter 2260 of the Texas Government Code and the State Office of Administrative Hearings’ administrative rules, venue for any litigation or contract claims will be in the State Office of Administrative Hearings or a court of competent jurisdiction in Travis County, Texas.

E. Submitting Invoices and Receiving Payment

TxDmv will pay Contractor on the basis of itemized invoices submitted to and approved by the TxDMV, showing the actual deliverables provided. Itemized invoices must clearly identify the project phase or title, the deliverables delivered, and the date range of work performed for the associated charge. Chapter 2251 of the Texas Government Code will govern payment and accrual of interest on any overdue payments.

Invoices must include an expenditure report or detailed billing report that provides documentation that validates the charges.

Invoices must also include the TxDMV Purchase Order number, Contractor’s Texas Identification Number, Contractor’s address, Contractor’s contact person, Contractor’s e-mail address, and Contractor’s phone number.

All invoices must be emailed to DMV_FIN-INVOICES@txdmv.gov or mailed to:

Texas Department of Motor Vehicles
Attention: Payment Processing
4000 Jackson Avenue
Austin, TX 78731
DMV_Fin-Invoices@TxDMV.gov

With a copy to:

TxDmv Contract Monitor

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When Contractor submits an invoice, Contractor certifies the following:

1. That invoices have been carefully reviewed for detailed description of the deliverables;
2. That the deliverables are in compliance with the Contract;
3. That the amount of the invoice and all previous invoices together does not exceed the contractual cap of the Contract or negotiated fees;
4. That the charges shown on the invoices are reasonable and necessary; and,
5. That all appropriate and required supporting documentation is attached.

TxDMV may, in its sole discretion, require additional documentation to support payment, and Contractor must respond to any such requests within five (5) calendar days of receipt.

Neither TxDMV nor the State will incur any penalty for late payment if the invoice was not mailed to the appropriate address identified herein.

If the TxDMV, for any reason, including lack of supporting documentation or noncompliant deliverables, disputes any items in any invoices submitted by Contractor, TxDMV will timely notify Contractor of the dispute and may request clarification and/or remedial action.

- F. Force Majeure:** Neither Contractor nor the TxDMV will be liable to the other for any delay in performance of, or failure to perform, any obligation contained herein caused by *force majeure*, provided the Party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such Party's control; provided, further, that any action or inaction by a subcontractor of a Party will not be considered to be outside the control of such Party except to the extent the Parties may expressly agree otherwise in this Contract. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been corrected.

Force majeure is defined as those causes beyond the control of the Party required to perform that are generally recognized under Texas law as a force majeure event, such as acts of God, acts of war, epidemic and court orders. Contractor must immediately upon discovery notify the TxDMV Contract Monitor in writing of any delays in the schedule or the delivery of deliverables without regard to responsibility, fault or negligence. However, this clause does not apply to Contractor's obligations regarding any disaster recovery deliverables.

- G. Severability:** If one or more provisions of this Contract, or the application of any provision to any Party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of this Contract and the application of the provision to other parties or circumstances will remain valid and in full force and effect.

- H. Survival:** Any provisions of this Contract that impose continuing obligations on the Parties, including, but not limited to, the following will survive the expiration or termination of this Contract for any reason:

- 1) The indemnity obligations
- 2) Contractor's news release, advertisement, and publicity restrictions
- 3) Ownership rights
- 4) Recordkeeping requirements and audit rights

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- 5) Warranties
- 6) Confidentiality and security obligations
- 7) The obligations in the section entitled Partially Completed Work
- 8) Any other provisions of this Contract that impose continuing obligations on either of the Parties or that govern the rights and limitations of either of the Parties after the expiration or termination of this Contract.

- I. Waiver:** Nothing in this Contract will be construed as a waiver of the State's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the state of Texas or the TxDMV. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the TxDMV or the state of Texas under this Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The TxDMV does not waive any privileges, rights, defenses, or immunities available to the TxDMV by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.
- J. Liability for Employees and Officers:** Each Party to this Contract will have no liability whatsoever for the actions or omissions of an individual employed or contracted by the other Party, regardless of where the individual's actions or omissions occurred. Each Party is solely responsible for the actions and/or omissions of its employees and agents; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from the joint or concurring acts or omissions of the Parties, liability, if any, will be shared by each Party in accordance with the applicable laws of the state of Texas, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties, and not for the benefit of any person or entity not a Party; nor will any provision hereof be deemed a waiver of any defenses available by law.
- K. Legislative Action:** TxDMV is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. If any of the following triggering conditions exist, the TxDMV may immediately terminate this Contract without penalty to or any liability whatsoever on the part of, TxDMV, the state of Texas, and the United States:
- 1) If the Texas Legislature fails to appropriate money for this Contract.
 - 2) If the TxDMV and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract.

This Contract does not grant Contractor a franchise or any other vested property right. Termination under this section is immediate, so the TxDMV is not required to provide thirty (30) days' notice to Contractor under this section. If funding for this Contract is reduced by law or the statutory amount of compensation authorized for the Contractor is reduced, the TxDMV may, upon thirty (30) days written notice to the Contractor, reduce the deliverables in such manner and for such periods of time as the TxDMV may elect.

- L. Termination by Default:** In the event that Contractor fails to carry out or comply with any of the requirements of this Contract with the TxDMV, the TxDMV may notify Contractor of such failure or default in writing and demand that the failure or default be remedied within ten (10) days. In the event that Contractor fails to remedy such failure or default within the ten (10) day period, the TxDMV has

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the right to cancel this Contract upon ten (10) days written notice. Contractor's failure to comply with any Contract deadline constitutes an incurable breach.

The cancellation of this Contract, under any circumstances whatsoever, does not affect or relieve Contractor from any liability that may have been incurred pursuant to this Contract, and such cancellation by the TxDMV does not limit any other right or remedy available to the TxDMV at law or in equity. If Contractor defaults under the Contract, Contractor is liable to TxDMV for any increases in costs associated with re-procuring the deliverables.

M. Termination for Cause or Convenience: TxDMV may terminate this Contract as follows:

- 1) **For Convenience:** TxDMV may terminate this Contract, in whole or in part, without penalty and without cause, by giving thirty (30) days written notice of such termination to Contractor.
- 2) **For Cause:** TxDMV may terminate this Contract if Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section herein entitled "Termination by Default."
- 3) **Termination for listing on Federal Excluded Party List, on the Terrorism List (Executive Order 13224), or on the state of Texas Debarred Vendor List:** TxDMV has the absolute right to terminate this Contract without recourse as follows: a) if Contractor becomes listed on the prohibited vendor list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; b) if contractor becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List (EPLS) maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. TxDMV will provide Contractor with written notice to terminate the Contract, which termination will become effective immediately upon Contractor's receipt of the notice.

If TxDMV terminates this Contract for cause, TxDMV reserves the right to either re-solicit or re-award the contract to the next best responsive and responsible Respondent. TxDMV will not consider the defaulting Contractor in the re-solicitation, and TxDMV may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes as determined by TxDMV. Also, If TxDMV terminates the Contract for cause, Contractor is liable to TxDMV for any increases in costs associated with re-procuring the deliverables.

- N. Termination Liability (for Termination for Convenience):** In no event will termination for convenience by TxDMV give rise to any liability whatsoever on the part of TxDMV, regardless of whether such claims of Contractor are for compensation for anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason.
- O. Partially Completed Work:** No later than the first calendar day after the termination of this Contract, or at TxDMV's request, Contractor must deliver to TxDMV 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 and all documentation or other products and results of the services will be a material breach of this Contract. Contractor must not make or retain any copies of the work or any documentation or other products and results of the services without the prior written consent of TxDMV.
- P. Joint Enterprise:** TxDMV is associated with Contractor only for the purposes and to the extent set forth in the Contract, and with respect to the creation and delivery of deliverables hereunder, Contractor is

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an independent contractor and has the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties under the Contract. This Contract will not be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for TxDMV whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

Q. Assignment by the Contractor and Acquisition(s): Contractor must not assign or transfer any interest in this Contract without the express, prior written consent of TxDMV. An attempted assignment in violation of this clause is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under the Contract.

To the extent Contractor is acquired by another entity and the acquiring entity becomes the Contractor, TxDMV reserves the right to require the acquiring entity to provide to TxDMV the same information that TxDMV required the Respondents to submit in response to the solicitation, such as: information to evaluate the acquiring entity's ability to successfully complete this project or provide the deliverables. In addition, the acquiring entity must meet with representatives of TxDMV to ensure the acquisition will not jeopardize the timely and successful delivery of deliverables or any other requirement under the Contract.

R. Successors: This Contract is binding upon and will inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

S. News Releases, Advertisements and Publicity: Contractor must not make any news releases, public announcements, or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of TxDMV, and then only in accordance with explicit written instructions from TxDMV.

Contractor must not use the name of the state of Texas or TxDMV in any advertisement, promotion, or otherwise for any purpose regarding this Contract without the express prior written consent of TxDMV. However, Contractor may make any disclosure required by law or regulation without the approval of TxDMV.

T. Contract Amendments: No modifications or amendment to this Contract will be valid unless in writing and signed by both Parties. All correspondence regarding modifications or amendments to this Contract must be forwarded to TxDMV for prior review and approval. Only an authorized TxDMV employee or an authorized designee is authorized to sign changes or amendments.

U. Confidentiality and Security Requirements: The following confidentiality and security requirements apply to the following information that is provided or created after the execution of this Contract:

- 1) **General Confidentiality Requirements:** All information provided by TxDMV to Contractor or created by Contractor in performing the obligations under this Contract is confidential and must not be used by Contractor or disclosed to any person or entity, unless such use or disclosure is required for Contractor to perform work under this Contract.

The obligations of this section do not apply to information that Contractor can demonstrate: (i) is publicly available; (ii) Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act; (iii) Contractor independently developed without regard to the TxDMV confidential information; or (iv) is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority,

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provided that Contractor must furnish prompt written notice of such required disclosure and must reasonably cooperate with TxDMV at TxDMV's cost and expense, in any effort made by TxDMV to seek a protective order or other appropriate protection of its confidential information. Contractor must notify TxDMV of any unauthorized release of confidential information within two (2) days of when Contractor knows or should have known of such unauthorized release.

Contractor agrees to maintain all confidential information in confidence during the term of this Contract and after the expiration or earlier termination of this Contract. TxDMV reserves the right to provide 30-days written notice to Contractor if TxDMV determines that Contractor is no longer required to comply with certain obligations contained in this Contract regarding confidential information.

If Contractor has any questions or doubts as to whether particular material or information is confidential information, Contractor must obtain the prior written approval of TxDMV prior to using, disclosing, or releasing such information. Contractor acknowledges that TxDMV's confidential information is unique and valuable, and that TxDMV may have no adequate remedy at law if Contractor does not comply with its confidentiality obligations under this Contract. Therefore, TxDMV will have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction (or any other court of competent jurisdiction) temporary, preliminary, and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of Contractor if Contractor fails to perform any of its confidentiality obligations under this Contract.

Contractor must immediately return to TxDMV all confidential information when this Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of this Contract or when TxDMV requests that such confidential information be returned. Information, documentation and other material in connection with this Contract, including Contractor's Response, may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code. Contractor's and subcontractor's personnel working on this project must sign all appropriate and required computer security agreements and abide by all computer security requirements, upon TxDMV's request.

- 2) **Sensitive Personal Information:** To the extent this subsection does not conflict with the subsection entitled "General Confidentiality Requirements," Contractor must comply with both subsections. To the extent this subsection conflicts with the subsection entitled "General Confidentiality Requirements," this subsection entitled "Sensitive Personal Information" controls. "Sensitive personal information" is defined as follows:
- a. An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
 - i. Social security number
 - ii. Driver's license number or government-issued identification number, or
 - iii. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account, or
 - b. Information that identifies an individual and relates to:
 - i. physical or mental health or condition of the individual

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- ii. provision of health care to the individual; or
- iii. Payment for the provision of health care to the individual

Sensitive personal information does not include publicly available information that is lawfully made available to the general public from the federal government or a state or local government. "Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information that Contractor maintains or collects under this Contract including data that is encrypted if the Contractor's employee or representative who is accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or representative of the Contractor for the purposes of performing under this Contract is not a breach of system security unless the sensitive personal information is used or disclosed by the person in an unauthorized manner.

Contractor must implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by Contractor under this Contract. Contractor must notify TxDMV and the affected people of any breach of system security immediately after discovering the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, Contractor must delay providing notice to the affected people at TxDMV's request if law enforcement determines that the notification will impede a criminal investigation. Contractor, at Contractor's expense, must give notice as follows:

- a. Written notice;
- b. Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;
- c. Notice as follows:
 - i. If Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, Contractor may give notice as follows:
 - 1. Electronic mail, if the Contractor has an electronic mail address for the affected people;
 - 2. Conspicuous posting of the notice on the Contractor's website;
 - 3. Notice published in or broadcast on major statewide media; or
 - ii. If Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," Contractor may provide notice in accordance with that policy.

If this subsection requires Contractor to notify at one time more than 10,000 people of a breach of system security, the Contractor must also notify, without unreasonable delay, all consumer reporting agencies, as defined by 15 U.S.C. Section 1681a, that maintain files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.

Contractor must notify the Attorney General of the State of Texas of any breach of system security not later than the 60th day after the date on which the Contractor determines the

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breach occurred if the breach involves at least 250 Texas residents. The notification must include:

- a. A detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of the breach;
- b. The number of Texas residents affected by the breach at the time of notification;
- c. The measures taken by the Contractor regarding the breach;
- d. Any measures that Contractor intends to take regarding the breach after this notification; and
- e. Information regarding whether law enforcement is engaged in investigating the breach.

In the event of any breach of system security, if sensitive personal information was, or is reasonably believed to have been acquired by an unauthorized person, Contractor must also provide the following protections (at Contractor's expense) to the affected people and must notify the affected people of these protections in the notice Contractor provides to such affected people in the following manner:

- a. Contractor must cover the cost of providing the affected people with credit monitoring services for twelve (12) months; and
- b. Contractor must provide the affected people with call center support for thirty (30) days.

V. Audit, Inspect and Test:

1) Inspection of Deliverables

- a. TxDMV has the right to inspect and test all deliverables under this Contract, and to the extent practicable, at all times and places during the term of this Contract. TxDMV will perform any inspections and tests in a manner that will not unduly delay the work.
- b. If TxDMV performs inspections or tests on the premises of Contractor or a subcontractor, Contractor must furnish, and must require subcontractor(s) to furnish, at no increase to this Contract's price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

If any of the deliverables do not conform to this Contract's requirements, TxDMV may require Contractor to provide the deliverables again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to exercising all other legal and equitable remedies

- 2) Audit:** Pursuant to Section 2262.154 of the Texas Government Code, TxDMV reserves the right to audit Contractor's records and documents regarding compliance with this Contract. Additionally, Contractor will be subject to audit by any other department or agency, including federal agencies, responsible for determining that the Parties have complied with the applicable laws. The Contractor agrees and understands that acceptance of state funds under this Contract or indirectly through a subcontract acts as acceptance of the authority of the State Auditor's Office (SAO) to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO in the conduct of the audit or investigation, including providing all records requested. The Contractor must ensure that the clause concerning the SAO's authority to audit state funds and the requirement to cooperate fully with the SAO is included in any subcontracts Contractor awards.

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Except as stated otherwise in the section herein entitled "Confidentiality and Security Requirements," Contractor must keep all records and documents regarding this Contract for the term of this Contract, including any renewal, and for the later of seven (7) years after the termination of this Contract or until the completion or final resolution of any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the records. Additionally, the SAO and the TxDMV Internal Auditor must at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract for any purpose, upon request.

In the event such an audit by TxDMV reveals any errors by TxDMV or the Contractor, the Contractor must refund TxDMV the full amount of any overpayments within thirty (30) days of such audit findings, or TxDMV at its option reserves the right to deduct such amounts owing TxDMV from any payments due Contractor.

W. Accessibility: To the extent applicable to the deliverables under this Contract, Contractor must ensure its deliverables comply with the accessibility standards for individuals with disabilities, which standards can be found in Subchapter M of Chapter 2054 of the Texas Government Code (Access to Electronic and Information Resources by Individuals with Disabilities), 1 TAC 206.1 *et seq.* (State Websites), the TxDMV accessibility policy, and 1 TAC 213.1 *et seq.* (Electronic and Information Resources).

Contractor must provide the Texas Department of Information Resources (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" <https://www.buyaccessible.gov/>.

Contractors 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/>.

X. Limitation on Authority; Other Obligations: Contractor is not authorized to act for or on behalf of TxDMV or the state of Texas except as expressly provided for in this Contract. No other authority, power, or use is granted or implied. Contractor is not authorized to incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas or TxDMV.

Y. Debts or Delinquencies to the State of Texas: The Contractor understands that the Texas Comptroller of Public Accounts 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 will 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 the satisfaction of debts or delinquencies to the state of Texas.

Z. Escalation Procedure and Dispute Resolution:

TxDMV will attempt to resolve disputes with project staff before escalating to executive-level management. If a dispute arises, TxDMV project staff will meet with Contractor to identify, discuss,

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and resolve the issue(s). If the dispute remains unresolved, the dispute resolution process will be escalated in the following manner:

- If the project staff cannot resolve the dispute within a reasonable time, the TxDMV Project Monitor and Contractor's Project Manager will meet to discuss the issue(s).
- If the TxDMV Project Monitor and the Contractor's Project Manager cannot resolve the dispute, the TxDMV executive sponsor will meet with the Contractor's project executive in an attempt to resolve the dispute.

Throughout the dispute resolution process, the Parties should make a good faith effort to work together towards a mutually beneficial resolution.

To the extent Chapter 2260 of the Texas Government Code applies to the contract claim at issue, Contractor must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code and the applicable TxDMV administrative rules to attempt to resolve all contract claims arising under this Contract.

However, neither Party is required to use this escalation procedure prior to using any other right or remedy that is available to the Party under this Contract to resolve an issue.

AA. 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, partnership, 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 Response to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

Contractor hereby assigns to TxDMV any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1, *et seq.* (1973), and the antitrust laws of the state of Texas, Texas Business and Commerce Code Section 15.01, *et seq.* (1967).

BB. Indemnity: TO THE EXTENT CAUSED BY CONTRACTOR IN CONNECTION WITH ITS PERFORMANCE UNDER THIS CONTRACT, CONTRACTOR MUST INDEMNIFY, DEFEND AND HOLD THE STATE OF TEXAS AND TxDMV (INCLUDING ITS DIRECTORS, BOARD MEMBERS, EMPLOYEES, AGENTS AND THEIR SUCCESSORS) ("INDEMNITEES") HARMLESS FROM AND AGAINST ANY OF THE FOLLOWING THAT ARISE OUT OF OR RESULT FROM CONTRACTOR'S NEGLIGENCE (ANY AND ALL), FAULT, ACT, FAILURE TO ACT, OMISSION, VIOLATION OF ANY STATE OR FEDERAL LAW AND/OR REGULATION, AS WELL AS ANY VIOLATION OF ANY MATTER MADE THE BASIS OF A TREATY AND/OR CONVENTION AND/OR AGREEMENT BETWEEN THE UNITED STATES AND ANOTHER NATION: CLAIMS; LAWSUITS; DAMAGES; LIABILITIES; PENALTIES; TAXES; FINES; INTEREST; EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, INVESTIGATION COSTS AND ALL DIRECT OR INDIRECT COSTS OR EXPENSES INCURRED IN DEFENDING AGAINST ANY CLAIM, LAWSUIT, OR OTHER PROCEEDING, INCLUDING THOSE EXPENSES INCURRED IN ANY NEGOTIATION, SETTLEMENT, OR ALTERNATIVE DISPUTE RESOLUTION); ANY AND ALL DAMAGES, HOWEVER CHARACTERIZED, SUCH AS DIRECT, GENERAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR LOSS OF DATA)

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ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS CONTRACT OR THE RIGHTS PROVIDED THEREIN.

IN ANY AND ALL CLAIMS AGAINST ANY OF THE INDEMNITEES BY ANY EMPLOYEE OF THE CONTRACTOR OR ANY EMPLOYEE OF ITS SUBCONTRACTOR(S), THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT WILL NOT BE LIMITED IN ANY WAY BY THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY OF ITS SUBCONTRACTOR(S) UNDER WORKER'S DISABILITY COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

CONTRACTOR'S OBLIGATIONS IN THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS, LAWSUITS, DAMAGES, ETC. BASED ON A CLAIM THAT ANY PIECE OF EQUIPMENT, GOODS, SOFTWARE, DOCUMENTATION, SERVICES, LOGOS, IMAGES, SLOGANS, OR OTHER DELIVERABLES SUPPLIED BY CONTRACTOR OR ITS SUBCONTRACTORS, OR THE USE, DISPLAY, OPERATION, OR REPRODUCTION THEREOF, INFRINGES ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL OR PROPRIETARY RIGHT OF ANY PERSON OR ENTITY. SHOULD THE PIECE OF EQUIPMENT, GOODS, SOFTWARE, ETC. BECOME, OR IN TxDMV'S OPINION IS LIKELY TO BECOME, THE SUBJECT OF A CLAIM OF INFRINGEMENT, THE CONTRACTOR, AT ITS OWN EXPENSE, MUST: 1) PROCURE FOR TxDMV THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, GOODS, ETC.; OR 2) IF SUCH OPTION IS NOT REASONABLY AVAILABLE TO CONTRACTOR, CONTRACTOR MUST REPLACE OR MODIFY THE SAME WITH EQUIPMENT, SOFTWARE, GOODS, ETC. OF EQUIVALENT FUNCTION AND PERFORMANCE SO THAT IT BECOMES NON-INFRINGEMENT.

CONTRACTOR MUST COORDINATE ITS DEFENSE AND ANY SETTLEMENT WITH THE ATTORNEY GENERAL FOR THE STATE OF TEXAS AS REQUESTED BY TxDMV. IN ANY SETTLEMENT, CONTRACTOR MUST NOT MAKE ANY ADMISSION OF LIABILITY ON THE PART OF ANY OF THE INDEMNITEES. THIS SECTION MUST NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION, CONTRIBUTION OR RIGHT WHICH ANY OF THE INDEMNITEES HAVE BY LAW OR EQUITY.

THIS SECTION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT

- CC. Buy Texas:** Under Section 2155.4441, Government Code, Contractor must buy Texas products and materials for use in creating and delivering the services authorized in this Contract when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials that were not produced in Texas.
- DD. Texas Family Code (Delinquent Child Support):** Under Section 231.006, Family Code, Contractor certifies that the individual or business entity named in this Contract 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.
- EE. Certification Concerning Hurricane Relief:** Sections 2155.006 and 2261.053, Government Code, prohibit state agencies from awarding a contract to any person who, in the past five (5) 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, Government Code, occurring after September 24, 2005. Under Section 2155.006, Government Code, the Contractor certifies and has certified that the individual or business entity named in its original Response is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if these certifications are inaccurate.

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FF. Entities that Boycott Israel: Under Section 2271.002, Government Code, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract. This section applies to a Contract with a value of \$100,000 or more with a Contractor with 10 or more full-time employees. This section does not apply to a sole proprietor.

GG. Commencement of Work: Any work performed before final execution of this Contract must be at Contractor's risk and will not be paid by TxDMV or the state of Texas.

HH. Rolling Estoppel: TxDMV will be conclusively deemed to have fulfilled its obligations under this Contract, unless TxDMV receives a deficiency report from Contractor within five (5) business days of the occurrence of the alleged deficiencies and Contractor identifies specific deficiencies in TxDMV's (to include any TxDMV contractor's) fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have impacted the specific performance requirement of Contractor. Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or any other provision of the Contract, if Contractor knew of that problem and failed to include it in the applicable report. The deficiency report must be sent to the TxDMV Contract Monitor.

In the event Contractor identifies a situation wherein TxDMV (including any TxDMV Contractor) is impairing Contractor's ability to perform for any reason, Contractor's deficiency report must contain Contractor's suggested solutions to the situation(s). These suggestions must be in sufficient detail so that the TxDMV Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

The obligations and ramifications of this section also apply to the acts and omissions of any other Texas state agency or Texas state governmental entity that impacts Contractor's performance under this Contract. If Contractor fails to comply with the requirements in this section, Contractor will be estopped from claiming the act or omission of any other Texas state agency or Texas state governmental entity impacted Contractor's performance under this Contract.

II. 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 Texas Business and Commerce 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 of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in any administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

JJ. Felony Criminal Convictions: Contractor represents and warrants that Contractor has not and Contractor's personnel (including any subcontractors) have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TxDMV as to the facts and circumstances surrounding the conviction(s).

KK. Criminal History Background Checks: Contractor must have its project personnel submit to a background check, which may include a fingerprint-based criminal history background investigation, if required by TxDMV. TxDMV will be responsible for any costs associated with the criminal history background investigation.

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If TxDMV requires a criminal history background check, Contractor must not allow personnel who have not successfully completed a TxDMV required criminal history background check and who do not otherwise maintain a TxDMV security clearance to work under the Contract. TxDMV will have the right to prevent the Contractor's personnel from gaining access to the TxDMV building(s) and computer systems if TxDMV determines that such personnel did not pass the criminal history background check, or failed to otherwise maintain a TxDMV security clearance.

LL. Financial Interest; Gifts: Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from TxDMV 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.

MM. Subcontractors: Contractor must assume full responsibility for all deliverables under the Contract. TxDMV considers Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under the Contract. If any part of the deliverables is planned to be subcontracted, Contractor must provide TxDMV with a list of subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted and descriptive information concerning each subcontractor's qualifications.

Contractor must not delegate any duties under the Contract to a subcontractor unless TxDMV has given express written consent to the delegation. TxDMV has the right to approve all subcontractors and to require Contractor to replace any subcontractor found, in the opinion of TxDMV, to be unacceptable. The management of any subcontractor will be the sole responsibility of Contractor, and failure by a subcontractor to perform will be deemed to be the Contractor's failure. Contractor must make all payments to subcontractors and suppliers. TxDMV will not release Contractor from having to perform any obligations under the Contract, regardless of whether a subcontractor may have been engaged by Contractor to perform those obligations. All subcontracts must include all applicable provisions contained in this Contract and any provisions required by law.

NN. 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 Response 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 will be in default under this Contract and TxDMV may terminate or void this Contract for cause and pursue other remedies available to TxDMV under this Contract and applicable law.

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

PP. Notices: Any notice required or permitted under this Contract must be directed to the respective Parties at the addresses shown below and will be deemed received: (1) when delivered in hand and a receipt granted; (2) three days after it is deposited in the United States mail by certified mail, return receipt requested; or (3) when received if sent by email:

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Attention: Director of Purchasing
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731
Purchasing@TxDMV.gov

With a copy to:
Linda Flores, Chief Financial Officer
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Contractor: _____

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

QQ. Complaints and Contract Claims: In addition to other remedies contained in this Contract, Contractor may send their written complaints, as well as any contract claims, to the following office:

Texas Department of Motor Vehicles
ATTN: Linda Flores, Chief Financial Officer
4000 Jackson Avenue
Austin, Texas 78731
Telephone: (512) 465-4125
E-mail: Linda.Flores@TxDMV.gov

RR. Personnel: Contractor warrants that all persons assigned to the Contract are fully qualified to perform the work under this Contract. For contracts for services, Contractor represents and warrants that none of its employees were former employees of TxDMV during the twelve (12) month period immediately prior to the date of execution of the Contract.

Replacement of any key personnel, if approved by TxDMV, must be with personnel of equal or greater ability and qualifications than what is listed in the Solicitation. This approval must be in writing by TxDMV prior to replacement key personnel being assigned to this Contract. TxDMV is the sole arbiter of whether the replacement key personnel have equal or greater ability and qualifications than what is listed in the Solicitation.

Contractor must assign any key personnel identified in its Response to complete all of their planned and assigned responsibilities in connection with performance of the obligations of Contractor under this Contract. TxDMV has the right to approve the assignment and replacement by Contractor of any key personnel assigned to provide deliverables or to provide on-site representation of Contractor.

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Before assigning a replacement key person for any of the key personnel commitments identified in Contractor's Response, Contractor must notify TxDMV of the proposed assignment, introduce the individual to the appropriate representatives of TxDMV, provide a transfer of knowledge validation, and provide to TxDMV a resume and any other information about the individual reasonably requested by TxDMV.

SS. Replacement of Personnel at TxDMV's Request: TxDMV reserves the right to require Contractor to replace Contractor personnel whom TxDMV judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of TxDMV or the state of Texas. Before a written request is issued, authorized representatives of TxDMV and Contractor will discuss the circumstances. Upon receipt of a written request from an authorized representative of TxDMV, Contractor must proceed with the replacement. The replacement request must include the desired replacement date and the reason for the request. Contractor must use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. Contractor must also provide TxDMV with evidence of a sufficient transfer of knowledge to the proposed replacement.

This provision does not give TxDMV the right to require Contractor to terminate any Contractor personnel's employment. Rather, this provision is only intended to give TxDMV the right to require that Contractor discontinue using a certain person in the performance under this Contract.

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

UU. Immigration: Contractor represents and warrants that it must comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, regarding employment verification and retention of verification forms for any individuals hired to perform any labor or services under this Contract.

VV. Interpretation Against the Drafter: Regardless of which Party drafted the Contract or the language at issue, any ambiguities in the Contract or the language at issue will not be interpreted against the drafting Party.

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

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

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

ZZ. Intellectual Property Matters:

1) **Definitions**

- a. **“Work Product”** means any and all deliverables produced by Contractor for TxDMV under this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to TxDMV under this Contract, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of TxDMV in connection with this Contract, or with funds appropriated by or for TxDMV or TxDMV’s benefit: (a) by any Contractor personnel or TxDMV personnel, or (b) any TxDMV personnel who then became personnel to Contractor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Contractor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with TxDMV.

- b. **“Intellectual Property Rights”** means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide legal rights or interests that the Party may have acquired by assignment or license with the right to grant sublicenses.

- c. **“Third-Party IP”** means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any deliverables to TxDMV under this Contract.

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- d. **“Contractor IP”** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Contractor (a) prior to providing any deliverables, including any Work Product, to TxDMV and prior to receiving any documents, materials, information or funding from or on behalf of TxDMV relating to the deliverables including any Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Contractor outside Contractor’s provision of deliverables, including any Work Product, for TxDMV hereunder and were not created, prepared, developed, invented or conceived by any TxDMV personnel who then became personnel of Contractor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Contractor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with TxDMV.
- 2) **Ownership:** As between Contractor and TxDMV, the Work Product and Intellectual Property Rights therein are and will be owned exclusively by TxDMV, and not Contractor. Contractor specifically agrees that the Work Product will be considered “works made for hire” and that the Work Product will, upon creation, be owned exclusively by TxDMV. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Contractor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to TxDMV all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and TxDMV will be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Contractor acknowledges that Contractor and TxDMV do not intend Contractor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. TxDMV must have access, during normal business hours and upon reasonable prior notice to Contractor, to all Contractor materials, premises and computer files containing the Work Product. Contractor and TxDMV, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third-Party IP, except as may be incorporated in the Work Product by Contractor.

Contractor must not place a proprietary notice, copyright notice, or any other notice on any deliverables that indicates the Contractor has any ownership rights to that which TxDMV owns under this Contract. TxDMV’s acceptance of such deliverables without objection to such a notice, will not waive TxDMV’s ownership rights to such deliverables and any notice that is contrary to TxDMV’s ownership rights will be deemed to be deleted and without legal effect.

- 3) **Further Actions:** Contractor, upon request and without further consideration, must perform any acts that may be deemed reasonably necessary or desirable by TxDMV to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to TxDMV to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by TxDMV. In

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the event TxDMV is unable to obtain Contractor's signature due to the dissolution of Contractor or Contractor's unreasonable failure to respond to TxDMV's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Contractor hereby irrevocably designates and appoints TxDMV and its duly authorized officers and agents as Contractor's agent and Contractor's attorney-in-fact to act for and on Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Contractor, provided however that no such grant of right to TxDMV is applicable if Contractor fails to execute any document due to a good faith dispute by Contractor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. TxDMV will have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Contractor must cooperate, at TxDMV's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 4) **Waiver of Moral Rights:** Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Contractor may now have or which may accrue to Contractor's benefit under U.S. or foreign copyright, trademark, or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Contractor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 5) **Confidentiality:** All documents, information and materials forwarded to Contractor by TxDMV for use in and preparation of the Work Product, will be deemed the confidential information of TxDMV. Such documents, information, and materials are subject to the following: a) the section herein titled "Confidentiality and Security Requirements;" and b) the license granted by TxDMV to Contractor in the section herein titled "Contractor License to Use." Except as stated otherwise in this Contract, Contractor must not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of TxDMV
- 6) **Injunctive Relief:** The Contract is intended to protect TxDMV's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to TxDMV's business and proprietary rights. Therefore, Contractor acknowledges and stipulates that a court of competent jurisdiction must immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by TxDMV, without requiring proof of irreparable injury as same should be presumed.
- 7) **Return of Materials Pertaining to Work Product:** This subsection only applies to the extent the Work Product is not held in escrow under an escrow agreement referenced in the Solicitation. Upon the request of TxDMV, but in any event upon termination or expiration of this Contract, Contractor must surrender (in the format requested by TxDMV) to TxDMV all documents and

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materials pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Contractor or furnished by TxDMV to Contractor, including all materials embodying the Work Product, or any TxDMV confidential information, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and materials furnished to Contractor by TxDMV or by anyone else that pertains to the Work Product.

- 8) **Contractor License to Use:** TxDMV hereby grants to Contractor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the deliverables to TxDMV under this Contract. Except as provided in this section, neither Contractor nor any subcontractor have the right to use the Work Product in connection with the provision of services to its other customers or clients without the prior written consent of TxDMV, which consent may be withheld in TxDMV's sole discretion.
- 9) **Third-Party Underlying and Derivative Works:** Contractor is not authorized to include any open source code in any deliverables, unless Contractor first receives the written authorization from the TxDMV Contract Monitor to do so. This subsection only applies to intellectual property which is not developed under this Contract and to which TxDMV does not already have a right to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such intellectual property. Contractor is not authorized to include any third-party intellectual property in any deliverables, unless Contractor first receives the written authorization from the TxDMV Contract Monitor to do so. Unless stated otherwise in this Contract, Contractor must pay all license fees and/or royalties and assume all costs incident to the use or possession in the performance of the deliverables or the incorporation into the deliverables of any third-party intellectual property.

If Contractor obtains any third party intellectual property for TxDMV and incorporates any proprietary third party intellectual property into the deliverables, Contractor must obtain and furnish with such intellectual property the following: (i) documentation on the use of such intellectual property, (ii) a perpetual, irrevocable, worldwide, royalty-free right and license (which may be nontransferable, nonexclusive, or both) to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such intellectual property and associated user documentation for TxDMV purposes, including TxDMV's performance of statutory duties for other governmental entities, such as the Tax Assessor-Collectors (TACs) or law enforcement, and the motoring public and (iii) a perpetual, irrevocable worldwide, royalty-free right and license (which may be nontransferable, nonexclusive, or both) to authorize others to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such intellectual property for TxDMV purposes, including TxDMV's performance of statutory duties for other governmental entities, such as the TACs or law enforcement, and the motoring public. Contractor will facilitate the transfer of third-party licenses to TxDMV upon terms and conditions acceptable to TxDMV. For those third-party products that require license renewal, TxDMV has the option to arrange licensing directly from the licensor.

- 10) **Agreement with Subcontractors:** Contractor agrees that it must have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors

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providing deliverables, including any Work Product, pursuant to the Contract, prior to their providing such deliverables, and that it must maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Contractor. Copies of such agreements must be provided to TxDMV promptly upon request.

- 11) **Contractor's Intellectual Property: License to TxDMV:** Contractor is not authorized to include any open source code in any deliverables, unless Contractor first receives the written authorization from the TxDMV Contract Monitor to do so. This subsection only applies to intellectual property which is not developed under this Contract and to which TxDMV does not already have a right to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such intellectual property. Contractor is not authorized to include any of Contractor's intellectual property in any deliverables, unless Contractor receives the written authorization from the TxDMV Contract Monitor to do so.

This Contract supersedes all terms of any "shrink-wrap" or "click wrap" license included in any package, media, or electronic version of the intellectual property and any such intellectual property must be licensed or provided under the terms of this Contract. In consideration of the compensation provided under this Contract, Contractor hereby grants to TxDMV a perpetual, irrevocable, royalty-free, and worldwide license to allow TxDMV and the TxDMV designees (such as the TACs, law enforcement, and the motoring public) to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such intellectual property. Contractor reserves all rights to the intellectual property that have not been expressly granted to TxDMV. TxDMV has the right, in its own discretion, to independently create derivative works of such intellectual property to which a license is granted to TxDMV herein, through the services of TxDMV employees or any independent contractors.

- 12) **Contractor Development Rights:** To the extent not inconsistent with TxDMV's rights in the Work Product or as set forth herein, nothing in this Contract will preclude Contractor from developing for itself, or for others, materials which are competitive with those produced as a result of the deliverables provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of TxDMV therein are infringed by such competitive materials.

AAA. Warranties:

- 1) **Third-Party Warranties:** If, under this Contract, the Contractor procures any materials or products for TxDMV, the Contractor must assign or otherwise transfer to TxDMV, or afford TxDMV the benefits of, any manufacturer's warranty for such materials or products.
- 2) **Contractor Warranties:** The Contractor/subcontractor(s) make the following representations and warranties:
 - a. Contractor/subcontractor(s) must create and deliver all deliverables in accordance with the highest professional standards in the industry.
 - b. Contractor/subcontractor(s) must use adequate numbers of qualified individuals with suitable training, education, experience, and skill to create and deliver the deliverables.
 - c. Contractor/subcontractor(s) must use its best efforts to use efficiently all resources or services necessary to provide the deliverables that are required under this Contract.

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- d. Contractor must use its best efforts to prevent any malware or programming shortcuts (including without limitation, trapdoors, backdoors, Trojan horses, or the like) from being introduced into any of the TxDMV or Texas systems.
- e. Contractor/subcontractor(s) must create and deliver the deliverables in a manner that complies with all applicable laws and regulations.
- f. Contractor has duly authorized the execution, delivery, and performance of this Contract.
- g. Contractor/subcontractor(s) has not and must not provide any gifts, payments, or other inducements to any officer, employee, or agent of TxDMV.
- h. Contractor/subcontractor(s) must not infringe any intellectual property right of any third party. In the course of performing work under this Contract, Contractor/subcontractor(s) must not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

BBB. U.S. Department of Homeland Security's E-Verify System: By entering into this Contract, the Contractor certifies that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- 1) All persons employed to perform duties within Texas, during the term of the Contract; and
- 2) All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor must provide, upon TxDMV's request, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that Contractor is complying with this section. Contractor must include the requirements of this paragraph in all contracts executed with Contractor's subcontractors, when such contracts are executed or renewed after the date of this Contract.

If this certification is made falsely, the Contract may be immediately terminated, at TxDMV's discretion and at no fault to the state, with no prior notification. The Contractor will also be responsible for the costs of any re-solicitation that TxDMV must undertake to replace the terminated Contract.

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

DDD. Conflict of Interest: Contractor represents and warrants that Contractor has no actual or potential conflict(s) of interest in providing the deliverables under this Contract. In the event that an actual or potential conflict arises, Contractor must report such actual or potential conflict to the TxDMV Contract Monitor.

EEE. Compliance with Drug-Free Workplace: The Contractor must 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.

FFF. Substitutions: Substitutions are not permitted without written approval from TxDMV.

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GGG. Insurance:

- 1) Contractor represents and warrants that it must, within five (5) business days of executing this Contract, provide TxDMV with current certificates of insurance or other acceptable proof of the following insurance coverage for Contractor and Contractor's personnel:
 - a. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401.001 et seq., Texas Labor Code) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit, and \$250,000 per disease per employee.
 - b. Commercial General Liability with a combined single limit of \$500,000 per occurrence for coverage AB&C including products and completed operations, where appropriate, with a separate aggregate of \$1,000,000. The policy must contain the following provisions:
 - i. Blanket insurable contractual liability coverage for liability assumed under the Contract
 - ii. TxDMV listed as an additional insured
 - iii. Waiver of Subrogation endorsement
 - c. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence, and at least \$100,000 property damage liability per accident. The policy must contain the following endorsement in favor of TxDMV:
 - i. Waiver of Subrogation endorsement
 - ii. TxDMV listed as an additional insured
- 2) Errors and Omissions Insurance: \$100,000 minimum each occurrence limit; \$300,000 minimum aggregate limit.
- 3) Contractor represents and warrants that the insurance coverage listed above is with companies licensed to do business 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 or policy language providing at least thirty (30) days prior notice of cancellation (except 10 days for non-payment of premiums) to TxDMV. Contractor represents and warrants that it must maintain all of the above insurance coverages during the term of this Contract, including any renewals.

HHH. Business Days and Calendar Days: Any reference to "day" or "days" is a reference to calendar days, unless the reference is to a business day.

III. Public Information Act: Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to Chapter 552 of the Government Code (the Public Information Act). In accordance with Section 2252.907 of the Government Code, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

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- JJJ. Time is of the Essence:** Time is of the essence in the performance under this Contract. Contractor must strictly comply with all of the deadlines, requirements, and standards of performance under this Contract.B
- KKK. Not Engaged in Business with Terrorist Organization:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code, Section 2252.152.
- LLL. Contracting Information Responsibilities:** Contractor represents and warrants that it will comply with the requirements of Government Code, Section 552.372(a). Except as provided by Section 552.374(c), the requirements of Subchapter J, Chapter 552 of the Government Code may apply to the Contract, and the Contractor agrees that the Contract may be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.
- MMM. Cybersecurity Training:** Contractor must ensure that any Contractor employee or subcontractor employee who has access to a state computer system or database completes a cybersecurity training program certified under Government Code, Section 2054.519. Such training is required to occur during the contract term and the renewal period. Contractor must provide TxDMV with verification of the completion of the requisite training.
- NNN. Human Trafficking Prohibition:** Under Government Code, Section 2155.0061, the Contractor certifies that the individual or business entity named in this 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.
- OOO. Distribution of Consultant Reports:** At TxDMV's discretion, TxDMV, any other state agency, and the legislature may distribute any consultant reports and may post any consultant reports on the agency's internet website or the website of a standing committee of the legislature under Government Code, Section 2254.041.