

**SUPPLEMENTAL TERMS AND CONDITIONS WITH AFFIRMATIONS
FOR PURCHASES THROUGH THE DIR COOPERATIVE CONTRACTS PROGRAM**

1. Purpose and Request

- 1.1 The purpose of these supplemental terms and conditions with affirmations (“**Supplemental Terms and Conditions**”) is to establish the rights, responsibilities, duties, and obligations applicable to any “**Contract**” (as defined in Subsection 4.1 below) that may result from a Respondent’s submittal of a price quote, bid, proposal, or offer (the “**Response**”) to a request for pricing or statement of work (the “**TxDMV Request**”) through the DIR Cooperative Contracts Program. These Supplemental Terms and Conditions address provisions within Respondent’s Texas Department of Information Resources (“**DIR**”) contract, which defer to the customer agency’s rules, regulations, or processes. Additionally, these Supplemental Terms and Conditions incorporate any missing Texas state required contract clauses and include additional customer agency terms and conditions that do not conflict with the successful Respondent’s DIR contract.
- 1.2 In accordance with Section 2157.068 of the Texas Government Code, the Texas Department of Motor Vehicles (“**TxDMV**”) is the ordering customer agency issuing the TxDMV Request to vendors that provide “**Commodity Items**” (as defined in Tex. Gov’t Code § 2157.068(a)) under existing DIR contracts.

2. Response Requirements

- 2.1 By submitting a Response, Respondent agrees to comply with all terms of the TxDMV Request issued by TxDMV.
- 2.2 In its Response, Respondent must specify the active DIR contract(s) under which the Response is submitted.
- 2.3 Respondent must provide pricing per specified unit of measure (“**UOM**”). Unit prices will govern in the event of extension errors.
- 2.4 Respondent pricing is firm for TxDMV acceptance for a minimum of 90 days from the Response due date.
- 2.5 If an early payment discount is available to TxDMV, then Respondent, in its Response, must describe with specificity the early payment discount offered and the discount percentage that would apply to early payment within 10, 15, 20, or 25 days after receipt of a valid invoice as outlined in Subsection 6.2 of this document and the Contract or Purchase Order.
- 2.6 Respondent acknowledges that the Contract is not exclusive, and that TxDMV may solicit the same or similar Commodity Items from other DIR vendors at any time, which includes any potential future volumes or usages beyond the initial term of the Contract.
- 2.7 TxDMV makes no guarantee of volume or usage of work under the Contract.
- 2.8 Respondent is solely responsible for all expenses related to the preparation and submission of its Response.
- 2.9 A Response that is late, illegible, incomplete, or otherwise non-responsive will not be considered. If the Response is submitted electronically, TxDMV will not be responsible for failure of electronic equipment or operator error.
- 2.10 A Response that does not meet all requirements or contain all required documentation specified in the TxDMV Request may be rejected as non-responsive.

3. Information Technology Commodity Item Requirements

- 3.1 Unless otherwise indicated in the specifications provided by TxDMV (the “**Specifications**”), the Commodity Item(s) must be new and unused and of current production.
- 3.2 All electrical items must meet all applicable Occupational Safety and Health Administration’s standards and regulations, and bear the appropriate certification, approval, or listing from either the Underwriters Laboratories, Electrical Testing Laboratories, Farm Mechanization Research Centre, or National Electrical Manufacturers Association.
- 3.3 The Respondent’s (i.e., manufacturer’s) standard warranty must apply to the Commodity Item(s), unless otherwise stated in the Specifications or the Respondent’s DIR contract.
- 3.4 The Respondent will use commercially reasonable efforts to provide the Commodity Item(s) by the mutually agreed to delivery date(s) and devote adequate resources to meet its Contract obligations. Respondent will allocate all its resources necessary to provide the Commodity Item(s), at the sole expense of Respondent, by the delivery date(s) agreed to by the parties, unless otherwise specified in the Specifications.
- 3.5 Respondent will convey to TxDMV clear title, ownership, or licenses, whichever is applicable, to each Commodity Item provided under the Contract.
- 3.6 For each software product, Respondent represents that it has sufficient right, title, and interest in the software to grant the license required by the Contract.
- 3.7 If Respondent is a software publisher, Respondent represents that it has implemented processes for the protection, detection, remediation, mitigation, and timely customer notification of software vulnerabilities associated with its software.
- 3.8 If Respondent is a software publisher, Respondent represents that the software does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret, or other proprietary right.
- 3.9 Respondent represents that the software and/or equipment provided under the Contract will have the functionality specified in the associated technical documentation.
- 3.10 For a Respondent-hosted service, Respondent must, unless otherwise specified in the Specifications or Contract, provide to TxDMV for no additional compensation all “**TxDMV Data**” (as defined in Subsection 10.25 below) in a commercially standard database export format, or as directed in writing by TxDMV, within 30 days following the date of Contract expiration or termination. The Contractor shall certify in writing to TxDMV that all TxDMV Data has been returned and that no copies have been retained.
- 3.11 For purposes of a Contract for software, TxDMV is the licensee. For the avoidance of doubt, TxDMV’s internal business use of software includes any activities consistent with TxDMV’s statutory authority and such activities will not be construed to be a service bureau, application service provider, provider of services to third parties, distribution outside of TxDMV’s organization, or similar activity. Respondent acknowledges and agrees that TxDMV’s internal business use is within the scope of the license granted in the Contract.
- 3.12 During the Contract term, TxDMV may be presented with the requirement to ‘agree’ to a click-through agreement before accessing software provided under the Contract. Respondent

expressly agrees that the terms of any such click-through agreement will be considered null and void and will not apply in any manner to TxDMV or its authorized users, unless expressly accepted by TxDMV in writing. For the avoidance of doubt, the terms of the Contract supersede any click-wrap, shrink-wrap, browse-wrap, terms of service, or similar agreement which may accompany or be prerequisite to accessing the software or software solution (includes cloud-based software).

- 3.13 Any software deployment verification activities conducted by Respondent will be (i) not more often than once each Texas fiscal biennium, unless Respondent has a reasonable basis to believe that a violation of the license terms has occurred, (ii) in a manner that minimizes disruption to TxDMV's business operations, and (iii) during TxDMV's normal business hours. Respondent must comply with applicable TxDMV confidentiality requirements as well as information security, building access, and health and safety policies and procedures. Respondent, at its sole expense, may use an independent auditor to assist with such verification, provided Respondent has a written confidentiality agreement in place with such auditor that is no less stringent than the confidentiality obligations set forth in the Contract. Respondent will provide written notice if any verification activity indicates that TxDMV has used any software in excess of TxDMV's use authorizations or TxDMV is otherwise not in compliance with the license terms. Respondent will afford TxDMV at least thirty 30 days to review the findings, correct any factual errors, and annotate the findings with TxDMV's position as part of Respondent's verification activities. In the event that a non-compliance determination is made, Respondent must submit an invoice for any overuse of the software to TxDMV under Chapter 2251 of the Texas Government Code at rates provided to public sector entities, provided such rates do not exceed retail prices. Respondent understands that TxDMV will comply with applicable Texas state procurement law in the acquisition of additional licenses subject to this Subsection.

4. Award of Contract

- 4.1 A Respondent's Response to the TxDMV Request is an offer to contract based upon the terms, conditions, and Specifications contained with the request and Supplemental Terms and Conditions. A Response does not become binding and enforceable until it is accepted by TxDMV as evidenced by a fully executed TxDMV contract signature document or issuance of a TxDMV purchase order (collectively herein, the "Contract") to the successful Respondent ("Contractor").
- 4.2 TxDMV reserves the right to accept or reject all or any part of the Response, waive minor technicalities, and award the Contract that represents the best value to the State of Texas.
- 4.3 No terms or conditions advanced by the Contractor in its Response, by way of exception or other means, are included as part of the Contract, unless expressly agreed to in writing by TxDMV.
- 4.4 In the event the TxDMV purchase order is issued without a TxDMV contract signature document, any control order documented therein will control and govern the Contract. However, if a control order is not documented within the TxDMV purchase order, then in the event of a conflict, ambiguity, or inconsistency between or among the terms and conditions of the documents referenced therein, resolution thereof will be made based on the following list, and in the order stated: (i) the Contractor's DIR contract; (ii) the TxDMV purchase order and any purchase order change notices related thereto; (iii) the Supplemental Terms and Conditions; (iv) the TxDMV Request; (v) the Contractor's Response; and (vi) any other Contractor documents expressly agreed in writing by TxDMV to be included in the Contract. For the avoidance of

doubt, if the Contract is entered into through a TxDMV contract signature document, the Contract between parties consists only of the documents referenced in the TxDMV contract signature document, which will control in the order specified therein.

5. Delivery

- 5.1 No substitutions are permitted without written approval of TxDMV.
- 5.2 Delivery of the Commodity Item(s) must be made during normal agency business hours only, unless prior approval has been obtained from TxDMV.
- 5.3 If delivery will be delayed, the Contractor must immediately notify TxDMV upon discovery, but no later than 3 business days prior to the delivery date agreed to by the parties. Default in promised delivery or failure to fulfill the Specifications authorizes TxDMV to purchase the Commodity Item(s) elsewhere, pursue financial remedies available under the Contractor's DIR contract, and terminate the Contract for cause.
- 5.4 Any delivered Commodity Item(s) that fails to meet the Specifications or is not the actual item awarded under the Contract will be rejected and may be returned at the Contractor's sole expense.

6. Payment, Invoicing, and Discounts

- 6.1 The "Texas Prompt Payment Act," Chapter 2251 of the Texas Government Code, will govern remittance of all payment(s) and remedies for late payment and non-payment.
- 6.2 To receive payment, Contractor must submit correct itemized invoice(s) that includes the Contract number or TxDMV purchase order number, whichever is applicable, that satisfies the minimum standards established under Title 34 of the Texas Administrative Code, Part 1, Chapter 20, Subchapter F, Division 1, Section 20.487, in a secure, non-alterable electronic form (.pdf acceptable) emailed to: dmv_fin-invoices@txdmv.gov, in accordance with Subsection 6.3 below, or mailed to: Texas Department of Motor Vehicles, Attn: Payment Processing, 4000 Jackson Avenue, Austin, Texas 78731, with a courtesy copy to the TxDMV Contract Representative identified in the contract signature document or TxDMV purchase order. Any alternative invoice submission arrangements must be approved in writing by the TxDMV Contract Representative.
- 6.3 All invoices submitted via email by the Contractor must use the following naming convention for the subject line of the email: "Invoice Submission: Contractor's Legal Entity Name, Invoice Number, TxDMV Contract Number, and Services Date(s) or Month(s)." For example, an invoice submitted to TxDMV by ABC, Inc. for the month of January 2025 would state: "Invoice Submission: ABC, Inc., Invoice No. 1, TxDMV Contract No. 608-25-000001, January 2025."
- 6.4 If the Contractor at any time during the term of the Contract provides a discount on the final Contract costs, the Contractor must notify TxDMV in writing at least 10 days prior to the effective date of the discount. TxDMV will generate an amendment or purchase order change notice for the Contractor's review and execution or acceptance.
- 6.5 Reimbursement for travel, meals, lodging or other related expenses will not be made, unless specifically provided for in the Contract and approved in writing by TxDMV. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts' Texttravel guidelines, which can currently be accessed at: <https://fmxcpa.texas.gov/fmx/travel/texttravel/>.

- 6.6 TxDMV will pay no costs or other amounts incurred by the Contractor (or any Respondent) in responding to the TxDMV Request or incurred prior to the effective date of the Contract.
- 6.7 Purchases made for State of Texas use are exempt from the state sales tax and federal excise tax. Respondents must not include taxes in their Responses, nor will the Contractor include taxes in its invoice(s). Excise tax exemption certificates are available from TxDMV upon request.

7. Contract Representatives

- 7.1 The designated TxDMV contract representative as set forth in the TxDMV contract signature document or TxDMV purchase order, whichever is applicable, is authorized to administer activities that include, but are not limited to, non-legal notices, consents, approvals, inspections, requests, or other general communications provided for or permitted under the Contract. The TxDMV contract representative may be changed by providing written notice to the Contractor.
- 7.2 Contractor must designate in writing a contract representative that is authorized to administer activities that include, but are not limited to, non-legal notices, consents, approval, inspections, requests, or other general communications, provided for or permitted under the Contract in its Response. The Contractor's contract representative may be changed by providing written notice to the TxDMV contract representative.

8. Legal Notices

- 8.1 Any legal notice required under the Contract must be provided as directed in the Contractor's DIR contract, with an additional copy provided to TxDMV at the following address:

**Texas Department of Motor Vehicles
Attn: Office of General Counsel
4000 Jackson Avenue
Austin, Texas 78731**

- 8.2 Legal notices given by the Contractor to TxDMV under the Contract will be deemed effective only if and when received by TxDMV's Office of General Counsel. A copy of any legal notice must be provided to the TxDMV Contract Representative via email within 24 hours of a legal notice being deposited in the United States mail or with a common carrier.
- 8.3 TxDMV reserves the right to update its legal notice contact information without the requirement for execution of a written amendment or purchase order change notice to the Contract by providing notice to the Contractor's contract representative.

9. Texas Required Contract Clauses

- 9.1 General. The terms in Section 9 are required when contracting with a Texas state agency in accordance with Section 2262.051(d)(1) of the Texas Government Code. In the event of a conflict or inconsistency between or among a term in this Section and a term in Contractor's DIR contract, the term of the DIR contract supersedes and controls to the extent permitted by the Constitution and laws of the State of Texas, and the Texas Comptroller of Public Accounts' statewide procurement and contracting guidance. Additionally, it should be noted that within the context of this Section, the term 'Contractor' refers to any Respondent who submits a Response, as well as the successful Respondent who is ultimately chosen for the award.
- 9.2 Antitrust Affirmation. Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the

federal antitrust laws, or (2) communicated directly or indirectly the contents of any related TxDMV Request to any competitor or any other person engaged in the same line of business as Contractor. Additionally, Contractor hereby assigns to TxDMV any and all claims for overcharges associated with the Contract arising under this Subsection.

- 9.3 Assignment. In accordance with Section 2262.056 of the Texas Government Code, Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from TxDMV. Any attempted assignment in violation of this provision is void and without effect.
- 9.4 Buy Texas Affirmation. Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
- 9.5 Child Support Obligation Affirmation. "Under Section 231.006, Family Code, the [Contractor] certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- 9.6 Cloud Computing State Risk and Authorization Management Program (TX-RAMP). If providing cloud computing services for TxDMV pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Contractor represents and warrants that it complies with the requirements of the state risk and authorization management program and Contractor agrees that throughout the term of the Contract it shall maintain its certifications and comply with the program requirements in the performance of the Contract. Contractor acknowledges that the Contract may be terminated by TxDMV without recourse and payment withheld if this representation is shown to be inaccurate.
- 9.7 Computer Equipment Recycling Program. If the Contract is for the purchase or lease of computer equipment, then Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in Title 30 of the Texas Administrative Code, Part 1, Chapter 328.
- 9.8 Contracting Information Responsibilities (\$1 Million or Greater in Public Funds). Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 9.9 COVID-19 Vaccine Passport Prohibition. Under Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that the individual or business entity named in the Response or Contract is not ineligible to receive the specified Contract.
- 9.10 Critical Infrastructure Affirmation. If Contractor will be granted direct or remote access to or control of critical infrastructure in the State of Texas, other than access specifically allowed for product warranty and support purposes, as defined by Section 2275.0101 of the Texas Government Code under the Contract, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country

- designated by the Governor under Texas Government Code Section 2275.0103, or (2) headquartered in any of those countries.
- 9.11 Cybersecurity Training. If Contractor has access to any Texas state computer system or database, Contractor shall complete cybersecurity training and verify completion of the training program to TxDMV pursuant to and in accordance with Section 2054.5192 of the Texas Government Code. TxDMV will not compensate Contractor for time spent completing the cybersecurity training.
- 9.12 Data Management and Security Controls. In accordance with Section 2054.138 of the Texas Government Code, Contractor certifies that it will comply with the security controls required under the Contract and will maintain records and make them available to TxDMV as evidence of Contractor's compliance with the required controls. This clause only applies if the Contractor is authorized to access, transmit, use, or store data for TxDMV under the Contract.
- 9.13 Dealings with Public Servants Affirmation. Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
- 9.14 Debts and Delinquencies Affirmation. Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
- 9.15 Disaster Recovery Plan. In accordance with Title 13 of the Texas Administrative Code, Part 1, Chapter 6, Subchapter C, Section 6.94(a)(9), Contractor shall provide to TxDMV the descriptions of its business continuity and disaster recovery plans.
- 9.16 Dispute Resolution. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Title 43 of the Texas Administrative Code, Part 10, Chapter 210, Subchapter C, Section 210.41 must be used to attempt to resolve any dispute arising under the Contract.
- 9.17 Entities that Boycott Energy Companies. Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TxDMV.
- 9.18 Entities that Boycott Israel. Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. Additionally, pursuant to Texas Executive Order No. GA-43, Contractor represents and warrants that all goods or products that may be provided under the Contract were not produced in or exported from the Gaza Strip, and from any organization or state actor with ties to Hamas. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TxDMV.
- 9.19 Entities that Discriminate Against Firearm Entities and Trade Associations. Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TxDMV.
- 9.20 E-Verify Program. Contractor certifies that for contracts for services, the Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:
- all persons employed by Contractor to perform duties within Texas; and
 - all persons, including subcontractors, assigned by Contractor to perform work pursuant the Contract within the United States of America.
- 9.21 Excess Obligations Prohibited. The Contract is subject to termination or cancellation, without penalty to TxDMV, either in whole or in part, subject to the availability of State of Texas funds. In the event the Contract is terminated due to non-appropriation of funds, such termination shall not affect TxDMV's right to use previously paid licensed software through the term of each such license and any maintenance and support paid prior to such termination, if applicable to the Contract.
- 9.22 Excluded Parties. Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 9.23 Executive Head of a State Agency Affirmation. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a Texas state agency, Contractor certifies that it is not (1) the executive head of TxDMV, (2) a person who at any time during the 4 years before the date of the Contract was the executive head of TxDMV, or (3) a person who employs a current or former executive head of TxDMV.
- 9.24 False Statements. If Contractor submits the Response with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Response, Contractor will be in default under the Contract and TxDMV may terminate or void the Contract.
- 9.25 Financial Participation Prohibited Affirmation. "Under Section 2155.004, Texas Government Code, the [Contractor] 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."
- 9.26 Foreign Terrorist Organizations. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 9.27 Governing Law and Venue. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless mandated otherwise by Texas statute.
- 9.28 Hardening of State Government. In accordance with Texas Executive Order No. GA-48, Contractor certifies by submitting a Solicitation Response that it, and, if applicable, any of its holding companies or subsidiaries, is not: (1) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA"); (2) listed in Section 1260H of the 2021 NDAA; (3) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or (4) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

9.29 Human Trafficking Prohibition. “Under Section 2155.0061, Texas Government Code, the [Contractor] 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.”

9.30 **INDEMNIFICATION (GENERAL).** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDMV, 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 CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OAG. CONTRACTOR AND TXDMV AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

THIS SUBSECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR TXDMV FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TXDMV OR ITS EMPLOYEES.

9.31 **INDEMNIFICATION (IP).** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TXDMV 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 CONTRACTOR PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) TXDMV'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDMV BY CONTRACTOR OR OTHERWISE TO WHICH TXDMV HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TXDMV AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE TXDMV 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 TXDMV DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TXDMV IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDMV WILL BE PERMITTED

TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TXDMV'S COUNSEL.

9.32 National Anthem Verification. If Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of the Contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State of Texas. TxDMV or the Attorney General may strictly enforce this provision.

9.33 No Conflicts of Interest. Contractor represents and warrants that the provision of goods, products, and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

9.34 Prior Disaster Relief Contract Violation. “Under Section 2155.006 [and Section 2261.053], Government Code, the [Contractor] 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.”

9.35 Public Information Act. Contractor understands that TxDMV will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with the TxDMV Request or Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State of Texas.

9.36 Signature Authority. By submitting the Response, Contractor represents and warrants that the individual submitting the Response and the documents made part of the Response is authorized to submit such Response on behalf of the Contractor and to bind the Contractor under any Contract that may result from the submission of the Response.

9.37 State Auditor's Right to Audit. The Texas state auditor may conduct an audit or investigation of any entity receiving funds from the State of Texas 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.

9.38 Suspension and Debarment. Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any federal or Texas state agency.

9.39 Television Equipment Recycling Program. If the Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is in compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

10. Additional Terms and Conditions

10.1 Contractor's DIR Contract Terms. The terms and conditions of the TxDMV Request may not weaken or diminish any terms and conditions of the Contractor's DIR contract. To the extent that the Contractor's DIR contract provides more favorable terms to TxDMV or imposes more rigorous obligations on Contractor, the DIR contract terms supersede and control over the TxDMV Request and Supplemental Terms and Conditions. As permitted by the Contractor's DIR contract, TxDMV may add additional terms and negotiate written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to the Contract.

10.2 Abortion Provider and Affiliate Transactions Prohibited. Contractor represents and warrants that the Contract is not a taxpayer resource transaction prohibited by Section 2273.003 of the Texas Government Code and that payments made by TxDMV to the Contractor and the Contractor's receipt of appropriated funds under the Contract and any related TxDMV Request are not prohibited by Texas General Appropriations Act. For the avoidance of doubt, this Subsection does not apply to a hospital licensed under Chapter 241 of the Texas Health & Safety Code, or an office exempt under Section 245.004(a)(2) of the Texas Health & Safety Code.

10.3 Amendment. The Contract may only be amended by an amendment executed by both Parties for a bilaterally executed contracts, or a purchase order change notice for purchase order Contracts and identifies itself as an amendment to the Contract. All correspondence regarding proposed changes or modifications to the Contract must be provided to the TxDMV contract representative for review in advance of the effective date of the amendment, though the TxDMV contract representative does not have the authority to bind TxDMV to changes, modifications, or amendment to the Contract.

10.4 Assignment by TxDMV. TxDMV may in one or more transactions assign, pledge, or transfer its interest in or duties or rights under the Contract without notice or approval. Upon receipt of TxDMV's notice of assignment, pledge, or transfer, the Contractor must cooperate with TxDMV in giving effect to such assignment, pledge, or transfer, at no cost to TxDMV or to the recipient Texas state agency or institution of higher education as designated by the Texas Legislature.

10.5 Contractor's Compliance Verification. Contractor agrees by entering into the Contract that prior to any software compliance audit, the Contractor, and its representative, if applicable, must enter into a TxDMV non-disclosure agreement to protect all confidential information that may be shared during such audit. The compliance audit methodology, date, time, and location must be mutually agreed upon between TxDMV and the Contractor, with at least 15 business days' advance notice provided by the Contractor. Additionally, the Contractor further agrees that TxDMV will be subject to a maximum of 1 compliance audit every 2 years, or, alternatively, TxDMV may self-certify its compliance in lieu of such audit.

10.6 Compliance with Applicable Laws. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable United States, Texas, county, and city rules, regulations, statutes, codes, and other laws that pertain to the Contract.

10.7 Confidentiality. Contractor must maintain the confidentiality of, and will not disclose to third parties, without TxDMV's prior written consent, any TxDMV "**Confidential Information**" (as defined in the Contractor's DIR contract) that includes, but is not limited to, TxDMV Data, and TxDMV's business activities, practices, systems, conditions, and services. This requirement must also be included in all subcontracts awarded by the Contractor.

Additionally, Contractor must immediately notify TxDMV via email to txdmvsecurityincidents@txdmv.gov with a copy to the TxDMV Contract Representative regarding any unauthorized release of Confidential Information when the Contractor knows or should have known of such unauthorized release. To avoid any confusion, the Contractor acknowledges and understands that if a 'breach of system security' is determined to have occurred, the Contractor must comply with the notification requirements outlined in Section 521.053 of the Texas Business and Commerce Code. This includes, but is not limited to, notifying the Texas Office of the Attorney General within 30 days of certain breaches.

10.8 Contractor Abandonment. If the Contractor abandons the Contract and the default causes the Commodity Items to be re-procured, Contractor may not be considered for future procurement opportunities to provide same or similar Commodity Items.

10.9 Criminal History Background Checks. Contractor will ensure its personnel and/or subcontractors and their employees who perform under the Contract have passed a criminal history background investigation if required by TxDMV, prior to being assigned to the project, so there is no lapse or delays in providing the Commodity Items under the Contract. If a background investigation reveals a Class A Misdemeanor or felony, the Contractor must notify the TxDMV contract representative to seek written approval in advance of assigning an employee and/or subcontractor to provide any work under the Contract. The Contractor will be solely responsible for any costs associated with the criminal history background investigation.

If TxDMV requires a criminal history background check under the terms of the TxDMV Request, Contractor must not allow personnel who have not successfully completed a TxDMV required criminal history background investigation and who do not otherwise maintain a TxDMV security clearance to provide any work under the Contract. TxDMV will have the right to prevent the Contractor's personnel from gaining access to TxDMV buildings 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.

10.10 Independent Contractor. Contractor and its employees, representatives, agents, subcontractors, suppliers, and third-party service providers will serve as independent contractors in providing the goods, products, or services under the Contract. Neither Contractor nor TxDMV is an agent of the other and neither may make any commitments on the other party's behalf. The Contractor will have no claim against TxDMV for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract does not create any joint venture, partnership, agency, or employment relationship between TxDMV and the Contractor.

10.11 Limitation on Authority. Contractor does not have any authority to act for or on behalf of TxDMV or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. The Contractor may not

incur any debt, obligation, expense, or liability of any kind on behalf of TxDMV or the State of Texas.

10.12 Media Release and Public Announcements. Contractor must not use TxDMV's name, logo, or other likeness in any press release, marketing material, or other announcement without TxDMV's prior written approval. TxDMV does not endorse any vendor, commodity, or service. The Contractor is not authorized to make or participate in any media releases, public announcements, or marketing activities pertaining to the Contract or the goods, products or services to which it relates without TxDMV's prior written consent, and then only in accordance with explicit written instruction from TxDMV. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, training, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by the Contractor under the Contract.

10.13 **NO TXDMV INDEMNIFICATION. FOR THE AVOIDANCE OF DOUBT, ANY REQUIREMENT THAT TXDMV DEFEND, INDEMNIFY, OR HOLD HARMLESS THE CONTRACTOR OR ANY OTHER ENTITY IN THE RESPONSE OR CONTRACTOR'S OTHER DOCUMENTS (INCLUDING BUT NOT LIMITED TO CLICK-THROUGH AGREEMENT, TERMS OF SERVICE, OR SIMILAR AGREEMENT) ARE REJECTED, VOID, UNENFORCEABLE, AND WITHOUT ANY FORCE OR EFFECT UNDER THE CONTRACT.**

10.14 No Felony Criminal Convictions. Contractor represents that neither the Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred the Contractor has fully advised TxDMV in writing of the facts and circumstances surrounding the convictions in the Response. If circumstances change during the course of the Contract, the Contractor must promptly notify TxDMV and understands that failure to update TxDMV timely will constitute breach of contract and may result in the immediate termination of the Contract.

10.15 No Implied Waiver. The failure of TxDMV to object to or to take affirmative action with respect to any conduct of the Contractor which is in violation or breach of the terms of the Contract will not be construed as a waiver of the violation or breach, or of any future violation or breach.

10.16 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. If payment in whole or in part under the Contract is from federal funds, the Contractor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract or funding pursuant to 2 C.F.R. § 200.216.

10.17 Public Nature of Contractor's Response and Posting of Certain Contracts on Websites. Contractor understands, acknowledges, and accepts that TxDMV will comply with the requirements of Sections 322.020, 2157.0685, and 2261.253 of the Texas Government Code regarding the reporting and posting of contracts. To the extent the Contract falls within these requirements, TxDMV will post the Contract, including any associated Attachments (such as the Contractor's Solicitation Response), on either the Legislative Budget Board's database of State agency contracts or the TxDMV website, as applicable, which are currently accessible at: https://www.lbb.texas.gov/contract_reporting.aspx and <https://www.txdmv.gov/contractors-vendors> (Contract Reporting Tab). This posting will exclude information covered by the "Texas Public Information Act," if any, as referred to in Subsection 9.35 above. Notwithstanding any confidentiality, proprietary, or other similar markings,

Contractor agrees that its Solicitation Response is a public document upon execution of the Contract, and TxDMV may distribute copies of the Solicitation Response to third parties in the ordinary course of business, including responses to public information requests and postings on the aforementioned websites. Any information withheld or redacted by TxDMV during this process does not represent or guarantee that this information is excepted from disclosure under a public information request.

10.18 Records Retention. Contractor must maintain and retain all records related to the performance of the Contract, including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable Texas state requirements. These records must be kept for a period of 7 years after the Contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

10.19 Rolling Estoppel. If the Contractor is aware a problem exists and fails to report the problem to TxDMV, the Contractor continues to be responsible for meeting the timelines and due dates established in the Contract. Under these circumstances, TxDMV will not be liable for any detrimental consequences.

10.20 Safety Standards. Contractor, and its employees, subcontractors, and agents must observe all safety measures and proper operating procedures at TxDMV locations at all times. The Contractor will direct its employees, subcontractors, and agents to immediately report to TxDMV any defect or unsafe condition encountered while on TxDMV premises.

10.21 Severability. If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

10.22 Sovereign Immunity. Nothing in the Contract will be construed as a waiver of the State of Texas or TxDMV's sovereign immunity. The Contract does not constitute nor will be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or TxDMV. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the State of Texas or TxDMV under the 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. TxDMV does not waive any privileges, rights, defenses, or immunities available to TxDMV by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

10.23 Survival of Terms. Expiration or termination of the Contract for any reason does not release the Contractor 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 warranties, affirmations, and federal requirements; indemnification; submission of invoices; confidential information and security provisions; data ownership, use, and return; records and audit provisions; Contract enforcement provisions; contract representatives and notification provisions; state property provisions; remedies; governing law and venue; intellectual property provisions; media releases and public announcements; marketing activities; rights and remedies upon termination, and any other provisions of the Contract that impose continuing obligations on either of the parties or that govern the rights and limitations of either of the parties after the termination or expiration of the Contract.

10.24 Trademark Ownership. Contractor acknowledges and agrees that the agency's trademarks remain the exclusive property of TxDMV, that all right, title, and interest in and to the trademarks is exclusively held by TxDMV, and all goodwill associated with such trademarks inures solely to TxDMV.

10.25 TxDmv Data Ownership, Use, and Return. Contractor acknowledges and agrees that all information and data provided by or on behalf of TxDMV or gathered or generated by the Contractor on behalf of TxDMV, including all data generated, processed, transmitted, or stored by the Contractor in the course of performance of its duties under the Contract (the "**TxDmv Data**") shall be and remain the sole property of TxDMV. The Contractor also acknowledges that all such data is confidential and proprietary to TxDMV. Furthermore, a Contractor that stores, collects, or maintains TxDMV Data as a condition of the Contract, agrees to the following additional conditions:

- a. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process TxDMV Data except as required for the Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by TxDMV. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, TxDMV Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of TxDMV;
- b. Contractor will, within 30 business days of Contract expiration or termination, or upon written request by TxDMV, and at no additional cost to TxDMV, promptly return all TxDMV Data to TxDMV, including any copies made, in a digital format specified by TxDMV, and in a manner that is complete, accurate, and accessible to TxDMV. The Contractor will not retain any copies of the returned TxDMV Data, unless expressly permitted in writing by TxDMV. The Contractor will certify in writing to TxDMV that all TxDMV Data has been returned to TxDMV and that no copies have been retained.
- c. The proprietary nature of the Contractor's procedures in processing, storing, collecting, and/or transmitting TxDMV Data will not excuse the Contractor's performance of its obligations under the Contract;
- d. Contractor must promptly assist TxDMV in documenting data classifications for all TxDMV Data stored or processed through the Contractor's information technology systems, upon request; and
- e. For the avoidance of doubt, Contractor is required to fulfill all responsibilities regarding the handling, return, and confidentiality of TxDMV Data as stipulated in the Contract, notwithstanding the conclusion of the contractual relationship.

10.26 TxDmv Data Location, Transfer, and Access Restrictions. Contractor and its subcontractors must ensure that all TxDMV Data, including any TxDMV Data residing in backup or disaster recovery systems, remains within the contiguous United States, and may not be accessed, viewed, stored, processed, transmitted, received, or disposed of via information technology systems located outside the contiguous United States without obtaining prior written approval from TxDMV. If such approval is granted, the Contractor must notify DIR in writing within 5 business days, in accordance with the Contractor's DIR contract. The Contractor must also not store TxDMV Data on portable devices, including personal laptops and desktop computers, except as required for the Contractor to fulfill its obligations under the Contract, or as authorized in advance in writing by TxDMV. Additionally, upon request by TxDMV, the Contractor must immediately disclose any data center(s) and server

locations where TxDMV Data is held or will be stored, as well as any redundant server locations.

10.27 TxDmv's Right to Audit. Contractor must make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by TxDMV and the State of Texas.

10.28 Unfair Business Practices. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The 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 an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

10.29 Use of State Property. Contractor and its subcontractors are strictly prohibited from using Texas state property for any purpose other than fulfilling their obligations authorized under the Contract. 'Texas state property,' as defined in the Contract, encompasses various resources, including, but not limited to, TxDMV's office space, identification badges, information technology equipment (e.g., laptops, portable printers, cell phones, iPads, external hard drives, and data storage devices), TxDMV-issued software, the TxDMV Virtual Private Network, and any other resources of TxDMV. Additionally, the Contractor and its subcontractors must not remove Texas state property from within Texas, or access TxDMV's network or email using any computing device while outside of the contiguous United States without prior written approval from TxDMV. Maintenance services on Texas state property are only allowed if expressly authorized by the Contract. During the possession of Texas state property, the Contractor and its subcontractors are responsible for repair and replacement charges associated with loss or damage beyond normal wear and tear, and charges attributable to Contractor's or its subcontractors use of Texas state property that exceeds the Contract scope. Any charges must be fully reimbursed to TxDMV by the Contractor within 10 business days of receiving notice. Unauthorized use of Texas state property constitutes a breach of contract and may lead to termination of the Contract and TxDMV evoking other remedies available under the Contract or at law.

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