

Exhibit A

Texas Department of Housing and Community Affairs

Terms and Conditions

Alphabetical Order

No substantive modifications or additions to these T&C will be considered.

1. Abandonment or Default

If the Respondent defaults on the contract, TDHCA reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the TDHCA based on the seriousness of the default. *In the event of abandonment or default, Respondent will be responsible for paying damages to TDHCA including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TDHCA resulting from the Respondent's non-performance.*

2. Additional Categories

Additional categories of goods or services may be added to the contract at offer rates for equivalent categories and under the same terms and conditions of the existing contract. Categories are to be prorated according to period of coverage. The cap, or limit that can be added to the contract for categories is dependent upon agreement of both parties.

3. Amendments

Except as provided in this Contract, this Contract may be amended only upon written agreement between *TDHCA* and Respondent; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

4. Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973

Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of the Rehabilitation Act of 1973 (Section 504) and implementing regulations, as each may be amended.

5. Antitrust

Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent or the firm, corporation, partnership, or institution represented by Respondent, 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 this Response to any competitor or any other person engaged in the same line of business as the Respondent.

6. Applicable Law; Venue

This 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 the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting agency.

7. Assignment

Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the TDHCA. Any attempted assignment in violation of this Section is void and without effect.

8. Binding Effect

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

9. Buy Texas

In accordance with Texas Government Code, Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in

Texas when they are available at a price and time comparable to products and materials produced outside this state.

10. Change in Law and Compliance with Laws

Respondent must comply with all laws, regulations, requirements and guidelines applicable to a Respondent providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. *TDHCA* reserves the right, in its sole discretion, to unilaterally amend this Contract prior to award and throughout the term of the contract to incorporate any modifications necessary for *TDHCA*'s compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements, and guidelines.

11. Clean Air Act

Respondent agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), if the award is over \$150,000. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

12. Computer Equipment Recycling Program

If Respondent is submitting a response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

13. Confidentiality and Open Records

Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Respondents are encouraged to minimize the amount of information submitted that reveals any privacy or proprietary interests, as defined in the Public Information Act. If Respondent includes such information in its response, Respondent shall also include a prominent notice that the response contains information that Respondent claims reveals privacy or proprietary interests. If Respondent's response is the subject of a public information request, *TDHCA* will make a good faith attempt to notify Respondent at its address of record, and seek a decision from the Attorney General as to whether the information should be released. Respondent will have an opportunity to provide arguments to the OAG, in writing, in support of its claim to withhold the information before any information is released.

In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with *TDHCA* pursuant to this contract available in a format that is accessible by the public at no additional charge to *TDHCA*.

The following are the format requirements of this contract:

1. Information created or exchanged with *TDHCA* on paper will be made available either on paper or scanned Portable Document Format (PDF) files.
2. Information created or exchanged with *TDHCA* through email, email attachments, or other form of electronic file transfer will be made available in the same format in which it was originally created or exchanged, with the following exception. If the requestor is unable to read the original format with software that they already own or is available at no cost, the Respondent will either print the requested information, convert it to PDF, or after obtaining approval from *TDHCA*, convert it to another file format that can be read with software that is available at no cost.
3. Information created or exchanged with *TDHCA* through software applications and stored in databases will be made available through an export to comma-separated values (CSV) format or, after the Respondent obtains approval from *TDHCA*, another format that can be read with software that is available at no cost.

An information request received by the Respondent directly from the public will be communicated to *TDHCA* by the close of the business day after the day the request is received. After gathering all information that is responsive to the request, but in no event later than 5 business days after receiving the information request, the Respondent will transfer the information to *TDHCA* for review so that *TDHCA* can redact information that *TDHCA* is specifically authorized to redact, and determine whether any of the information should be otherwise withheld. The Respondent shall not provide any requested information directly to the public.

If Respondent cannot gather and transfer all responsive information to *TDHCA* within the 5 business day time limit, Respondent shall contact Jeff Pender, *TDHCA* Legal Services at (512) 475-4752, as soon as it determines it may not make the 5 business day deadline.

14. Damage to Government Property

In the event of loss, destruction or damage to any *TDHCA* or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to

TDHCA and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse TDHCA and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of TDHCA's notice of amount due.

15. Debts or Delinquencies to State

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

16. Deceptive Trade Practices; Unfair Business Practices

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

17. Default

If Respondent is found to be in default under any provision of this Contract, TDHCA may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Respondent will be responsible for paying damages to TDHCA including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TDHCA resulting from Respondent's non-performance. The defaulting Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specifications or scope of work is significantly changed.

18. Disclosure of Interested Parties

Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to TDHCA a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

19. Discounts

If Respondent at any time during the term of the contract provided a discount on the final contract costs, Respondent will notify TDHCA in writing ten (10) calendar days prior to the effective date of the discount. TDHCA will generate a Purchase Order Change Notice /Amendment and send a revised Purchase Order or fully executed Amendment (containing both party signatures) to Respondent.

20. Dispute Resolution

The dispute resolution process provided for in, Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract.

21. Drug Free Workplace

The Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. §701 *et seq.*) and maintain a drug-free work environment.

22. Electrical Items

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

23. Electronic and Information Resources Accessibility Standards, As Required by Texas Administrative Code (TAC), Title 1, Part 10, §213 (Applicable to State Agency and Institution of Higher Education Purchases Only).

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

(2) Respondent shall provide TDHCA 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 §508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Respondents not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide TDHCA 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/>.

24. Eligibility

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

25. Equal Employment Opportunity and Contract Work Housing and Safety Standards Act

Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities. Respondent also represents and warrants its compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

26. E-Verify System

Respondent certifies that it utilized and will continue to utilize 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 Respondent to perform work pursuant to the Contract within the United States of America.

27. Family Code

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

28. False Statements

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

29. Federal Occupational Safety and Health Law

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

30. Federal, State, and Local Requirements

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

31. Felony Criminal Convictions

Respondent represents neither Respondent nor 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 Respondent has fully advised *TDHCA* in writing of the facts and circumstances surrounding the conviction.

32. Financial Interests; Gifts

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

33. Force Majeure

Neither Respondent nor *TDHCA* shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

34. Funding/Excess Obligations Prohibited/Non-Appropriation

The contract is subject to termination or cancellation, without penalty to *TDHCA*, either in whole or in part, subject to the availability of state funds. *TDHCA* is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If *TDHCA* becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either *TDHCA*'s or Respondent's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of termination or cancellation under this Section, *TDHCA* will not be liable to Respondent for any damages, that are caused or associated with such termination, or cancellation, and *TDHCA* will not be required to give prior notice.

35. HUBs

Respondent represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Government Code, Chapters 2161 and 2261. A HUB Subcontracting Plan form must be filled out and returned with the Response to be considered responsive. If the Response does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

36. Immigration

Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. §1101 *et seq.*) and all subsequent immigration laws and amendments.

37. INDEMNIFICATION

RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND *TDHCA*, 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 RESPONDENT 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 RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND THE AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Intellectual Property

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

38. Independent Contractor

Respondent and Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Respondent nor TDHCA is an agent of the other and neither may make any commitments on the other party's behalf. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), TDHCA is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Respondent shall have no claim against TDHCA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Respondent and TDHCA.

39. Insurance

Respondent represents and warrants that it will, within five (5) business days of executing this agreement, provide TDHCA with current certificates of insurance or other proof acceptable to TDHCA of the following insurance coverage:

Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract, does not apply to Sole Proprietors;

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

Respondent represents that it will maintain fidelity bond insurance at a minimum of the greater of \$50,000 or the amount of 10% of the Contract. The fidelity bond insurance must cover all officers, employees, or contractors that sign or counter-sign checks, or approve or disperse funds under this Contract in an amount that exceeds \$250. Respondent is responsible for submitting claims when losses are discovered.

Respondent represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage.

Respondent also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TDHCA. Respondent represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide TDHCA with an executed copy of the policies immediately upon request.

40. Legal and Regulatory Actions

Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the TDHCA's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents

and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or service, or otherwise be relevant to TDHCA's consideration of the Response. In addition, Respondent represents and warrants that it shall notify TDHCA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

41. License Grant

Respondent hereby grants to TDHCA a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restricts and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.

42. Limitation on Authority

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

43. Lobbying Prohibition

Respondent represents and warrants that TDHCA's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections §556.005 or §556.0055 of the Texas Government Code. Respondent certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Respondent also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

44. Media Releases

Respondent shall not use TDHCA's name, logo, or other likeness in any press release, marketing material, or other announcement without TDHCA's prior written approval. TDHCA does not endorse any Respondent, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcement pertaining to this procurement, the Response or the services to which they relate without TDHCA's prior written consent, and then only in accordance with explicit written instructions from TDHCA.

45. Merger

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

46. No Conflicts of Interest

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

47. No Implied Waiver

No provision of the contract shall be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TDHCA as an agency of the State of Texas or otherwise available to TDHCA. The failure to enforce or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to TDHCA by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

48. No Liability Upon Termination

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

49. No Quantity Guarantees

TDHCA makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

50. No Third-Party Beneficiaries

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

51. Notices

Any written notices required under this Contract will be by either hand delivery to Respondent's office address specified on Page 1 of this Contract or by overnight carrier, to Texas Department of Housing and Community Affairs, PO Box 13941, Austin, TX 78711-3911. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this section by written notification to the other party.

52. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed PO Contract, Attachments, Procurement Document, Response to the Procurement Document, Negotiated Items signed by both parties.

53. Partially Completed Work

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

54. Patent, Trademark, Copyright, and Other Infringement Claims

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

55. Payments/Prompt Payment

Prior to authorizing payment to Respondent, *TDHCA* shall evaluate Respondent's performance using the performance standards set forth in all documents constituting the contract. Respondent shall provide invoices to *TDHCA* for Commodities/Services provided/performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

56. Payments-Refund

Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by *TDHCA* which are not expressly authorized under the contract.

57. Personnel

Respondent shall assign only qualified personnel to this Contract. Respondent, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Respondent shall provide to *TDHCA* prior written notice and obtain prior approval from the Department of any proposed change in key personnel involved in providing services under this Contract.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve Respondent of responsibility for ensuring the requested services are provided. If Respondent uses a subcontractor for any or all of the work required, the following conditions shall apply:

- (1) Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- (2) Subcontracting shall be solely at Respondent's expense.

(3) TDHCA retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.

(4) A subcontract award (see 2 CFR §180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(5) Respondent shall be the sole contact for TDHCA. Respondent shall list a designated point of contact for all TDHCA inquiries.

58.. Procurement of Recovered Materials

Respondent agrees to follow, as applicable, the requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

59. Prohibition on Purchase of Certain Telecommunications Equipment

Respondent certifies that it will not spend awarded funds on prohibited telecommunications equipment including:

(a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(c) Telecommunications or video surveillance services provided by such entities or using such equipment;

(d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

(d) Covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(f) For additional information, see section 889 of Public Law 115-232 and §200.471.

60. Property Rights/Work Made for Hire

For purposes of the contract, the term "Work Product" is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property and/or results of the services that are developed, produced, generated or provided to TDHCA in connection with, or as a result of, the services provided under the contract. TDHCA and Respondent intend this agreement to be a contract for the services and each considers and expressly intends and agrees that the Work Product to be rendered by Respondent shall be a work-made-for-hire. Respondent and Respondent's employees will have no rights in or ownership of the Work Product or any other property of TDHCA. Respondent acknowledges and agrees that the Work Product (and all rights therein, including without limitation all intellectual property rights) belongs to and shall be the sole and exclusive property of TDHCA. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, Respondent does hereby irrevocably sell, assign, and transfer to TDHCA, its successors and assigns, the entire right, title and interest in and to the Work

Product and any and all intellectual property rights embedded therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Respondent agrees to execute all papers and to perform such other property rights, as TDHCA may deem necessary to secure for TDHCA or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work Product that cannot be assigned to TDHCA, Respondent hereby grants to TDHCA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon TDHCA's request, Respondent shall deliver to TDHCA all completed, or partially completed, Work Product and any and all versions thereof. Failure to timely deliver such Work Product will be considered a material breach of the contract. Respondent will not make or retain any copies of the Work Product or any and all documentation or other products and results of the services without the prior written consent of TDHCA.

61. PROPRIETARY INFORMATION:

If Respondent asserts that any information in its response implicates its privacy or property interests ("Proprietary Information"), as more fully defined in Tex. Gov't Code §552.305, Respondent must clearly identify such information in its response by placing the words, "Proprietary Information" in bolded, size 12 or greater font, at the top of each page that Respondent claims contains any Proprietary Information. If such information is later requested under the Texas Public Information Act, Respondent will be notified by TDHCA and given an opportunity to present arguments in writing to the OAG why the information should not be released. Respondent hereby agrees that any pages of its response not properly labeled "Proprietary Information" as described above, may be released to the public upon request.

62. Secure Erasure of Hard Disk Capability

All equipment provided to TDHCA by Respondent that is equipped with hard disk drives (*i.e.*, computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

63. Security Policy

Respondent shall comply with TDHCA policies regarding building access and physical security as appropriate. Respondent shall comply with TDHCA's Computer Services Security Policies as appropriate. The selected Respondent shall be provided with such policies after the award has been made. The selected Respondent will conform to the State of Texas Security policies and procedures for handling data. Respondent acknowledges that no personally identifiable or private information collected will be used, sold or shared by the Respondent for any purpose other than the intended purpose. In the event of a security breach where names, mailing addresses, birthdates, social security numbers, credit card information and drivers license data is disclosed, Respondent will be responsible for notifying anyone affected by such a security breach. Failure to comply with security standards may lead to the suspension or termination of this contract. If a security breach occurs on the agency's side, the selected Respondent will not be liable if the agency is at fault.

64. Service Adjustment/Contingency Requirements

The State envisions the necessity from time to time to incur additional changes against this contract to be considered "Service Adjustments/Contingency Requirements" (SACR). This is to include any service recognized to be needed to accommodate unforeseen occurrences. This SACR shall not exceed agreed upon percentage by both parties of the total estimated cost by the awarded Respondent.

65. Severability Clause

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.

66. Signatories

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

67. Smoking

TDHCA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Respondent, by acceptance of this contract, agrees to abide by this policy when on the property of *TDHCA*.

68. Strict Compliance

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

69. Substitutions

Substitutions are not permitted without written approval from *TDHCA*.

70. Records Retention

Respondent shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

71. Sovereign Immunity

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the *TDHCA* or the State of Texas of any immunities from suit or from liability that the *TDHCA* or the State of Texas may have by operation of law.

72. Subcontractors

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

73. Survival of Terms

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

74. Taxes

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. *TDHCA* will furnish Tax Exemption Certificates upon request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Respondent or its employees. *TDHCA* shall not be liable for any taxes resulting from the contract.

75. TDHCA's Right to Audit

Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by *TDHCA* and the State of Texas.

76. Television Equipment Recycling Program

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

77. Terms and Conditions Attached to Response

Any terms and conditions attached to the response will not be considered unless specifically referred to in the response.

78. Term and Termination

This Contract shall become effective on the date signed by the appropriate Procurement official of *TDHCA* and shall terminate approximately twelve months later, unless otherwise sooner terminated as provided in this contract. Additionally, this contract may be renewed with consent of both parties, for three (3) additional 12-month periods. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration

dates of this Contract. *TDHCA* may, in its sole discretion for convenience or due to failure to perform, terminate this Contract upon thirty (30) days' written notice to Respondent. Such notice may be provided by facsimile, email, or overnight mail, and is effective upon Respondent's receipt.

(a) Convenience

TDHCA reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if *TDHCA* determines that such termination is in the best interest of the state. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. *TDHCA* shall be liable for payments limited only to the portion of work *TDHCA* authorized in writing and which Respondent has completed, delivered to *TDHCA*, and which has been accepted by *TDHCA*. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. *TDHCA* shall have no other liability, including no liability for any costs associated with the termination.

(b) Cause/Default/Remedy

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, *TDHCA* may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. *TDHCA* has the option to notify Respondent of any failure and request resolution within ten (10) working days of notification. *TDHCA* may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless *TDHCA* notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by *TDHCA* with respect to the enforcement of any of the remedies listed herein.

(c) Rights upon Termination or Expiration

In the event that the Contract is terminated for any reason, or upon its expiration, *TDHCA* shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

79. Testing and Inspection

TDHCA may test and inspect goods and services purchased under the Contract to ensure compliance with the specification of this Procurement and the Contract. *TDHCA* may also test and inspect goods and services before they are purchased under the Contract.

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

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

80. Trademark License

TDHCA hereby grants to Respondent, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce *TDHCA*'s trademarks (as depicted in Exhibit) on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following:

- (1) Respondent is in compliance with all provisions of the contract;
- (2) Respondent's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit or as otherwise communicated by *TDHCA*;
- (3) Respondent takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose *TDHCA*'s right, title and interest in the trademarks or their validity;
- (4) Respondent makes no attempt to sublicense any rights under this trademark license; and

- (5) Respondent complies with any marking requests TDHCA may make in relation to the trademarks, including without limitation to use the phrase “Registered Trademark”, the symbol “™”, the registered trademark symbol “®” and/or any equivalent thereof.

81. Trademark Ownership

Respondent hereby acknowledges and agrees that the trademarks remain the exclusive property of TDHCA, that all right, title and interest in and to the trademarks is exclusively held by TDHCA, and all goodwill associated with such trademarks inures solely to TDHCA.

82. Unfair Business Practices

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

83. Use of State Property

Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, TDHCA’s office space, identification badges, TDHCA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TDHCA-issued software, and the TDHCA Virtual Private Network (VPN client)), and any other resources of TDHCA. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access TDHCA’s network or e-mail while outside of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by TDHCA that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent’s use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to TDHCA within ten (10) calendar days of Respondent’s receipt of TDHCA’s notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to TDHCA under contract, at law, or in equity.

84. Waiver of Consequential Damages

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.

85. Vendor Past Performance

The State Procurement Division (SPD), a division of the Comptroller of Public Accounts (CPA), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer’s participation in gathering information on vendor performance. State agencies shall report vendor performance on purchases over \$25,000 from contracts administered by CPA, or any other purchase over \$25,000 made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.

Vendor Performance shall be reported through the CPA Vendor Performance Tracking System –

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking>

The purpose of the Vendor Performance Tracking System is to:

- *Identify vendors that have exceptional performance
- *Aid purchasers in making a best value determination based upon vendor past performance
- *Protect the state from vendors with unethical business practices
- *Provide performance scores in four measurable categories for the CMBL vendors
- *Track vendor performance for delegated and exempt purchases