

Attachment I

Texas Workforce Commission (TWC) – Terms & Conditions (04/24/2020)

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

*****NOTE TO VENDORS: Any terms and conditions attached to a Vendor's solicitation response will not be considered unless the Vendor specifically refers to them on the face of the first page of its response.**

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

1. SOLICITATION RESPONSE REQUIREMENTS

- 1.1. **Written Specifications:** TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the solicitation.
- 1.2. **Incomplete Responses:** Late, illegible, incomplete and/or unsigned responses may be deemed non-responsive and may not be considered.
- 1.3. **Freight:** Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.
- 1.4. **Firm Pricing: [RESERVED]**
"Discount from list" offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the low offer. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the term of the PO/contract.
- 1.5. **Ties:** In the case of tie bids, the award will be made in accordance with the preferences listed under 34 Texas Administrative Code (TAC) §20.306.
- 1.6. **Preferences:** In making an award, TWC shall apply the preferences listed at 34 TAC §20.306. For purchase or lease of computer equipment TWC shall apply a preference for manufacturers that have a computer recycling program as described in 1 TAC §217.11.
- 1.7. **Bid Alteration/Withdrawal:** A submitted response to a solicitation cannot be altered or amended after the solicitation deadline, except by formal negotiation via the RFO/RFP processes. Any alteration made before the solicitation deadline is to be initialed by Vendor or the Vendor's authorized agent. Vendors are not allowed to withdraw their submitted response after the solicitation deadline without approval by TWC.
- 1.8. **Rejection of Bids:** In accordance with Texas Government Code §2156.008, TWC reserves the right to reject a bid in which there is a material failure to comply with specification requirements. TWC may reject all bids or parts of bids if the rejection serves the State's best interest.
- 1.9. **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. **Other Entities: [RESERVED]**
- 1.11. **Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform

under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the agreement.

- 1.12. **No Travel:** TWC will not reimburse a Vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.
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2. GENERAL CONDITIONS

- 2.1. **Certain Construction Liability Claims. [RESERVED]**
- 2.2. **Damage to Grounds and Buildings:** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to the TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.
- 2.3. **Disclosure of Information:** TWC, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records which are directly pertinent to this

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procurement.

2.4. Texas Public Information Act:

- 2.4.1. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the “Public Information Act”).
- 2.4.2. All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the Vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by the Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.
- 2.4.3. All information, documentation and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the Vendor who submitted it during the retention period time.
- 2.4.4. Vendor is required to make any public information created or exchanged with the State pursuant to any contract with TWC, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TWC.

2.5. Award of Contract:

- 2.5.1. Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted and an award is made by TWC Procurement and Hub-Services and a PO or a fully executed contract is issued to the Vendor.
 - 2.5.2. TWC reserves the right to negotiate price and terms with any and all Vendors, to accept or reject all or any part of a Vendor’s response, waive minor technicalities, to request Best and Final Offers from all or any Vendors, and make an award that represents Best Value to the agency or the State.
 - 2.5.3. Subsequent to award, TWC may, at its sole option, request the Vendor to negotiate contract amendments or renewals as is determined to be in the best interest of the agency or the State.
 - 2.5.4. TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.
 - 2.5.5. TWC reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.
- 2.6. **Vendor Assignments:** No assignment is permitted by the Vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code §2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment.
- 2.7. **TWC Assignments:** TWC may sub-lease or assign equipment and related services provided via the contract to other entities which contract with TWC to provide agency support or services.

2.8. INDEMNIFICATION

2.8.1. **ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DISIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

2.8.2. Infringements:

2.8.2.1. **VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DISIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS,**

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TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- 2.8.2.2. VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (1) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (2) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT VENDOR'S WRITTEN APPROVAL, (3) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE VENDOR PURSUANT TO TWC'S SPECIFIC INSTRUCTIONS, (4) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TWC, OR (5) ANY USE OF THE PRODUCT OR SERVICE BY TWC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.
- 2.8.2.3. IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TWC PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TWC, SHALL), AT VENDOR'S SOLE OPTION AND EXPENSE; (1) PROCURE FOR TWC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALITY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TWC'S USE IS NON-INFRINGEMENT.
- 2.8.3. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY:
 - 2.8.3.1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS AND/OR TWC SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
 - 2.8.3.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 2.9. **Vendor Performance:** In accordance with Texas Government Code §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.10. **Force Majeure:** TWC may grant relief from performance of an awarded contract or PO, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.
- 2.11. **Dispute Resolution Procedures:**
 - 2.11.1. **Procurement Disputes:** In accordance with Texas Government Code, §2155.076, TWC has established protest procedures for resolving vendor protests relating to the solicitation, evaluation or award of a contract for goods and/or services. Such protests must be made via certified mail and received in the Director of Business Operations' office within ten (10) business days from the date of the announcement of the award. The written protest must include: the number of the solicitation being protested; the grounds for the protest, including a description of any alleged acts or omissions by TWC that form the basis for the protest; any written information which the protestor believes is relevant to the award; and the basis for the protestor's interest in the procurement. TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law.

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- TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The protestor will be provided an opportunity for an informal meeting with the Director or his designee, to discuss the protest, however, TWC may limit the amount of time allocated for the meeting. The Director will issue the final written decision to the protestor
- 2.11.2. **Contract Disputes:** Disputes arising under this Contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.
- 2.12. **Debt to the State:** Vendor agrees that any payments due under this contract will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 2.13. **Hold-Over Contract Extension:** In the event contract renewal negotiations are not completed prior to the contract expiration date, both parties agree that services shall be provided by the Vendor and accepted by TWC, subject to all original terms and conditions of the contract, for a period not to exceed ninety (90) days following the original contract expiration date. During the hold over extension period, service costs shall be provided at the pro-rated rates, as applicable, in effect immediately prior to expiration of the original contract period and all other terms and conditions shall remain in effect. TWC may terminate such hold over extension period by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.
- 2.14. **Records Retention:** Vendor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor agrees to provide at no cost to TWC all contracting information related to the Contract that is in the custody or possession of Vendor or any of its subcontractors.
- 2.15. **Agency's Right to Audit:** Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this Contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this Contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC and any authorized agency of the State of Texas, including an investigation of audit by the State Auditor.
- 2.16. **State Auditor:** Vendor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Vendor's failure to comply with this Section shall constitute a material breach of Contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code §2262.154, the acceptance of funds by Vendor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract shall constitute acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Vendor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the director of the legislative audit committee, an entity that is 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.
- 2.17. **Limitation on TWC's Liability:** TWC will not be liable for any incidental, indirect, special, or consequential damages under contract, Tort, (including negligence), or other legal theory. TWC's liability to Vendor under the contract will not exceed the total charges to be paid by TWC to Vendor under the contract.
- 2.18. **State Ownership:** The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, source and object code and documentation developed by the Vendor in connection with the contract.
- 2.18.1. All work products including deliverables, source and object code and documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.
- 2.18.2. To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.
- 2.18.3. Vendor will assist TWC or its nominees to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts

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- known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.
- 2.18.4. Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by Vendor on such copies, in whole or in part, or on any form of the work products or deliverables.
- 2.19. **License:** In accordance with 2 C.F.R. §200.315, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including but not limited to those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system.
- 2.20. **Most Favored Customer:** If during the term of the contract, the Vendor enters into another contract with any customer for substantially similar services at prices more favorable than those provided to TWC, the contract may be amended to provide the more favorable prices to TWC.
- 2.21. **Governing Law and Venue:** The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.
- 2.22. **Survival:** Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
- 2.23. **Severability:** If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.
- 2.24. TWC and the Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>
- 2.25. **No Waiver:** Nothing in this contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TWC or the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this contract or by its conduct prior to or subsequent to entering into this contract.
- 2.26. **Redacted Electronic Copy:** Texas Government Code §322.020 and as per the following requirements, no later than two (2) business days after Vendor's receipt of notice from TWC, the Vendor must deliver to TWC two (2) electronic copies of its complete proposal. Vendor shall deliver these electronic copies to TWC via overnight delivery in compliance with all of the following requirements:
- 2.26.1. Two (2) compact discs (CDs), each containing a copy of Vendor's response to solicitation, in searchable Portable Document Format (PDF) format, which has excised, blacked out, or otherwise redacted information from its solicitation response that Vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Vendor's solicitation response, such as social security numbers). Each CD shall also contain an Appendix for Vendor's solicitation response which provides a cross reference for the location of all information redacted by Vendor and a general description of the redacted information. These two (2) identical CDs should be entitled "For Public Release: Redacted Version of [Name of Vendor]'s Proposal and Exhibits. Texas Workforce Commission's RFP/RFO/IFB solicitation No. ___."
- 2.26.2. Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database.
- 2.26.3. TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than ten (10) days after date of contract award. By submitting a response to this solicitation, Vendors acknowledge that they understand and accept this requirement. See the LBB website at <http://www.lbb.state.tx.us/>.

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2.26.4. American Recovery and Reinvestment Act (ARRA or the Recovery Act)

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

2.26.4.2. Whistleblower Protection: Pursuant to Section 1553 of the American Recovery and Reinvestment Act, Vendors shall promptly refer to the U.S. Department of Labor, Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds

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

2.28 Privacy: Vendor who has access to sensitive personally identifiable information (“Sensitive PII”), including anyone who views contracts, collects, uses, maintains, stores or destroys Sensitive PII of TWC employees, job seekers, employers, customers or partners, must safeguard that information.

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

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

2.28.3 In order to safeguard Sensitive PII, Awarded Vendor must:

2.28.1.1 Collect Sensitive PII only as authorized.

2.28.1.2 Limit the use of Sensitive PII.

2.28.1.3 Minimize the proliferation of Sensitive PII.

2.28.1.4 Secure Sensitive PII both physically and in electronic form.

2.28.1.5 Report suspected privacy incidents within twenty four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at CSO@twc.state.tx.us.

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

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

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

2.30 Change in Law: Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

2.31. Davis-Bacon Act: Vendors on all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144) as supplemented by the Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.”)

2.32. Vendor will comply with the Copeland “Anti-Kickback” Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

2.33. Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708). For all contracts in excess of \$100,000 that involve the employment of mechanics and laborers, Vendor shall comply with 40 U.S.C. §§3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

2.34. Environmental Protection: Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).

2.35. Contracting Information Responsibilities: If this contract has a stated value equal to or in excess of \$1 million or results in the expenditure of an amount equal to or in excess of \$1 million in public funds, in accordance with Texas Government Code §552.372, Vendor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirement applicable to TWC for the duration of the Contract, (2) promptly provide to TWC any contracting information related to the contract that is in the custody or possession of the Vendor on request of TWC, and (3) on

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termination or expiration of the contract, either provide at no cost to TWC all contracting information related to the contract that is in the custody or possession of the Vendor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to TWC. Except as provided by Texas Government Code §552.374(c), the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the contract and Vendor agrees that the contract may be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

- 2.36. Disaster Recovery Plan.** In accordance with 13 TAC §6.94(a)(9), Vendor shall provide to TWC the descriptions of its business continuity and disaster recovery plans.
- 2.37. Media Releases.** Vendor shall not use TWC's name, logo, or other likeness in any press release, marketing material, or other announcement without TWC's prior written approval. TWC does not endorse any vendor, commodity, or service. Vendor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instruction from TWC.
- 2.38. Specific Conditions for Disclosing Federal Funding in Public Announcements.** The parties agree that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money from the U.S. Department of Education, the parties shall clearly state:
- 2.38.1 the percentage of the total costs of the program or project which will be financed with Federal money;
 - 2.38.2 the dollar amount of Federal funds for the project or program; and,
 - 2.38.3 the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.
- 2.39. Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business.** The parties and their employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official contract business, or from using government supplied electronic equipment to text message or email when driving. The parties must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

3. REQUIRED CERTIFICATIONS

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

- 3.1.** Vendor represents and warrants that all statements and information prepared and submitted in this Proposal are current, complete, true and accurate. Submitting a Proposal with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.
- 3.2. All Terms and Conditions Met:** that all terms and conditions listed in the solicitation will be met.
- 3.3.** By submitting the Proposal, Vendor represents and warrants that the individual submitting this document and the documents made part of this Proposal is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract that may result from the submission of this Proposal
- 3.4. U.S. Department of Homeland Security's E-Verify System:** By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of:
- 3.4.1.** All persons employed to perform duties within Texas, during the term of the Contract; and
 - 3.4.2.** All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
 - 3.4.3.** The Contractor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.
 - 3.4.4.** If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Contractor shall also be responsible for

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- the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**
- 3.5. Inducements/Dealings with Public Servants:** that the Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response.
- 3.6. Lobbying:** that the Vendor will not and has not used any federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. Vendor certifies that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. Further, Vendor certifies that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.
- 3.7. Not Ineligible:** that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in this contract by any state or federal agency.
- 3.8. Non-Discrimination:** The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Vendor certifies compliance with the Rehabilitation Act of 1998 § 508, 29 U.S.C. §794d, relating to the use of electronic and information technology for individuals with disabilities; the Housing and Urban Development Act §3, 12 USC §1701u Sec. 1701u, relating to economic opportunities for low- and very low-income persons; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor."; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.
- 3.9. Drug-Free Workplace:** The Vendor agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. §81, Title V, Subtitle D).
- 3.10. Franchise Tax:** The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
- 3.11. Child Support:** The Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code §231.006 (relating to child support) and acknowledges that the contract may be terminated and payment may be withheld if certification is inaccurate. Pursuant to Texas Family Code §231.006(c), Vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.
- 3.12. Certain Bids and Contracts Prohibited:** Under Texas Government Code §2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.13. Fair Business Practices:** The Vendor has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The Vendor further affirms that no officer of the Vendor has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.14. Antitrust Affirmation:** Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have

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directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.

- 3.15. No Compensation:** The Vendor has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.
- 3.16. Conflict of Interest:** Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.
- 3.17. Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita:** Under Texas Government Code §2155.006, the Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
- 3.18. Independent Contractor:** Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and Vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.
- 3.19. Workers' Compensation Insurance.** Vendor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.
- Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease – Each Employee \$1,000,000
Disease – Policy Limit \$1,000,000
Commercial General Liability:
Occurrence based:
Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000
Aggregate limit: \$2,000,000
Medical Expense each person: \$5,000
Personal Injury and Advertising Liability: \$1,000,000
Products/Completed Operations Aggregate Limit: \$2,000,000
Damage to Premises Rented to You: \$50,000
- NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.
- 3.20. Felony Criminal Convictions:** Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.
- 3.21. Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069:** Vendor certifies that it has not employed and will not employ a former TWC or state officer who participated in a procurement or contract negotiations for TWC involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

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

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

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

3.23. Entities that Boycott Israel: In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code §808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor represents and warrants that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.

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

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

Former Executive

Name: _____

State Agency _____

Name: _____

Date Separated _____

from Agency: _____

Position with _____

Vendor: _____

Date employed _____

with Vendor: _____

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

3.27. Human Trafficking. Under Texas Government Code §2155.0061, Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the Contract, TWC may immediately terminate the contract without further obligation to Vendor.

3.28. Trafficking in Persons. The parties acknowledge the requirements of 2 C.F.R. §175, including the U.S. Department of Education’s modifications to these requirements, and agree to comply with the requirements regarding trafficking in persons.

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

3.30. Former Agency Employees. In accordance with Texas Government Code §2252.0901, Vendor represents and warrants that none of its employees, including but not limited to those authorized to provide services under the contract were former employees of TWC during the twelve (12) month period immediately prior to the date of execution of the contract.

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- 3.31. Vendor represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Texas Government Code §2252.908.
- 3.32. Cybersecurity Training: Vendor represents and warrants that it will comply with the requirement of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee or subcontractor employee has access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code §2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.
- 3.33. **Computer Equipment Recycling Program:** Vendor hereby certifies its compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act located in Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328.
Failure of a Vendor to provide this certification shall render the Vendor ineligible to participate in the bidding process. TWC shall reject the related bid and not evaluate it.
- 3.34. **Television Equipment Recycling Program:** Vendor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

4. SPECIFICATIONS

- 4.1. Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Submitted responses containing other brands that are functionally equivalent will be considered unless TWC has advertised the solicitation as proprietary under Texas Government Code §2155.067. If Vendor takes an exception to the solicitation's specifications and Vendor's response contains equivalent product, Vendor is required to include additional information such as manufacturer, brand or trade name, illustrations, and specifications for the equivalent product as part of their response to the solicitation. If Vendor takes no exception to the specifications, the Vendor must furnish the item(s) as specified in the solicitation.
- 4.2. Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product, and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.
- 4.3. **No Substitutions:** Vendor will not make any substitution to the specifications of any solicitation or PO, unless the substitution is (1) proposed to TWC in writing by the Vendor, and (2) supported by the expressed written prior approval of TWC.
- 4.4. **Replacement Parts Available:** The Vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.
- 4.5. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 4.6. Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.
- 4.7. **Projects Using Iron or Steel Products:** Pursuant to Texas Government Code §2252.202, iron or steel products produced through a manufacturing process and used in the project must be produced in the United States.

5. DELIVERY

- 5.1. Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days.

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Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.

- 5.2. If delay is foreseen, Vendor shall give written notice to TWC who reserves the right to extend delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting Vendor.
- 5.3. Delivery shall be made on State business days between 8:00 am and 5:00 pm, unless prior approval has been obtained from TWC.

6. VALIDATION, INSPECTION & TESTS

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

7. INVOICING INSTRUCTIONS

- 7.1. Invoices must be submitted to TWC according to the instructions on the PO to the named individual and the address indicated on the PO. Invoice must show TWC as the receiving agency.
- 7.2. Submit invoice in duplicate. Upon request, one copy will be returned when making payment.
- 7.3. Invoices must include the name and address of Vendor, which must be identical to the information stated on the PO.
- 7.4. The TWC PO number and date of the PO must be shown on all invoice copies.
- 7.5. Invoice must have description of each item. Item numbers must be shown to correspond with the item numbers on the PO.
- 7.6. Quantity and date delivered, unit of measure specified and total price of each item must be shown, all prices extended on the invoice, with all extensions on the invoice totaled, and the grand total shown.
- 7.7. Discounts, if applicable, must be stated, extended, and deducted to arrive at a Net Total for the invoice.
- 7.8. Trade-in values must be stated on the invoice.

8. PAYMENT

- 8.1. Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 governs remittance of payment and remedies for late payment and non-payment.
- 8.2. TWC will incur no penalty for late payment if payment is made within thirty (30) days of acceptance of goods or services, or within thirty (30) days of receipt of an uncontested invoice submitted according to the instructions on the PO, whichever comes last.
- 8.3. In no event shall use of the product by TWC, for any purpose during any phase of the acceptance testing, constitute acceptance of any product by TWC.
- 8.4. Prior to any payment being made, the goods or services being invoiced must have been received and accepted by TWC.

9. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

- 9.1. Vendor 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 Vendor's use of acquisition of any services or other items provided to the State of Texas by Vendor or otherwise to which the State of Texas has access as a result of Vendor's performance under this Contract, provided that the State shall notify Vendor of any such claim within a reasonable time of the State's

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receiving notice of any such claim. If Vendor is notified of any claim subject to this section, Vendor shall notify TWC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Vendor without TWC prior written approval. Vendor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including but not limited to, attorney's fees and court costs, arising from such claim. Vendor 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.

- 9.2. Should the goods, or use of the goods, become the subject of a claim of infringement of a United States patent, trademark, copyright, trade secret or other proprietary rights, TWC may require the Vendor to procure for TWC the right to continue using the goods, to replace or modify the same to remove the infringement, or to accept return of the goods.
- 9.3. Vendor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.
- 9.4. Vendor agrees that for the exclusive use by TWC for State business, TWC is free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

10. TERMINATION PROVISIONS

- 10.1. TWC reserves the right to immediately terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty for breach of contract by the Vendor.
- 10.2. TWC reserves the right to terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty upon TWC within thirty (30) calendar days advance written notice, if TWC determines that such termination is in the best interest of the state, including but not limited to the following reasons:
 - 10.2.1. Failure to obtain or sustain funding from either Federal or State funding sources.
 - 10.2.2. Amendment or judicial interpretation of State or Federal laws or regulations that render fulfillment of the contract substantially unreasonable, impossible, or unnecessary.
- 10.3. In the event of such termination, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC shall have no other liability, including no liability for any costs associated with the termination.
- 10.4. TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Vendor.
- 10.5. TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the Vendor shall transfer title and deliver to the TWC any partially completed work products, deliverables, source and object code, or documentation that the Vendor has produced or acquired in the performance of the contract.

11. INFORMATION TECHNOLOGY (IT) PURCHASES:

- 11.1. During the term of the contract, the Vendor must notify TWC whenever an engineering change is made that may affect TWC's use of the product. It will be the sole option of TWC to accept the change.
- 11.2. Vendor represents that the product and all its elements, including, but not limited to, documentation and source code, meet the standards issued by the American National Standards Institute.
- 11.3. Vendor agrees that TWC owns the source code to any jointly-developed application(s) resulting from the contract.
- 11.4 As required by 1 TAC, Chapter 213:
 - 11.4.1 Effective September 1, 2006, state agencies 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.
 - 11.4.2 Vendor shall provide TWC with the URL to its Voluntary Product Accessibility Template (VPAT) for

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reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act of 1973, as amended (29 USC § 794d)), or indicate that the product/services accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide TWC 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/>.

11.4.3 TWC will use either VPAT or the Buy Accessible Wizard to assess the degree of accessibility of a proposed product when making the procurement decision.

11.5 Vendor shall follow Web Content and Accessibility Guidelines. (WCAG 2.0) as applicable for new websites, applications or redesigns.

11.6 Vendor agrees that all products and/or services 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 products and/or services, either at the end of the Customer’s Managed Services product’s useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC, Chapter 202.
