



Texas Department *of* Motor Vehicles

Contract Uniform Terms and Conditions with Affirmations

TABLE OF CONTENTS

ARTICLE 1, DEFINITIONS AND INTERPRETIVE PROVISIONS.....	6
1.1 Definitions.....	6
1.2 Interpretive Provisions	8
ARTICLE 2, CONSIDERATION, PAYMENT, AND FUNDING PROVISIONS.....	9
2.1 Prompt Payment	9
2.2 Submission of Invoices	9
2.3 Ancillary and Travel Expenses	10
2.4 No Quantity Guarantees	10
2.5 Debts and Delinquencies.....	10
2.6 Refunds and Overpayments	10
2.7 Taxes	10
2.8 Termination for Non-Appropriation (Funding Out).....	11
2.9 No Debt Against the State.....	11
ARTICLE 3, CONFIDENTIAL INFORMATION AND SECURITY PROVISIONS.....	11
3.1 Confidentiality and Security Requirements	11
3.2 Confidential Information Storage.....	17
3.3 Access to Internal Agency Network and Systems	17
3.4 Cybersecurity Training.....	17
ARTICLE 4, INTELLECTUAL PROPERTY PROVISIONS	18
4.1 Property Rights / Ownership of Work Product	18
4.2 Contractor's Pre-Existing Works	18
4.3 Third-Party Intellectual Property	20
4.4 Agreements with Employees and Subcontractors	20
4.5 Delivery Upon Contract Termination or Expiration	20
4.6 Trademark Ownership.....	20
4.7 Data Ownership, Use, and Return.....	20
ARTICLE 5, RECORDS AND AUDIT PROVISIONS.....	21
5.1 Books and Records Retention	21
5.2 Agency's Right to Audit and Inspect	21
5.3 Texas State Auditor's Right to Audit.....	22
5.4 Response and Compliance with Audit or Inspection Findings	23
5.5 Public Information Act.....	23
5.6 Data Management and Security Controls.....	23
ARTICLE 6, CONTRACT MANAGEMENT AND ENFORCEMENT PROVISIONS.....	23
6.1 Contract Management and Remedies.....	23
6.2 Inspection and Testing of Deliverables	24
6.3 Termination for Convenience.....	24
6.4 Termination for Cause.....	24
6.5 Excluded Parties.....	25
6.6 Contractor's Responsibility for Associated Costs.....	25
6.7 Liquidated Damages.....	25
6.8 Cumulative Remedies	25

ARTICLE 7, CONTRACT REPRESENTATIVES AND NOTIFICATION PROVISIONS	25
7.1 Contract Representatives.....	25
7.2 Notices.....	26
ARTICLE 8, WARRANTIES, AFFIRMATIONS, AND ASSURANCES PROVISIONS	26
8.1 Warranty.....	26
8.2 Software Warranty	27
8.3 Third-Party Warranties.....	27
8.4 Affirmations	27
8.5 Parties to the Affirmations	27
8.6 Federal Assurances and Certifications	27
ARTICLE 9, INDEMNIFICATION PROVISIONS	27
9.1 INDEMNIFICATION (GENERAL).....	27
9.2 INDEMNIFICATION (INTELLECTUAL PROPERTY).....	28
9.3 NO AGENCY INDEMNIFICATION	28
ARTICLE 10, CONTRACTOR AND SUBCONTRACTOR PROVISIONS.....	28
10.1 Independent Contractor	28
10.2 Contractor’s Personnel	29
10.3 Replacement of Contractor’s Personnel at Agency’s Request.....	29
10.4 Contractor’s Subcontractors and Subcontracts	30
10.5 Criminal History Background Checks	30
ARTICLE 11, INSURANCE REQUIREMENTS PROVISIONS	30
11.1 Insurance	30
ARTICLE 12, STATE PROPERTY PROVISIONS	31
12.1 Use of State Government Property.....	31
12.2 Damage to State Government Property.....	31
12.3 State Property Rights upon Termination or Expiration of the Contract.....	31
ARTICLE 13, WORK ORDER PROVISIONS	32
13.1 Work Orders.....	32
13.2 Proposals	32
13.3 Contract Termination or Expiration	32
ARTICLE 14, TECHNOLOGY PROJECT PROVISIONS	32
14.1 Technology Access / Accessibility Requirements	32
14.2 Artificial Intelligence Disclosure and Requirements	32
14.3 Cloud Computing State Risk and Authorization Management Program (TX-RAMP)	33
14.4 Computer Equipment Recycling Program	33
14.5 Contractor’s Compliance Verification	33
14.6 Evaluation, Testing, and Monitoring	34
14.7 Information Management Standards	34
14.8 No Surreptitious Code Warranty.....	34
14.9 Remedies	35
14.10 Secure Erasure of Hard Disk Capability	35
14.11 Shrink-Wrap, Click-Wrap, and Browser-Wrap Agreements	35
14.12 Software Security Configuration.....	35

14.13	Technical Representations and Warranties	35
ARTICLE 15, MISCELLANEOUS AFFIRMATIONS PROVISIONS		36
15.1	Abortion Provider and Affiliate Transactions Prohibited	36
15.2	Americans with Disabilities Act	36
15.3	Antitrust.....	36
15.4	Buy Texas (Service Contracts).....	36
15.5	Child Support Obligation	36
15.6	Contracting Information Responsibilities (\$1 Million or Greater in Public Funds)	37
15.7	COVID-19 Vaccine Passports Prohibition.....	37
15.8	Critical Infrastructure	37
15.9	Dealings with Public Servants.....	37
15.10	Disaster Recovery Plan	37
15.11	Disclosure of Interested Parties.....	38
15.12	Disclosure of Prior State Employment (Consulting Services).....	38
15.13	Entities that Boycott Energy Companies	38
15.14	Entities that Boycott Israel	38
15.15	Entities that Discriminate Against Firearm and Ammunition Industries	38
15.16	Executive Head of a State Agency	38
15.17	False Statements	38
15.18	Federal Occupational Safety and Health Law	39
15.19	Financial Participation Prohibited.....	39
15.20	Foreign Terrorist Organizations	39
15.21	Former Agency Employees (Certain Contracts)	39
15.22	Fraud, Waste, and Abuse.....	39
15.23	Hardening of State Government.....	40
15.24	Human Trafficking Prohibition.....	40
15.25	Immigration.....	40
15.26	Legal and Regulatory Actions.....	40
15.27	Lobbying Prohibition	41
15.28	No Conflicts of Interest	41
15.29	No Felony Criminal Convictions	41
15.30	Permits, Certifications, and License.....	41
15.31	Prior Disaster Relief Contract Violation	41
15.32	Public Nature of Response and Posting of Certain Contracts on Websites	42
15.33	Restricted Employment for Certain State Personnel.....	42
15.34	Signature Authority	42
15.35	Surveillance, Intimidation, and Related Acts.....	42
15.36	Suspension and Debarment	43
15.37	Television Equipment Recycling Program	43
15.38	Unfair Business Practices.....	43
ARTICLE 16, MISCELLANEOUS PROVISIONS		43
16.1	Amendment	43
16.2	Assignments and Acquisitions	43
16.3	Binding Effect	44
16.4	Change in Law and Compliance with Laws.....	44
16.5	Equal Employment Opportunity	44
16.6	Conflict with Applicable Law or Regulation	44

16.7	Consulting Reports	44
16.8	Counterparts	44
16.9	Critical Infrastructure Subcontracts	45
16.10	Dispute Resolution and Escalation Procedure	45
16.11	Electrical Items.....	45
16.12	E-Verify Program.....	45
16.13	Force Majeure	46
16.14	Governing Law and Venue	46
16.15	Legal Obligations	46
16.16	Limitation on Authority; Other Obligations.....	46
16.17	Media Releases and Marketing Activities.....	47
16.18	National Anthem	47
16.19	No Implied Waiver.....	47
16.20	No Third-Party Beneficiaries	47
16.21	Partially Completed Work.....	47
16.22	Permits, Certifications, and Licenses	48
16.23	Prohibition on Non-Compete Restrictions	48
16.24	Rolling Estoppel.....	48
16.25	Severability.....	48
16.26	Sovereign Immunity.....	49
16.27	Survival	49
16.28	Technical Guidance Letters.....	49

ARTICLE 1, DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 Definitions

As used in the Contract and any Attachments incorporated and made part of the Contract, the following terms and acronyms have the meaning set forth below, unless the context clearly indicates otherwise; all other terms have their ordinary meanings:

“**Amendment**” means a written document that formally records modifications or changes to the Contract, except for those changes that are expressly permitted by Work Orders or Technical Guidance Letters, as herein defined.

“**Attachment**” means the documents, terms, conditions, or other information appended to the Contract or incorporated by reference, which are considered an integral part of the Contract for all purposes.

“**Contract**” means the legally enforceable written agreement between TxDMV and Contractor, which includes the Signature Document (if applicable); the Purchase Order; these Contract Uniform Terms and Conditions with Affirmations; Attachments; Amendments; Exhibits; Purchase Order change notices; Work Orders; and Technical Guidance Letters that may be issued by TxDMV, and incorporated into and made part of the Contract for all purposes. TxDMV, in its sole and absolute discretion, may issue a Signature Document and/or Purchase Order. *See*, Signature Document and Purchase Order definitions below.

“**Contractor**” means the vendor selected by TxDMV to provide the Deliverables to TxDMV under the Contract.

“**Deliverable**” means a good, product, or Service, including all reports and Contract documentation, required to be prepared, developed, performed, supported, provided, or procured by Contractor under the Contract. May also be referred to in its plural form as “**Deliverables**.”

“**Effective Date**” means the date agreed to by the Parties as the date on which the Contract takes effect.

“**Federal Fiscal Year**” means the annual accounting period for the United States government from October 1st through September 30th of each year.

“**GAAP**” means the Generally Accepted Accounting Principles, a set of accounting rules and standards that companies use to prepare and report their financial statements established by the U.S. Securities and Exchange Commission and the default accounting standard for companies in the United States.

“**GASB**” means the Governmental Accounting Standards Board, a private, non-governmental organization, and the source of generally accepted accounting principles used by state and local governments in the United States.

“**HUB**” means a Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“**Intellectual Property**” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, trademark rights, branding, or other indicia of source or origin, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. domain name registrations; and

iv. any other proprietary or similar rights.

The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“MVCPA” means the Motor Vehicle Crime Prevention Authority, a division within TxDMV, established under Chapter 1006 of the Texas Transportation Code.

“Parties” means TxDMV and Contractor, collectively.

“Party” means either TxDMV or Contractor, individually.

“Project” means the Deliverables to be provided by Contractor under the Contract.

“Purchase Order” means either the funding instrument supporting the Signature Document signed by the Parties, or the legally enforceable document issued by TxDMV without a Signature Document and accepted by the Contractor by its performance in accordance with the Purchase Order terms and conditions, which are subject to these Contract Uniform Terms and Conditions; Attachments; Amendments; Purchase Order change notices; Work Orders; and Technical Guidance Letters that may be issued by TxDMV, which are attached, incorporated into, and made part of the Purchase Order for all purposes. The Purchase Order may indicate the Effective Date, terms, types, quantities, and agreed prices for the Deliverables the Contractor will provide to TxDMV during the Contract term. Also, considered the Contract when issued by TxDMV without a TxDMV contract Signature Document. May also be referred to as “**PO**.”

“Service” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract. May also be referred to in its plural form as “**Services**.”

“Signature Document” means the document executed by both Parties, that specifically sets forth and incorporates all the documents that constitute the Contract.

“Solicitation” means the document or communication submitted or issued by TxDMV, under which the Deliverables provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“Solicitation Response” means Contractor’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Exhibits, Attachments, and Addenda. May also be referred to as “**Response**.”

“State” means the state of Texas and its instrumentalities, including TxDMV and any other State agency or public institution of higher education.

“State Fiscal Year” means the annual accounting period for the State from September 1st through August 31st of each year. May also be referred to as “**Texas Fiscal Year**” or “**Fiscal Year**.” This term is not to be confused with Federal Fiscal Year or calendar year.

“State of Texas Textravel” means Title 34 of the Texas Administrative Code, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under the Contract, if any.

“Statement of Work” means the description of requirements and specifications for the Deliverables as specified in the Contract, and as may be amended, that the Contractor is required to provide under the Contract. May also be referred to as “**Scope of Work**,” “**Statement of Services to be Performed**,” or “**Scope of Services to be Performed**.”

“Subcontract” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“Subcontractor” means any individual or entity (including a subcontractor of a subcontractor) that enters a contract with Contractor to perform part or all of the obligations of Contractor under the Contract.

“TxDMV” means the Texas Department of Motor Vehicles, an administrative agency within the executive branch of the State, established under Chapter 1001 of the Texas Transportation Code. May also be referred to as **“Department”** or **“Agency.”**

“Work” means all Deliverables to be provided, and any appurtenant actions performed, and items produced, conceived, or developed under the Contract.

“Work Order” means an individually negotiated document that is executed by both Parties, and which authorizes a project under the Contract, if any, in an indefinite quantity Contract.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, software, programs, source code or other programming code, innovations, improvements, inventions, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, to all products and materials developed, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Contractor in connection with Contractor’s performance of its duties under the Contract or through use of any funding provided under the Contract.

1.2 Interpretive Provisions

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to the Contract as a whole and not to any particular provision, section, Attachment, or schedule of the Contract unless otherwise specified.
- C. Any reference to “day” or “days” is a reference to calendar days unless the reference is specifically to a business day.
- D. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in the Contract, (1) references to contracts (including the Contract) and other contractual instruments will be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of the Contract, and (2) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- E. Unless the context clearly indicates otherwise, any references to “sections,” “appendices,” or “Attachments” are references to sections, appendices, or Attachments of the Contract.
- F. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented during the term of the Contract.
- G. The captions and headings of the Contract are for convenience of reference only and do not affect the interpretation of the Contract.
- H. All Attachments, including those incorporated by reference, and any Amendments are considered part of the Contract.

- I. The Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative, and each will be performed in accordance with its terms.
- J. Unless otherwise expressly provided, reference to any action of TxDMV or by TxDMV by way of consent, approval, or waiver will be deemed to include the phrase “in its sole discretion.”
- K. Time is of the essence in the performance under the Contract. Contractor must strictly comply with all of the deadlines, requirements, and standards of performance under the Contract.

ARTICLE 2, CONSIDERATION, PAYMENT, AND FUNDING PROVISIONS

2.1 Prompt Payment

Any payments to the Contractor by TxDMV under the Contract will be made in accordance with Chapter 2251 of the Texas Government Code (the “**Texas Prompt Payment Act**”). Chapter 2251 will govern remittance of payment and remedies for late payment and non-payment.

2.2 Submission of Invoices

- A. To receive payment under the Contract, Contractor must submit correct itemized invoice(s) that includes the Contract number or Purchase Order number, whichever is applicable, that satisfies the minimum standards established under Title 34 of the Texas Administrative Code, Part 1, Chapter 20, Subchapter F, Division 1, Section 20.487, in a secure, non-alterable electronic form (*.pdf acceptable*) emailed to: dmv_fin-invoices@txdmv.gov, or mailed to: Texas Department of Motor Vehicles, Attn: Payment Processing, 4000 Jackson Avenue, Austin, Texas 78731, with a courtesy copy to the TxDMV Contract Representative identified in the Signature Document or Purchase Order. Any alternative invoice submission arrangements must be approved in writing by the TxDMV Contract Representative.

Additionally, all invoices submitted via email by the Contractor must use the following naming convention for the subject line of the email: Invoice Submission: Contractor’s Legal Entity Name, Invoice Number, TxDMV Contract Number, and Services Date(s) or Month(s). For example, an invoice submitted to TxDMV by ABC, Inc. for the month of January 2025 would state: “*Invoice Submission: ABC, Inc., Invoice No. 1, TxDMV Contract No. 608-25-000001, January 2025.*”

- B. When Contractor submits an invoice, the Contractor certifies:
 - i. the invoice has been carefully reviewed to ensure the invoice accurately describes the Deliverables provided;
 - ii. the Deliverables provided are in compliance with the Contract and accepted by TxDMV;
 - iii. the amount of the invoice and all previous submitted invoices together does not exceed the not-to-exceed amount of the Contract or negotiated fees;
 - iv. the charges documented in the invoice are reasonable and necessary; and
 - v. all appropriate and required supporting documentation is attached to the invoice.
- C. TxDMV may withhold payment of any charges that it disputes in good faith pursuant to Title 34 of the Texas Administrative Code, Part 1, Chapter 20, Subchapter F, Division 1, Section 20.487(b) and may offset amounts the Contractor owes the state of Texas (“**State**”) or TxDMV as credits against charges payable to the Contractor under the Contract.
- D. If TxDMV requests corrections to an invoice or additional information, documentation, or justification, the Contractor must submit a revised invoice with all corrections initialed or information necessary with the invoice’s date of submission changed to the date of resubmission.

- E. The final invoice must be submitted by the Contractor within 30 days following Contract termination or expiration.

2.3 Ancillary and Travel Expenses

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Deliverables will be reimbursed by TxDMV. Ancillary expenses include any per diem, travel, mileage rates, trip charges, hotel, phone calls, reproduction services, office space, labor, materials, supplies, tools, equipment, personnel, shipping and handling, insurance, or other incidental expenses related to the provision of Deliverables under any Contract that may result from this Solicitation.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts' *Textravel* guidelines, currently accessible at: <https://fm.xcpa.texas.gov/fmx/travel/texttravel/>.

2.4 No Quantity Guarantees

All Work requested under the Contract may be on an irregular and as needed basis throughout the Contract term, and TxDMV makes no guarantee of volume or usage of Work under the Contract.

2.5 Debts and Delinquencies

Contractor acknowledges and agrees that, to the extent Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State, any payments or other amounts Contractor is otherwise owed under the Contract may be applied toward any debt Contractor owes the State until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency.

2.6 Refunds and Overpayments

A. At its sole discretion, TxDMV may:

- i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); and/or
- ii. require the Contractor to promptly refund or credit, within 30 days of written notice, any funds erroneously paid by TxDMV which are not expressly authorized under the Contract or deduct such amounts owing TxDMV from any payments due Contractor.

B. "Overpayments," as used in this Section, include payments:

- i. made by TxDMV that exceed the maximum allowable rates;
- ii. that are not allowed under applicable laws, rules, or regulations; and/or
- iii. that are otherwise inconsistent with the Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to TxDMV for any costs disallowed pursuant to financial and compliance audit(s) of funds received under the Contract. Contractor further understands and agrees that reimbursement of such disallowed costs will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under the Contract.

2.7 Taxes

Purchases made for State use are exempt from State and local sales and use tax and United States excise tax. TxDMV will furnish Tax Exemption Certificates upon request. Contractor represents and warrants

that it will pay any required taxes or similar amounts resulting from the Contract, including, but not limited to, any United States, State, or local income, sales or excise taxes of Contractor or its employees. TxDMV will not be liable for any taxes resulting from the Contract.

2.8 Termination for Non-Appropriation (Funding Out)

The Contract is subject to termination or cancellation, without penalty to TxDMV, either in whole or in part, subject to the availability of United States and/or State funds. TxDMV is a State agency whose authority and appropriations are subject to actions of the Texas Legislature. If TxDMV becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TxDMV's or Contractor'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 a termination or cancellation under this Section, TxDMV will not be liable to Contractor for any damages that are caused or associated with such termination or cancellation, and TxDMV will not be required to give prior notice.

2.9 No Debt Against the State

The Contract will not be construed as creating any debt by or on behalf of the State.

ARTICLE 3, CONFIDENTIAL INFORMATION AND SECURITY PROVISIONS

3.1 Confidentiality and Security Requirements

Any specific confidentiality agreement/data use agreement between the Parties takes precedence over the terms of this Section.

A. Definitions. As used in these Contract Uniform Terms and Conditions, the following definitions have the meaning set forth below when used in the context of Confidential Information (as defined below in Section 3.1(A)(4)), unless the context clearly indicates otherwise. The defined terms are as follows:

- (1) **"Authorized Purpose"** means the specific purpose or purposes described in the Contract for Contractor to fulfill its obligations under the Contract, or any other purpose expressly authorized by TxDMV in writing in advance.
- (2) **"Authorized User"** means a person: who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to the Contract; for whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by the Contract.
- (3) **"Breach"** means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure, or loss of Confidential Information other than as permitted by the Contract will be presumed to be a Breach unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.
- (4) **"Confidential Information"** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided by or on behalf of TxDMV to Contractor, or otherwise made available to the Contractor by TxDMV, or

gathered, received, maintained, stored, used, processed, disclosed, transmitted, accessed, or generated by the Contractor on behalf of TxDMV under the Contract, or otherwise in the course of Contractor's performance under the Contract, that includes, but is not limited to, TxDMV Data (as defined below in Section 4.6), business activities, practices, systems, conditions, services, all privileged work product, motor vehicle records, financial data, sensitive governmental records, and other information that TxDMV designates as secret, proprietary, or confidential, and any communication or record that is protected by United States or State law or regulation.

Exclusions from Confidential Information. Confidential Information will not include, and the confidentiality obligations contained in this Article will not apply to, information that the Contractor can demonstrate:

- (i) contractor received from a third party without restriction on disclosure and without breach of the Contract, or other wrongful act;
- (ii) was independently developed by Contractor, not as part of Contractor's performance or obligations under the Contract, as sufficiently demonstrated by Contractor's written records;
- (iii) is available to the public without breach of the Contract; or
- (iv) is required to be disclosed by law or court order, provided that Contractor provides TxDMV with adequate notice to allow TxDMV to seek a protective order or other similar order with respect to such Confidential Information. In this instance, Contractor must reasonably cooperate with TxDMV at TxDMV's cost and expense, in any effort made by TxDMV to seek a protective order or other appropriate protection of Confidential information.

(5) **"Destroy"** or **"Destruction,"** of Confidential Information, means:

- (i) paper, film, or other hard copy media that has been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.
- (ii) electronic media that has been cleared, purged, or destroyed within systems, devices, and storage media consistent with National Institute of Standards and Technology ("NIST") Special Publication 800-88, "Guidelines for Media Sanitization" or equivalent, such that the Confidential Information cannot be retrieved.

(6) **"Discover"** or **"Discovery,"** means the first day on which a Breach becomes known to Contractor, or by exercising reasonable diligence, should have been known to Contractor.

B. Information Security Controls. Contractor agrees that:

- (1) To the extent permitted by law, the Contractor must keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor from TxDMV, unless such use or disclosure is required for Contractor to perform Work under the Contract. The Contractor must maintain as confidential and is prohibited from disclosing to third parties without TxDMV's prior written consent, any Confidential Information. This requirement must be included in all subcontracts awarded by Contractor.

Contractor must: (i) use appropriate legal, organizational, physical, administrative, and technical measures, and security procedures, including, without limitation, ensuring

Confidential Information will be encrypted at rest and in motion, to ensure the integrity, security, and availability of Confidential Information, and safeguard and ensure the security of Confidential Information from unauthorized access, hacking, disclosure, duplication, theft, use, modification and/or loss; and (ii) implement physical security and access controls at any of its facilities (including any data centers) that house Confidential Information in accordance with applicable laws, rules, and regulations. The foregoing requirements in this Subpart apply to Confidential Information that is in the Contractor's actual or constructive possession.

- (2) TxDMV will have the right to review the Contractor's security measures to ensure any Confidential Information that is in the Contractor's possession is secure. For any Contractor or Subcontractor that transmits, processes, or stores Confidential Information, TxDMV may require the Contractor or Subcontractor to periodically provide evidence of its information security policies, procedures, and controls. The Contractor must cooperate fully by providing such evidence and by making resources, employees, and systems available to TxDMV and TxDMV's authorized representative(s), if requested by TxDMV. TxDMV also reserves the right to immediately terminate network and system connections not meeting such requirements. For any information security risks of the Contractor identified by TxDMV throughout the term of the Contract, TxDMV may require an action plan to mitigate or remediate the security risk and Contractor agrees to provide such action plan promptly upon request.
- (3) Contractor must provide notice to TxDMV's Information Security Officer via email to txdmvsecurityincidents@txdmv.gov, with a copy to TxDMV's Contract Representative, within 24 hours of the Contractor's Discovery of unauthorized use, exposure, access, disclosure, compromise, modification, or loss of Confidential Information or any Breach, denial of service attack and/or inaccessible data due to ransomware or other type of malware (each such event, a "**Security Incident**"). Additionally, within 24 hours of the Discovery of a Security Incident, the Contractor must provide a written report to TxDMV's Information Security Officer detailing the circumstances of the Security Incident which includes, at a minimum:
 - (i) description of the nature of the Security Incident;
 - (ii) the type of Confidential Information involved;
 - (iii) who may have obtained the Confidential Information;
 - (iv) what steps Contractor has taken or will take to investigate the Security Incident;
 - (v) what steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
 - (vi) a point of contact for additional information.
- (4) Each day thereafter, or as additional information becomes available, and until the investigation is complete, the Contractor must provide TxDMV's Information Security Officer with a written report regarding the status of the investigation and the following additional information:
 - (i) who is known or suspected of having gained unauthorized access to Confidential Information;
 - (ii) whether there is any knowledge that Confidential Information has been abused or compromised;

- (iii) what additional steps Contractor has taken or will take to investigate the Security Incident;
 - (iv) what steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
 - (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.
- (5) Further, Contractor must notify TxDMV within 12 hours of any new report of any security vulnerability that affects its platforms directly or indirectly, that is published in sources including, but not limited to, the Common Vulnerabilities and Exposures and publications of the U.S. Cybersecurity and Infrastructure Security Agency (each such event, a **“Security Vulnerability”**).
- (6) Furthermore, the Contractor must provide an action plan for final resolution of such Security Incident or Security Vulnerability within one week of the date of such Security Incident or Security Vulnerability and complete remediation of such Security Incident or Security Vulnerability must be completed at the Contractor’s sole expense.
- (7) Contractor must confer with TxDMV’s Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TxDMV reserves the right to conduct an independent investigation of any Security Incident, and should TxDMV choose to do so, the Contractor must cooperate fully by making resources, employees, and systems access available to TxDMV and TxDMV’s authorized representative(s). Subject to review and approval of TxDMV’s Information Security Officer, the Contractor, at its own cost, will provide notice that satisfies the requirements of applicable United States and State law and regulation to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident.
- (8) Contractor also acknowledges and understands that if a “breach of system security” is determined to have occurred, Contractor must comply with all notification requirements outlined in Section 521.053 of the Texas Business and Commerce Code. This includes, but is not limited to, notifying the Texas Office of the Attorney General within 30 days of certain breaches.
- (9) If Contractor has any questions or concerns regarding whether particular material or information is Confidential Information, Contractor must obtain the prior written approval of TxDMV prior to using, disclosing, or releasing such information. Contractor acknowledges that Confidential Information is unique and valuable, and that TxDMV may have no adequate remedy at law if Contractor does not comply with its confidentiality obligations under the Contract. Therefore, TxDMV will have the right, in addition to any other rights it may have, to seek temporary, preliminary, and/or permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of the Contractor if Contractor fails to perform any of its confidentiality obligations under the Contract.
- (10) With respect to all Confidential Information, Contractor must:
 - (a) Ensure websites that process, transmit, or store Confidential Information will be accessible through a secure connection (HTTPS-only, with HTTP Strict Transport Security (“HSTS”)), utilizing Transport Layer Security (“TLS”) version 1.2 or higher.

- (b) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as required by law, which includes industry standard physical and electronic security measures, password protection, recordkeeping controls, and personnel procedures. The Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.
- (c) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security, and Breach notice requirements of this Article prior to performing Work under the Contract. The Contractor will provide to TxDMV, within five business days of request, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.
- (d) Obtain TxDMV's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce, or Subcontractors who have completed training required by the Contract in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management.
- (e) Obtain prior written approval of TxDMV, to disclose or provide access to any Confidential Information on the basis that such act is required by law or regulation, so that TxDMV may have the opportunity to object to the disclosure or access and seek appropriate relief. If TxDMV objects to such disclosure or access, the Contractor will refrain from disclosing or providing access to the Confidential Information until TxDMV has exhausted all alternatives for relief.
- (f) Certify that its Authorized Users have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each Authorized User has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this Article. Contractor and its Subcontractors will maintain at all times an updated, complete, accurate list of Authorized Users and supply it to TxDMV upon request.
- (g) Provide, and will cause its Subcontractors and agents to provide, to TxDMV periodic written confirmation of compliance with controls and the terms and conditions of the Contract.
- (h) Return to TxDMV or Destroy, at TxDMV's election and at Contractor's expense, all Confidential Information received from TxDMV or created or maintained by Contractor or any of Contractor's agents or Subcontractors on TxDMV's behalf upon the termination or expiration of the Contract, if reasonably feasible and permitted by law and regulation. The Contractor will certify in writing to TxDMV that all such Confidential Information has been Destroyed or returned to TxDMV, and that Contractor and its agents and

Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if United States or State law, rule, or regulation, TxDMV record retention policy, or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law or regulation, Contractor will immediately notify TxDMV of the reasons such return, or Destruction is not feasible, and agree to extend the protections of this Article to the Confidential Information for as long as Contractor maintains such Confidential Information.

- (i) If required under the terms of the Solicitation, complete, return, and comply with the Contract and the Information Resources Security Compliance & Confidentiality Agreement.
- (j) Contractor's security controls will comply with all NIST standards, as amended. Contractor will update its security controls assessment whenever there are significant changes in security controls for TxDMV Confidential Information and will provide the updated document to TxDMV. TxDMV also reserves the right to request updates as needed to satisfy United States and State monitoring requirements.
- (k) Contractor will only conduct secure transmissions of Confidential Information whether in paper, oral, or electronic form. A secure transmission of electronic Confidential Information in motion includes Secure File Transfer Protocol ("SFTP") or encryption at an appropriate level as required by rule, regulation, or law. Confidential Information at rest requires encryption unless there is adequate administrative, technical, and physical security as required by law, regulation, or rule. All electronic data transfer and communications of Confidential Information will be through secure systems. Contractor will provide proof of system, media or device security and/or encryption to TxDMV no later than 72 hours after TxDMV's written request in response to a compliance investigation, audit, or the Discovery of a Breach. TxDMV may also request production of proof of security at other times as necessary to satisfy United States and State monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards, if applicable, is deemed secure.
- (l) Make available to TxDMV any information TxDMV requires to fulfill TxDMV's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, rules, regulations, or demands of a regulatory authority relating to Confidential Information. The Contractor will provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.
- (m) Comply with NIST standards and all United States and State laws and regulations applicable to the type of Confidential Information and Contractor's Authorized Purpose.
- (n) Be permitted to use or disclose Confidential Information for the proper management and administration of the Contractor to carry out Contractor's legal responsibilities, except as otherwise limited by this Article or law, rule, or regulation applicable to the Confidential Information, if:

- (i) Disclosure is required by law, rule, or regulation; or
- (ii) Contractor obtains reasonable assurances from the person or entity to whom the information is disclosed that the person or entity will:
 - Maintain the confidentiality of the Confidential Information in accordance with the Contract;
 - Use or further disclose the information only as required by law, rule, or regulation, or for the Authorized Purpose for which it was disclosed to the person; and
 - Notify Contractor in event of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.
- (o) Implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by Contractor under the Contract.

3.2 Confidential Information Storage

Contractor must ensure that all Confidential Information, including any Confidential Information residing in backup or disaster recovery systems, remains within the contiguous United States, and may not be accessed, viewed, stored, processed, transmitted, received, or disposed of via information technology systems located outside the contiguous United States without obtaining prior written approval from TxDMV. The Contractor must also not store Confidential Information on portable devices, including personal laptops and desktop computers, except as required for the Contractor to fulfill its obligations under the Contract, or as authorized in advance in writing by TxDMV. Additionally, upon request by TxDMV, the Contractor must immediately disclose any data center(s) and server locations where Confidential Information is held or will be stored, as well as any redundant server locations.

3.3 Access to Internal Agency Network and Systems

As a condition of gaining remote access to any internal TxDMV network and systems, if applicable, the Contractor must comply with TxDMV's policies and procedures, more fully detailed in the security and awareness training that every contractor and its employees are required to complete prior to obtaining access to TxDMV networks and systems. TxDMV's remote access request procedures will require Contractor to submit TxDMV Applicable Access Request forms for TxDMV's review and approval. Remote access technologies provided by Contractor must be approved by TxDMV's Information Security Officer. TxDMV, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TxDMV's requirements. The off-site downloading, transfer, and/or storage of Confidential Information is strictly prohibited unless such acts are specifically allowed by the Contract.

3.4 Cybersecurity Training

If Contractor or a Subcontractor will have access to any State computer system or database in the performance of the Contract, Contractor represents and warrants that it and any Subcontractor will comply with the requirements of Section 2063.104 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program. TxDMV will not compensate Contractor for completing the cybersecurity training.

ARTICLE 4, INTELLECTUAL PROPERTY PROVISIONS

4.1 Property Rights / Ownership of Work Product

- A. All rights, title, and interest in the Work Product, including all Intellectual Property Rights therein, are exclusively owned by TxDMV. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of TxDMV.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be a "work made for hire" owned by TxDMV, as provided by Title 17 of the United States Code. To the extent Work Product does not qualify as a work made for hire under applicable United States law, and to the extent that the Work Product includes materials subject to copyright, patent, trade secret, trademarks, registrations, or other proprietary right protection, Contractor hereby irrevocably assigns and transfers to TxDMV, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied 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 equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers, provide all assistance, and perform any acts as TxDMV may deem necessary to secure and perfect the rights herein assigned, without any charge or expense beyond those amounts payable for Deliverables provided under the Contract.
- D. In the event Contractor has any rights in and to the Work Product that cannot be assigned to TxDMV, Contractor hereby grants to TxDMV an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense to third parties solely for the purpose of engaging such third parties to assist or carryout TxDMV's internal business use of the Work Product, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale, and transmit the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-Existing Works (as defined below in Section 4.2) or Third-Party IP that are incorporated in the Work Product by Contractor. Contractor will provide TxDMV access during normal business hours to all Contractor materials, premises, and computer files containing the Work Product.
- F. For the avoidance of doubt, nothing in this Section affects the ownership of Intellectual Property Rights of either Party which were in existence prior to the Effective Date or are developed independently of the Contract.

The following Section 4.2(A) below will not apply to, or have any force or effect on, the Contract if Contractor is licensing software to TxDMV under the Contract. In contrast, if Contractor is licensing software to TxDMV under the Contract, Section 4.2(B) will apply to the Contract.

4.2 Contractor's Pre-Existing Works

A. Pre-Existing Works - Non-Software

- (1) To the extent Contractor incorporates into the Work Product, any works of Contractor that were created by Contractor, or that Contractor acquired rights in: (i) independent of the performance of the Services; or (ii) prior to the Effective Date of the Contract

(collectively, the “**Incorporated Pre-Existing Works**”), Contractor retains ownership of such Incorporated Pre-Existing Works.

- (2) License Grant. Contractor hereby grants to TxDMV an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-Existing Works, in any medium, with or without the associated Work Product.
- (3) Contractor represents, warrants, and covenants to TxDMV that Contractor has all necessary rights and authority to grant the foregoing license in the Incorporated Pre-Existing Works to TxDMV.

B. Pre-Existing Works - Software

- (1) To the extent Contractor incorporates into the Work Product, any works of Contractor that were created by Contractor, or that Contractor acquired rights in: (i) independent of the performance of the Services; or (ii) prior to the Effective Date of the Contract (collectively, the “**Incorporated Pre-Existing Works**”), Contractor retains ownership of such Incorporated Pre-Existing Works.
- (2) Software License Grant. During the Contract Term (as defined below in Section 4.2(B)(7)), Contractor hereby grants to TxDMV a limited, non-exclusive, royalty-free, non-transferable, non-sublicensable, worldwide right and license to use and access and allow a successor service provider to use and access the Incorporated Pre-Existing Works comprised of software, as necessary to receive the Services and only in executable code format (i.e., not source code).
- (3) Non-Software and Related Documentation. For Incorporated Pre-existing Works other than software and related software documentation, Contractor hereby grants to TxDMV an irrevocable, perpetual, non-exclusive, royalty-free, non-transferable, worldwide right and license to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, the Incorporated Pre-Existing Works, in any medium, with or without the associated Work Product.
- (4) Contractor represents, warrants, and covenants to TxDMV that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-Existing Works to TxDMV.
- (5) Contractor agrees that the following Work Product will not be considered Contractor’s Incorporated Pre-existing Work: (a) reports containing only ‘TxDMV Data’ and (b) the form and format of meeting notifications, minutes, and agenda (i.e., the look and feel of the documents independent of the work made for hire content and excluding content and attachments which may comprise Contractor’s Incorporated Pre-Existing Works).
- (6) TxDMV will not create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile Contractor’s software provided under the Contract or otherwise attempt to discover any source code or modify Contractor’s software, unless otherwise permitted by applicable law.

- (7) For purposes of this Section 4.2(B), the term “**Contract Term**” refers to the period beginning on the Effective Date of the Contract and ending when the Contract expires in accordance with its terms, or when the Contract has been terminated.

4.3 Third-Party Intellectual Property

- A. To the extent that any third-party intellectual property is included or incorporated in the Work Product by Contractor, the Contractor hereby grants to TxDMV, or must obtain from the applicable third party for TxDMV’s benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for TxDMV’s internal business purposes only:
- i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third-Party IP and any derivative works thereof embodied in or delivered to TxDMV in conjunction with the Work Product; and
 - ii. to authorize others to do any or all of the foregoing.
- B. Contractor must obtain TxDMV’s advance written approval prior to incorporating any third-party intellectual property into the Work Product, and Contractor must notify TxDMV regarding delivery of the Work Product if such materials include any third-party intellectual property.
- C. Contractor must provide TxDMV with all supporting documentation demonstrating Contractor’s compliance with this Section, including without limitation documentation indicating a third party’s written approval for Contractor to use any third-party intellectual property that may be incorporated in the Work Product.

4.4 Agreements with Employees and Subcontractors

Contractor must have written, binding agreements, with its employees and Subcontractors that include provisions sufficient to give effect to and enable the Contractor’s compliance with Contractor’s obligations under this Article.

4.5 Delivery Upon Contract Termination or Expiration

No later than the first day after the termination or expiration of the Contract or upon TxDMV’s request, Contractor must deliver to TxDMV all completed, or partially completed, Work Product, including any Incorporated Pre-Existing Works, and any and all versions thereof. Contractor’s failure to timely deliver such Work Product is a material breach of the Contract. The Contractor will not retain any copies of the Work Product or any documentation or other products or results of Contractor’s activities under the Contract without the prior written consent of TxDMV.

4.6 Trademark Ownership

Contractor acknowledges and agrees that the Agency’s trademarks remain the exclusive property of TxDMV, that all right, title, and interest in and to the trademarks is exclusively held by TxDMV, and all goodwill associated with such trademarks inures solely to TxDMV. Furthermore, the Contractor agrees not to register, adopt, or use any trademark, trade name, domain name, or any designation confusingly similar to TxDMV’s trademarks. The Contractor also agrees that it will not challenge, contest, or otherwise impair TxDMV’s rights in its trademarks. Any use of the Agency’s trademarks by the Contractor will inure to the benefit of TxDMV, and the Contractor must, upon TxDMV’s request, provide reasonable assistance in protecting and enforcing TxDMV’s trademark rights.

4.7 Data Ownership, Use, and Return

Contractor acknowledges and agrees that all information and data provided by or on behalf of TxDMV or gathered or generated by the Contractor on behalf of TxDMV, including all data generated, processed,

transmitted, or stored by the Contractor in the course of performance of its duties under the Contract (the “**TxDMV Data**”) will be and remain the sole property of TxDMV. The Contractor further acknowledges that all such data is confidential and proprietary to TxDMV. Furthermore, a Contractor that stores, collects, or maintains TxDMV Data as a condition of the Contract, agrees to the following additional conditions:

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

ARTICLE 5, RECORDS AND AUDIT PROVISIONS

5.1 Books and Records Retention

- A. Contractor will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to TxDMV, the Texas Legislative Budget Board, the Texas State Auditor’s Office, the United States Government, and their authorized representatives all information required to determine compliance with the terms and conditions of the Contract and all United States and State laws, rules, and regulations. The Contractor must ensure these same requirements are included in all Subcontracts.
- B. Contractor will maintain and retain legible copies of the Contract and 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 requirements. These records will be maintained and retained by Contractor for a minimum of seven years after the Contract termination or expiration date or seven years after the completion of all audits, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later. Contractor will ensure these same requirements are included in all Subcontracts.

5.2 Agency’s Right to Audit and Inspect

- A. Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor

pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by TxDMV and the State. Contractor will ensure these same requirements are included in all Subcontracts.

- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit TxDMV or any of its duly authorized representatives, as well as duly authorized United States, State or local authorities, reasonable access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to the Contract. Contractor will permit TxDMV or any of its duly authorized United States, State, or local authorities' reasonable access to and the right to examine all external contracts and/or pricing models or methodologies related to the Contract. The Contractor will ensure these same requirements are included in all subcontracts. If the Contract includes United States government funds, United States agencies that will have a right of access to records as described in this Section include: the United States agency providing the funds; the U.S. Comptroller General; the U.S. General Accounting Office; the U.S. Office of the Inspector General; and any of their authorized representatives. In addition, agencies of the State that will have a right of access to records as described in this Section include: TxDMV's contracted examiners, the Texas Legislative Budget Board, the Texas State Auditor's Office, the Texas Office of the Attorney General, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by TxDMV or any duly authorized authority, for the purpose of oversight, including, but not limited to, reviews, inspections, audits and investigations, the Contractor will produce original documents related to the Contract.
- D. TxDMV and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings and payments related to the Contract, including those related to a Subcontractor. Accordingly, TxDMV reserves the right to verify the details set forth in Contractor's invoice(s), either before or after payment, by requesting any additional information TxDMV deems necessary to support the invoiced amount. The Contractor must respond to any such documentation requests within five days of receipt.
- E. Contractor will include TxDMV's and any of its duly authorized representatives', as well as duly authorized United States, State, or local authorities, unrestricted right of access to, and examination of, sites and information related to the Contract in any Subcontract it awards.

5.3 Texas State Auditor's Right to Audit

- A. The Texas State Auditor's Office may conduct an audit or investigation of any entity receiving funds from the State directly under the Contract or indirectly through a Subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the Texas State Auditor's Office, under the direction of the Texas Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Texas Legislative Audit Committee, an entity that is the subject of an audit or investigation by the Texas State Auditor's Office must provide the auditor with access to any information the auditor considers relevant to the investigation or audit.
- B. The Contractor will comply with any rules and procedures of the Texas State Auditor's Office in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

- C. Contractor will ensure the authority to audit funds received indirectly by Subcontractors through the Contract and the requirement to cooperate is included in any Subcontract it awards.

5.4 Response and Compliance with Audit or Inspection Findings

- A. Contractor must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, inspection or investigation of the Contract and the Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of TxDMV.
- B. As part of the Deliverables, Contractor must provide TxDMV, upon request, with a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Deliverables provided to the State under the Contract.
- C. Contractor will include the requirement to provide to TxDMV (and any of its duly authorized United States, State, or local authorities) internal audit reports related to the Contract in any Subcontract it awards. Upon TxDMV request, Contractor will enforce this requirement against any Subcontractor. Further, Contractor will include in any Subcontract, a requirement that all Subcontractor subcontracts include these requirements.
- D. In the event such an audit by TxDMV reveals any errors by TxDMV or the Contractor showing overpayments, the Contractor must refund TxDMV the full amount of the overpayments to TxDMV within 30 days of such audit finding, or TxDMV otherwise at its option, reserves the right to deduct such amounts owing TxDMV from any payments due Contractor.

5.5 Public Information Act

Any information, documentation, or other material related to the performance of the Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “**Texas Public Information Act**”). In accordance with Section 2252.907, Contractor or its Subcontractor(s) are required to make any information, documentation, and other material created or exchanged with the State or TxDMV pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or TxDMV.

5.6 Data Management and Security Controls

In accordance with Section 2054.138 of the Texas Government Code, the Contractor certifies that it will comply with the security controls required under the Contract and will maintain records and make them available to TxDMV as evidence of the Contractor's compliance with the required controls. This clause only applies if the Contractor is authorized to access, transmit, use, or store data for TxDMV under the Contract.

ARTICLE 6, CONTRACT MANAGEMENT AND ENFORCEMENT PROVISIONS

6.1 Contract Management and Remedies

To ensure Contractor's full performance of the Contract and compliance with applicable laws, rules, and regulations, TxDMV reserves the right to hold Contractor accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspend all or part of the Contract;

- ii. require the Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recoup payments made by TxDMV to the Contractor found to be in error;
- iv. suspend, limit, or place conditions on the Contractor's continued performance of Work; and
- v. impose any other remedies, sanctions, or penalties authorized under the Contract or permitted by United States or State law, rule, or regulation.

6.2 Inspection and Testing of Deliverables

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

6.3 Termination for Convenience

TxDMV may terminate the Contract, in whole or in part, at any time when, in its sole discretion, TxDMV determines that termination is in the best interests of the State. The termination will be effective on the date specified in TxDMV's notice of termination.

There is no buyout or termination fee due if TxDMV terminates the Contract early; however, if TxDMV terminates the Contract for convenience, TxDMV's sole and maximum obligation to Contractor will be to pay in full for all Work completed, and a percentage/pro rata for all partially completed Work, that was previously authorized and in compliance with the requirements of the Contract at time of Contract termination.

6.4 Termination for Cause

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, TxDMV may terminate the Contract, in whole or in part, upon either of the following conditions:

- A. Material Breach. TxDMV will have the right to terminate the Contract in whole or in part if TxDMV determines, at its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's presence on the excluded parties list system, in the U.S. General Service Administration's "System for Award Management" procurement information, will be considered a material breach of the Contract.
- B. Failure to Maintain Financial Viability. TxDMV may terminate the Contract if, in its sole discretion, TxDMV believes, in good faith, that Contractor no longer maintains the financial viability required to complete the Deliverables, or to otherwise fully perform its responsibilities under the Contract.
- C. Failure to Meet Deliverable Deadlines or Requirements. Failure to meet a Deliverable deadline or to achieve Deliverable acceptance constitutes a breach of contract under this Subpart. The Contractor will be provided a reasonable time to cure a breach under this Subpart, as set forth in a cure notice by TxDMV. A reasonable time to cure a breach is at the sole discretion of TxDMV. Failure to cure the breach within the timeframe stated in TxDMV's cure notice will constitute a

material breach of contract and may result in immediate Contract termination or assessment of liquidated damages. Additionally, repeated failure of the Contractor to provide Deliverables in compliance with Contract requirements will constitute a material breach of contract; and whether Contractor has materially breached the Contract under this Subsection, will be at the sole discretion of TxDMV.

6.5 Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, “*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*,” published by the United States Department of the Treasury, Office of Foreign Assets Control. Entities that are ineligible for United States procurements are currently accessible at: <https://sam.gov/content/home>. The Contractor acknowledges that TxDMV may, at its sole and absolute discretion, terminate the Contract for cause and may withhold payment if this certification is found to be inaccurate or later becomes inaccurate, and the Contractor waives any recourse against TxDMV arising from such termination or withholding.

6.6 Contractor’s Responsibility for Associated Costs

If TxDMV terminates the Contract for Cause, the Contractor will be responsible to TxDMV for all costs incurred by TxDMV and the State to replace Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation that is reasonably attributable to Contractor’s failure to perform any Work in accordance with the terms of the Contract.

6.7 Liquidated Damages

Unless otherwise specified in the Contract, the Parties agree that in the event a Deliverable deadline is not met due to any action(s) or omission(s) of Contractor, TxDMV reserves the right to assess liquidated damages in the amount of \$500.00 for each business day for each missed Deliverable deadline. The Parties agree that this constitutes a reasonable approximation of compensatory damages that would occur in the event of breach.

6.8 Cumulative Remedies

The rights and remedies provided by the Contract are cumulative and the use of one right or remedy by TxDMV will not preclude or waive TxDMV’s right to use any other remedies available under the Contract, or applicable laws, rules, or regulations.

ARTICLE 7, CONTRACT REPRESENTATIVES AND NOTIFICATION PROVISIONS

7.1 Contract Representatives

- A. The designated TxDMV Contract Representative, as set forth in the Signature Document or Purchase Order, whichever is applicable, is authorized to administer activities that include, but are not limited to, non-legal notices, consents, approval, inspections, requests, or other general communications provided for or permitted under the Contract.
- B. Contractor must designate in writing a Contract Representative that is authorized to administer activities that include, but are not limited to, non-legal notices, consents, approval, inspections, requests, or other general communications, provided for or permitted under the Contract in its Solicitation Response, or within five days of TxDMV written request.

7.2 Notices

- A. All non-legal notices provided by Contractor must be in writing or electronic transmission, include the TxDMV Contract number, comply with all terms and conditions of the Contract, and be delivered to the TxDMV Contract Representative identified in Section 7.1 above. **In addition, with the exception of legal notices, which must be delivered in the methods prescribed within this Section,** any requirements of a “writing” may be satisfied if the information is provided, sent, or delivered in an electronic mail, as set forth in the “**Texas Uniform Electronic Transactions Act**,” Chapter 322 of the Texas Business and Commerce Code.
- B. The Contractor must send legal notices to TxDMV at the address below, which will be deemed delivered only if and when received by TxDMV’s Office of General Counsel. Additionally, Contractor will provide a copy of any legal notice to the TxDMV Contract Representative within 24 hours of the legal notice being deposited in the United States mail or with a common carrier. TxDMV’s legal notice delivery information is as follows:

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

- C. Legal notices given by TxDMV to the Contractor may be emailed, mailed, or sent by common carrier to the Contractor’s Contract Representative identified in the Signature Document or Purchase Order, as applicable, which will be deemed delivered when either the email is sent by TxDMV, deposited by TxDMV in the United States mail, postage paid, certified, return receipt requested, or deposited by TxDMV with a common carrier, overnight, signature required.
- D. Either Party may designate a new Contract Representative or update its legal notice delivery information without the requirement for the execution of an Amendment to the Contract by giving notice to the other Party as provided for under this Section at least ten business days prior to the change.

ARTICLE 8, WARRANTIES, AFFIRMATIONS, AND ASSURANCES PROVISIONS

8.1 Warranty

Contractor warrants that all Work under the Contract will be completed in a manner consistent with standards under the terms of the Contract, in the applicable trade, profession, or industry; will conform to or exceed the specifications set forth in the Contract; and all Deliverables will be fit for ordinary use, of good quality, and with no material defects. If TxDMV, in its sole discretion, determines Contractor has failed to complete Work timely or to perform satisfactorily under conditions required by the Contract, TxDMV may require Contractor, at its sole expense, to:

- i. repair or replace all defective or damaged Work;
- ii. refund any payment Contractor received from TxDMV for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work;
- iii. take necessary action to ensure that Contractor’s future performance and Work conforms to Contract requirements; and
- iv. exercise all other remedies under the Contract, at law, and in equity.

8.2 Software Warranty

Contractor warrants, represents, and covenants that any software (1) delivered or made available to TxDMV for TxDMV's use, or (2) used by Contractor to provide the Deliverables, will conform in all material respects to all Contract specifications. In addition, for any provided software; software configuration(s); enhancement(s); integration; or migration under the Contract, Contractor will provide maintenance and support to TxDMV for the foregoing for a 90-day warranty period after any deployment/go-live for any issues that may arise, unless the Contractor's standard warranty period is longer.

8.3 Third-Party Warranties

If, under the Contract, the Contractor procures any materials or products for TxDMV, the Contractor must assign or otherwise transfer to TxDMV, or afford TxDMV the benefits of, any manufacturer's warranty for such materials or products.

8.4 Affirmations

Contractor certifies that it is in compliance with each of the affirmations (whether framed as certifications, representations, warranties, or in other terms) identified herein, and will remain in compliance throughout the Contract term, including all renewals and extensions. The Contractor acknowledges that TxDMV may, at its sole and absolute discretion, terminate the Contract for cause and may withhold payment if this certification is found to be inaccurate or later becomes inaccurate, and the Contractor waives any recourse against TxDMV arising from such termination or withholding.

These Affirmations apply to all vendors, contractors, and grantees (referred to as "**Contractor**") regardless of their business form (e.g., individual, sole proprietorship, partnership, limited liability company, corporation, and nonprofit organization).

8.5 Parties to the Affirmations

Contractor represents and warrants that the affirmations herein, as referenced in Subsection 8.4 above, apply to Contractor and all of Contractor's officers, directors, partners, owners, agents, employees, Subcontractors, and any other representatives who may provide the Deliverables, who have a financial interest in, or otherwise are interested in the Contract.

8.6 Federal Assurances and Certifications

Contractor certifies that, to the extent United States assurances and/or certifications are incorporated into the Contract, the federal assurances and/or certifications have been reviewed and Contractor is in compliance with each of the requirements reflected therein, and will remain in compliance throughout the Contract Term, including all renewals and extensions.

ARTICLE 9, INDEMNIFICATION PROVISIONS

9.1 INDEMNIFICATION (GENERAL)

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, CONTRACTOR MUST DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDMV, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY

PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE TEXAS OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE TEXAS OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND TXDMV AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

9.2 INDEMNIFICATION (INTELLECTUAL PROPERTY)

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TXDMV 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: (i) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THE CONTRACT; (ii) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED THEREUNDER; AND/OR (iii) TXDMV'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDMV BY CONTRACTOR OR OTHERWISE TO WHICH TXDMV HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. THE CONTRACTOR AND TXDMV AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE TEXAS OFFICE OF THE ATTORNEY GENERAL. IN ADDITION, THE CONTRACTOR WILL REIMBURSE THE STATE OF TEXAS AND TXDMV FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TXDMV DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TXDMV IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDMV WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TXDMV'S COUNSEL.

9.3 NO AGENCY INDEMNIFICATION

FOR THE AVOIDANCE OF DOUBT, ANY REQUIREMENT THAT TXDMV DEFEND, INDEMNIFY, OR HOLD HARMLESS THE CONTRACTOR OR ANY OTHER ENTITY IN A SOLICITATION RESPONSE OR CONTRACTOR'S OTHER DOCUMENTS (INCLUDING BUT NOT LIMITED TO CLICK-THROUGH AGREEMENT, TERMS OF SERVICE, OR SIMILAR AGREEMENT) ARE REJECTED, VOID, UNENFORCEABLE, AND WITHOUT ANY FORCE OR EFFECT UNDER THE CONTRACT.

ARTICLE 10, CONTRACTOR AND SUBCONTRACTOR PROVISIONS

10.1 Independent Contractor

Contractor is, and will be, an independent contractor and, subject only to the terms of the Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the detail's incident

to its duties under the Contract. Nothing contained in the Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for TxDMV any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

The Contractor will be solely responsible for, and TxDMV will have no obligation with respect to:

- i. payment of Contractor's personnel and benefits;
- ii. payment to subcontractors, suppliers, and third-party service providers who provide Deliverables under the Contract;
- iii. ensuring each of its employees, agents, or Subcontractors who provide Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- iv. withholding of income taxes, Federal Insurance Contributions Act taxes, or any other taxes or fees;
- v. industrial or workers' compensation insurance coverage;
- vi. accumulation of vacation leave or sick leave; and
- vii. unemployment compensation coverage administered by the Texas Workforce Commission.

10.2 Contractor's Personnel

If required under the terms of the Solicitation, Contractor must assign only key personnel identified in its Solicitation Response to complete, all of their planned and assigned responsibilities in connection with performance of the obligations of the Contractor under the Contract, and warrants that all personnel assigned to the Contract are fully qualified to perform the Work. It is critical to the overall success of the Project that Contractor does not remove or reassign key personnel, without TxDMV's prior written approval, until such time as the key personnel have completed all of their planned and assigned responsibilities in connection with performance of Contractor's obligations under the Contract, or provide on-site representation of Contractor. The unauthorized removal of any key personnel by Contractor will constitute a breach of the Contract and grounds for immediate termination.

Replacement of any key personnel, if approved by TxDMV, must have equal or greater ability and qualifications than any key personnel to be replaced. This approval must be in writing by TxDMV, at TxDMV's sole discretion, prior to any assignment of replacement key personnel. TxDMV is the sole arbiter of whether the replacement key personnel have equal or greater ability and qualifications than what is listed in the Solicitation.

Before assigning replacement key personnel, the Contractor must notify TxDMV of the proposed assignment, introduce the individual to the appropriate representatives of TxDMV, provide a transfer of knowledge validation, and provide TxDMV with a resume and any other information about the individual reasonably requested by TxDMV.

This Section does not require the Contractor to seek or received prior written approval from TxDMV, when changing any key personnel in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor.

10.3 Replacement of Contractor's Personnel at Agency's Request

TxDMV reserves the right, in its sole discretion, to require Contractor to replace Contractor's personnel whom TxDMV has determined is incompetent, careless, unsuitable, or otherwise objectionable, or whose continued use is deemed contrary to the best interests of TxDMV or the State. Before a written request is issued, the TxDMV Contract Representative and Contractor will discuss the circumstances. Upon receipt of a written request from TxDMV, Contractor must immediately proceed with the replacement. Contractor

must use its best efforts to effect the replacement in a manner that does not compromise the delivery or quality of any Deliverables. Additionally, Contractor must also provide TxDMV with evidence of a sufficient transfer of knowledge to the proposed replacement.

This Section does not give TxDMV the right to require Contractor to terminate any Contractor personnel's employment. Rather, this Section will act to afford TxDMV the right to preclude certain contractor personnel from performing the obligations of Contractor under the Contract.

10.4 Contractor's Subcontractors and Subcontracts

Contractor may not Subcontract any Work under the Contract without prior written approval of TxDMV. Contractor must have written binding agreements with all Subcontractors providing Deliverables under the Contract that include provisions sufficient to give effect to and enable Contractor's compliance with its obligations under the Contract, which agreements will subject all Subcontractors to all the requirements of the Contract. Should Contractor subcontract any of the Work under the Contract, Contractor expressly understands and acknowledges that in entering into such Subcontract(s), TxDMV is in no manner liable to any Subcontractor(s) of Contractor. In no event will this Section relieve the Contractor of the responsibility for ensuring that the Work performed under all Subcontracts is rendered in compliance with the Contract.

10.5 Criminal History Background Checks

Contractor must ensure its personnel and/or Subcontractors and their employees who perform under the Contract have passed a criminal history background investigation if required by TxDMV, prior to being assigned to the Project, so there is no lapse or delays in providing the Deliverables under the Contract. If a background investigation reveals a Class A Misdemeanor or felony, the Contractor must notify the TxDMV Contract Representative to seek written approval in advance of assigning an employee and/or Subcontractor to provide any Work under the Contract. The Contractor will be solely responsible for any costs associated with the criminal history background investigation.

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

ARTICLE 11, INSURANCE REQUIREMENTS PROVISIONS

11.1 Insurance

- A. Unless otherwise specified in the Contract, Contractor must acquire and maintain, for the duration of the Contract, insurance coverage necessary to ensure proper fulfillment of the Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by TxDMV. The Contractor will provide evidence of insurance as required under the Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of TxDMV the nature and extent of coverage granted by each such policy, upon request by TxDMV. In the event any policy is determined by TxDMV to not comply with the terms of the Contract, Contractor will secure such additional policies or coverage as TxDMV may reasonably request or that are required by law or regulation. If coverage expires during the term of the Contract, Contractor must produce renewal certificates for each type of coverage.

- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

ARTICLE 12, STATE PROPERTY PROVISIONS

12.1 Use of State Government Property

- A. Contractor is prohibited from using State Property (as defined below in Section 12.1(B)) for any purpose other than providing Deliverables authorized under the Contract.
- B. **"State Property"** includes but is not limited to: TxDMV's office space; identification badges; TxDMV information technology equipment and networks (e.g., laptops, portable printers, cell phones, tablets, external hard drives, data storage devices, any TxDMV-issued software, and TxDMV's Virtual Private Network); and any other resources of TxDMV.
- C. Contractor and Subcontractors must not remove State Property from within Texas, or access TxDMV's network or email using any computing device while outside the contiguous United States without prior written approval from TxDMV.
- D. Contractor will not perform any maintenance services on State Property unless the Contract expressly authorizes such services.
- E. During the time State Property is in the possession of Contractor, Contractor will be responsible for:
 - i. all repair and replacement charges incurred by TxDMV that are associated with loss of State Property or damage beyond normal wear and tear; and
 - ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. The Contractor will fully reimburse such charges to TxDMV within ten business days of Contractor's receipt of TxDMV's notice of amount due. Use of State Property for a purpose not authorized by the Contract will constitute a breach of contract and may result in Contract termination and pursuit of other remedies available to TxDMV under the Contract, at law, or in equity.

12.2 Damage to State Government Property

- A. In the event of loss, destruction, or damage to any TxDMV or State Property (owned, leased, or occupied) by Contractor or Contractor's employees, agents, Subcontractors, or suppliers, Contractor will be liable to TxDMV and the State for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Contractor will notify TxDMV of the loss, destruction, or damage of State Property within one business day of the occurrence. Contractor will reimburse TxDMV and the State for such loss, destruction, or damage within ten business days after Contractor's receipt of TxDMV's notice of amount due.

12.3 State Property Rights upon Termination or Expiration of the Contract

Upon Contract termination or expiration, State Property will remain the property of TxDMV, and must be returned to TxDMV upon written request, or within ten business days of Contract termination or expiration.

ARTICLE 13, WORK ORDER PROVISIONS

13.1 Work Orders

To the extent the Contract is for indefinite quantities of Deliverables, as specified in the Contract, all Work will be performed in accordance with, and as authorized through, Work Orders issued by TxDMV. Contractor will be responsible for all Work assigned by TxDMV under Work Order(s).

13.2 Proposals

Upon identification of a project under the Contract, TxDMV will request that Contractor submit to TxDMV a proposal, including pricing and a project plan. If Contractor is selected to carry out an individual project, a Work Order will be issued. Multiple Work Orders may be issued during the term of the Contract, all of which will be in writing and signed by the Parties.

13.3 Contract Termination or Expiration

If a Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until the Work Order is terminated or expires; and the Contract and the Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary.

ARTICLE 14, TECHNOLOGY PROJECT PROVISIONS

14.1 Technology Access / Accessibility Requirements

To the extent applicable to the Deliverables under the Contract, Contractor must ensure the Deliverables comply with the accessibility standards for individuals with disabilities identified in Subchapter M, Chapter 2054 of the Texas Government Code; Title 1 of the Texas Administrative Code, Part 10, Chapter 206, Subchapters A and B (Texas state agency websites accessibility policy); and Title 1 of the Texas Administrative Code, Part 10, Chapter 213, Subchapters A and B.

Contractor must provide the Texas Department of Information Resources (“**DIR**”) with the Uniform Resource Locator (“**URL**”) to its Voluntary Product Accessibility Template (“**VPAT**”) for reviewing compliance with the State Accessibility requirements (based on the United States standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the U.S. General Services Administration’s “Buy Accessible Wizard” currently accessible at: <https://www.section508.gov/buy/>.

Contractors not listed with the Buy Accessible Wizard or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the Buy Accessible Wizard or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

14.2 Artificial Intelligence Disclosure and Requirements

Contractor certifies that it has fully disclosed to TxDMV, all artificial intelligence (“**AI**”) systems or functions proposed to be used in performing, supporting, or providing the Deliverables, or any portion thereof, under the Contract. For purposes of this clause, “artificial intelligence system,” as defined by Section 2054.003 of the Texas Government Code, “means a machine-based system that for explicit or implicit objectives infers from provided information a method to generate outputs, such as predictions, content, recommendations, or decisions, to influence a physical or virtual environment with varying levels of autonomy and adaptiveness after deployment;” and, “artificial intelligence function” means any mechanism, capability, or embedded process of an information technology system, component, or application that uses artificial intelligence techniques (such as machine learning, natural language

processing, computer vision, or generative algorithms) to carry out or augment a specific task, whether or not it constitutes a standalone artificial intelligence system.

The use of any AI system or function by the Contractor or its Subcontractors in connection with the Deliverables is strictly prohibited, unless the Contractor first submits the TxDMV Artificial Intelligence Disclosure Form to the TxDMV Contract Representative, and receives prior written approval from TxDMV. The written request and disclosure must, at a minimum, address: (i) AI model type; (ii) construction and parameters (model card); (iii) training data sources; (iv) bias testing; (v) validation methods; (vi) anomaly detection; (vii) human involvement; (viii) employees and subcontractors that have access; (ix) hosting and Backup locations (continental United States only); and (x) any other information requested by TxDMV. If TxDMV approval is granted, all written approvals, requests and disclosures, and supporting documentation regarding the approved AI system or functions will be deemed incorporated into the Contract by reference.

The Contractor must also maintain ongoing and transparent communications with TxDMV concerning any modifications, updates, or enhancements to disclosed or approved AI systems or functions that may affect the performance of the Contractor's contractual obligations under the Contract. The Contractor must promptly notify TxDMV and seek renewed review and approval for any relevant material changes for previously approved AI systems or functions by submitting an updated TxDMV Artificial Intelligence Disclosure and Approval Form.

Failure by the Contractor to comply with the requirements of this Section may, at the sole and absolute discretion of TxDMV, result in TxDMV termination of the Contract for cause, withholding of payment(s) otherwise due under the Contract; and the Contractor will have no recourse against TxDMV arising from such termination or withholding.

14.3 Cloud Computing State Risk and Authorization Management Program (TX-RAMP)

If providing cloud computing services for TxDMV pursuant to Section 2063.408 of the Texas Government Code, relating to the cloud computing State risk and authorization management program, Contractor represents and warrants that it complies with the requirements of the state risk and authorization management program and Contractor agrees that throughout the term of the Contract, it will maintain its certifications and comply with the program requirements in the performance of the Contract. The Contractor acknowledges that TxDMV may, at its sole and absolute discretion, terminate the Contract for cause and may withhold payment if this representation is found to be inaccurate or later becomes inaccurate, and the Contractor waives any recourse against TxDMV arising from such termination or withholding.

14.4 Computer Equipment Recycling Program

If the Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 of the Texas Administrative Code, Part 1, Chapter 328.

14.5 Contractor's Compliance Verification

Contractor agrees by entering into the Contract that prior to any software compliance audit, the Contractor, and its representative, if applicable, must enter into a TxDMV non-disclosure agreement to protect all confidential information that may be shared during such audit. The compliance audit methodology, date, time, and location must be mutually agreed upon between TxDMV and the Contractor, with at least 15 business days' advance notice provided by the Contractor. Additionally, the Contractor further agrees that

TxDMV will be subject to a maximum of one compliance audit every two years, or, alternatively, TxDMV may self-certify its compliance in lieu of such audit.

14.6 Evaluation, Testing, and Monitoring

- A. TxDMV may review, test, evaluate, and monitor Contractor's Deliverables, and associated documentation and technical support for compliance with required accessibility standards. Review, testing, evaluation, and monitoring will be conducted upon the Effective Date of the Contract. Testing and monitoring may include user acceptance testing.
- B. Neither (1) the review, testing (including user acceptance testing), evaluation, or monitoring of any Deliverable, nor (2) the absence of such review, testing, evaluation, or monitoring, will constitute a waiver of TxDMV's right to contest Contractor's assertion of compliance with required accessibility standards.
- C. Contractor agrees to cooperate fully with, and provide TxDMV, timely access to Deliverables, documentation, and other items and information TxDMV requires to conduct the review, evaluation, testing, and monitoring.

14.7 Information Management Standards

Contractor will conform to TxDMV standards for data management as described in the Solicitation, to include standards for documentation and communication of data models, metadata, and other data definition methods that are required by TxDMV for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of TxDMV data assets.

14.8 No Surreptitious Code Warranty

Contractor warrants, represents, and covenants that no software provided to TxDMV contains or will contain any Self-Help Code (as defined below) nor any Unauthorized Code (as defined below). Contractor further warrants that Contractor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict TxDMV's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the software provided under the Contract. This warranty is referred to as the "No Surreptitious Code Warranty."

As used herein, "**Self-Help Code**" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of providing maintenance or technical support services.

As used herein, "**Unauthorized Code**" means any virus, trojan horse, worm, or other software routines or equipment components designed to permit unauthorized access or to disable, erase, or otherwise harm Software, equipment, or data. The term Unauthorized Code does not include Self-Help Code.

In the event Contractor suspends or terminates TxDMV's use of the software due to lack of payment or Contract termination by either Party, such an action will not constitute a Self-Help Code as defined above.

14.9 Remedies

- A. Pursuant to Section 2054.465 of the Texas Government Code, neither Contractor nor any other person has cause of action against TxDMV for a claim of a failure to comply with Subchapter M, Chapter 2054 of the Texas Government Code, and rules of DIR.
- B. In the event of a breach of Contractor's representations and warranties under this Article, Contractor will be liable for direct and consequential damages and any other remedies to which TxDMV may be entitled. This remedy is cumulative of any and all other remedies to which TxDMV may be entitled under the Contract, and pursuant to applicable laws, rules, and regulations.

14.10 Secure Erasure of Hard Disk Capability

All equipment provided to TxDMV by the Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) must 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 Title 1 of the Texas Administrative Code, Part 10, Chapter 202.

14.11 Shrink-Wrap, Click-Wrap, and Browser-Wrap Agreements

If the Contract is for the purchase of, licensing of, or access to software, applications, or systems that are locally installed, web-based, or cloud-based, including, but not limited to, Infrastructure-as-a-Service, Platform-as-a-Service, or Software-as-a-Service, then Contractor acknowledges and agrees that any terms and conditions of any shrink-wrap, click-wrap, browser-wrap, or similar agreement relating to the subject matter of the Contract will be null and void, will have no force or effect on the Contract, and accordingly, will not apply in any manner to TxDMV or its authorized users, unless expressly accepted by TxDMV in writing. For the avoidance of doubt, the Contract supersedes any shrink-wrap, click-wrap, browser-wrap, or similar agreement which may accompany or purportedly apply to the Deliverables provided by Contractor under the Contract.

14.12 Software Security Configuration

If Contractor is providing TxDMV software Deliverables and/or data processing Deliverables, the Contractor agrees to provide secure configuration guidelines that fully describe all security relevant configuration options and their implications for the overall security of the software. The guideline will include a full description of dependencies on the supporting platform, including operating system, web server, and application server, and how they should be configured for security.

14.13 Technical Representations and Warranties

- A. Contractor represents and warrants that (1) as of the Effective Date of the Contract, Contractor has used industry standard measures to ensure the Deliverables, associated documentation, and technical support comply with accessibility standards, unless and to the extent the Parties otherwise expressly agree in writing, and (2) if the Deliverables will be in the custody of TxDMV upon Contract termination or expiration, the Deliverables will continue to comply with such accessibility standards after Contract termination or expiration, unless TxDMV uses the Deliverables in a manner that renders it noncompliant.
- B. In the event Contractor should have known, becomes aware, or is notified that the Deliverables, associated documentation, and technical support do not comply with the accessibility standards, Contractor represents and warrants that it will, in a timely manner and at no cost to TxDMV, perform all necessary and reasonable steps to satisfy the accessibility standards, including but not

limited to remediation, repair, replacement, and upgrading of the Deliverable, or providing a suitable substitute.

- C. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which TxDMV relies in awarding the Contract.

ARTICLE 15, MISCELLANEOUS AFFIRMATIONS PROVISIONS

15.1 Abortion Provider and Affiliate Transactions Prohibited

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

15.2 Americans with Disabilities Act

Contractor represents and warrants that it is, and will remain, in compliance with all applicable requirements of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and all implementing regulations issued by the U.S. Department of Justice and other applicable United States agencies, as each may be amended.

15.3 Antitrust

Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the United States antitrust laws, or (2) communicated directly or indirectly the contents of the Contract to any competitor or any other person engaged in the same line of business as Contractor. Additionally, Contractor assigns to TxDMV all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Solicitation or any resulting contract.

15.4 Buy Texas (Service Contracts)

In accordance with Section 2155.4441 of the Texas Government Code, the Contractor agrees that during the performance of a Contract for Services it will purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside the State.

15.5 Child Support Obligation

"Under Section 231.006, Family Code, the [Contractor] certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate." Section 231.006 prohibits a Texas state agency from accepting a Solicitation Response, awarding a contract, or remitting payment to a child support obligor, who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent. If the certification is shown to be false, Contractor may be liable for additional costs and damages as set forth in Section 231.006(f).

15.6 Contracting Information Responsibilities (\$1 Million or Greater in Public Funds)

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TxDMV for the duration of the Contract, (2) promptly provide to TxDMV any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TxDMV, and (3) on termination or expiration of the Contract, either provide at no cost to TxDMV all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TxDMV. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

15.7 COVID-19 Vaccine Passports Prohibition

In accordance with Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a State-funded contract and may result in the immediate termination of the Contract.

15.8 Critical Infrastructure

If Contractor will be granted direct or remote access to or control of critical infrastructure in this State, other than access specifically allowed for product warranty and support purposes, as defined by Section 2275.0101 of the Texas Government Code under the Contract, Contractor certifies (1) that Contractor, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Contractor, is not owned by or the majority of stock or other ownership interest of Contractor is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Texas Governor as a threat to critical infrastructure; (2) that Contractor including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Contractor, is not owned by or the majority of stock or other ownership interest of Contractor is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Texas Governor as a threat to critical infrastructure; and (3) that Contractor including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Contractor, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Texas Governor as a threat to critical infrastructures.

15.9 Dealings with Public Servants

Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.

15.10 Disaster Recovery Plan

In accordance with Title 13 of the Texas Administrative Code, Part 1, Chapter 6, Subchapter C, Section 6.94(a)(9), Contractor agrees that upon request of TxDMV, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

15.11 Disclosure of Interested Parties

Contractor certifies that, if the value of the Contract is \$1 million or greater, Contractor has complied with Section 2252.908 of the Texas Government Code and Title 1 of the Texas Administrative Code, Part 2, Chapter 46, Sections 46.1-46.5, as implemented by the Texas Ethics Commission (“TEC”), if applicable, and has provided TxDMV with a fully executed TEC Form 1295, approved by TEC and signed by the Contractor.

15.12 Disclosure of Prior State Employment (Consulting Services)

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TxDMV or another State agency at any time during the two years preceding the submission of the Solicitation Response or, in the alternative, Contractor has disclosed in its Solicitation Response the following: (i) the nature of the previous employment with TxDMV or the other State agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

15.13 Entities that Boycott Energy Companies

Contractor represents and warrants that (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor must promptly notify TxDMV.

15.14 Entities that Boycott Israel

Contractor represents and warrants that (1) it does not, and will not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor must promptly notify TxDMV.

15.15 Entities that Discriminate Against Firearm and Ammunition Industries

Contractor verifies that (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor must promptly notify TxDMV.

15.16 Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a State agency, Contractor certifies that it is not (1) the executive head of TxDMV, (2) a person who at any time during the four years before the date of the Contract was the executive head of TxDMV, or (3) a person who employs a current or former executive head of TxDMV.

15.17 False Statements

Contractor represents and warrants that all statements and information prepared and submitted by the Contractor in the Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor in any related Solicitation Response or during the performance of the Contract is a material breach of contract and may void the Contract.

15.18 Federal Occupational Safety and Health Law

Contractor represents and warrants that all Deliverables under the Contract will 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). For the avoidance of doubt, this clause does not apply to a Contractor that is a governmental entity of the State, or a political subdivision of Texas, such as a city or county government (29 U.S.C. § 652(5)).

15.19 Financial Participation Prohibited

“Under Section 2155.004, Government Code, the [Contractor] certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.” Section 2155.004 prohibits a State agency from accepting a bid from or awarding a contract to an individual or business entity that includes proposed financial participation by a person who received compensation from the Agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.

15.20 Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code. Additionally, pursuant to Texas Executive Order No. GA-43, Contractor represents and warrants that all goods or products that may be provided under the Contract were not produced in or exported from the Gaza Strip, and from any organization or state actor with ties to Hamas. The Contractor acknowledges that TxDMV may, at its sole and absolute discretion, terminate the Contract for cause and may withhold payment if either of these representations are found to be inaccurate or later becomes inaccurate, and the Contractor waives any recourse against TxDMV arising from such termination or withholding.

15.21 Former Agency Employees (Certain Contracts)

If the Contract is an employment contract, professional services contract, or consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor 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 TxDMV during the twelve month period immediately prior to the date of execution of the Contract.

15.22 Fraud, Waste, and Abuse

Contractor acknowledges and understands that TxDMV does not tolerate any type of fraud, waste, or abuse. Violations of Texas laws, policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Section 321.022 of the Texas Government Code, if the administrative head of a department or entity that is subject to audit by the Texas State Auditor’s Office has reasonable cause to believe that money received from the State by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head will report the reason and basis for the belief to the Texas State Auditor’s Office. A reasonable cause to believe exists when a set of facts would lead a reasonable and prudent person to believe that an offense may have been committed. **All TxDMV contractors and subcontractors who become aware of a situation that involves suspicious activities or fraudulent acts (including misconduct by any TxDMV board member, officer, employee, agent, another contractor, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the**

questionable activity to the Texas State Auditor's Office. The Contractor agrees to comply with all applicable laws, rules, regulations, and TxDMV policies regarding fraud, waste, and abuse.

A report to the Texas State Auditor's Office may be made through one of the following avenues:

Toll Free Hotline: 1-800-TX-AUDIT (800-892-8348)

Website: <https://sao.fraud.texas.gov/>

Mailing Address: Texas State Auditor's Office
Attn: Investigations
P.O. Box 12067
Austin, Texas 78711-2067

15.23 Hardening of State Government

In accordance with Texas Executive Order No. GA-48, Contractor certifies by entering into the Contract that it, and, if applicable, any of its holding companies or subsidiaries, is not: (i) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA"); (ii) listed in Section 1260H of the 2021 NDAA; (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or (iv) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4. The Contractor acknowledges that TxDMV may, at its sole and absolute discretion, terminate the Contract for cause and may withhold payment if this certification is found to be inaccurate or later becomes inaccurate, and the Contractor waives any recourse against TxDMV arising from such termination or withholding.

15.24 Human Trafficking Prohibition

"Under Section 2155.0061, Government Code, the [Contractor] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate." Section 2155.0061 prohibits a State agency from accepting a bid from or awarding a contract to an individual or business entity that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking.

15.25 Immigration

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, and all subsequent immigration laws and amendments during the term of the Contract.

15.26 Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in Section 8.5 of the Contract within the five calendar years immediately preceding execution of the Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under the Contract, relate to the Deliverables, or otherwise be relevant to TxDMV's consideration of entering into the Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to TxDMV in advance a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under the Contract, relate to the Deliverables, or otherwise be relevant to TxDMV's consideration of entering into the Contract. In addition, Contractor acknowledges this is a continuing disclosure

requirement throughout the term of the Contract. Contractor represents and warrants that Contractor will notify TxDMV in writing within five business days of any change to the representations or warranties in this clause and understands that failure to update TxDMV timely will constitute a breach of contract and may result in the immediate termination of the Contract.

15.27 Lobbying Prohibition

Contractor represents and warrants that TxDMV's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or State funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

15.28 No Conflicts of Interest

Contractor represents and warrants that the provision of Deliverables or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety in accordance with Sections 2252.908, 2254.032, and 2261.252(b), and 2262.004 of the Texas Government Code. If circumstances change during the course of the Contract, Contractor will notify TxDMV in writing within five business days of any changes to the representations or warranties in this clause and understands that failure to update TxDMV timely will constitute a breach of the Contract and may result in the immediate termination of the Contract. TxDMV reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by TxDMV's decision.

15.29 No Felony Criminal Convictions

Contractor represents that neither Contractor, nor any of its employees, agents, and representatives, including any Subcontractor(s) and its employees, agents, representatives, or subcontractors, have been convicted of a felony criminal offense, or that if such a conviction has occurred, Contractor has fully advised TxDMV in writing of the facts and circumstances surrounding the convictions in its Solicitation Response. If circumstances change during the course of the Contract, Contractor must promptly notify TxDMV and understands that failure to update TxDMV timely of any change will constitute breach of the Contract and may result in the immediate termination of the Contract.

15.30 Permits, Certifications, and License

At Contractor's sole expense, Contractor will procure and maintain for the duration of the Contract any United States, State, county, or city, license, authorization, insurance, waiver, permit, qualification, or certification required by statute, law, regulation, or ordinance to be held by Contractor to provide the Deliverables required by the Contract.

The Contractor will be responsible for payment of all taxes and assessments, and any fees or premiums required to procure and maintain any permits, insurance, licenses, certifications, and qualifications required by law. Contractor will be responsible for payment of any such government obligations not paid by its Subcontractors during performance of the Contract.

15.31 Prior Disaster Relief Contract Violation

"Under Section 2155.006 [and Section 2261.053], Government Code, the [Contractor] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate." Sections 2155.006 and 2261.053 prohibit a State agency from accepting a bid from or awarding a contract to an individual or business entity that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of

violating a United States law in connection with a contract awarded by the United States government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005, or assessed a penalty in a United States civil or administrative enforcement action in connection with a contract awarded by the United States government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

15.32 Public Nature of Response and Posting of Certain Contracts on Websites

Contractor understands, acknowledges, and accepts that TxDMV will comply with the requirements of Sections 322.020, 2157.0685, and 2261.253 of the Texas Government Code regarding the reporting and posting of contracts. To the extent the Contract falls within these requirements, TxDMV will post the Contract, including any associated Attachments (such as the Contractor's Solicitation Response), on either the Legislative Budget Board's database of State agency contracts or the TxDMV website, as applicable, currently accessible at: https://www.lbb.texas.gov/contract_reporting.aspx and <https://www.txdmv.gov/contractors-vendors> (Contract Reporting Tab). This posting will exclude information covered by the "Public Information Act," if any, as referred to in Section 5.5 above. Notwithstanding any designations or claims that information is confidential, proprietary, trade secret, trademarked, copyrighted, protected, or bears any similar markings, the Contractor agrees by executing the Contract, that the entire Contract, including its Solicitation Response, are considered public documents upon execution, except to the extent that specific information is excepted from disclosure under the Public Information Act. TxDMV may distribute copies of the Contract and its attachments to third parties in the ordinary course of business, including responses to public information requests and postings on the aforementioned governmental websites. Any information withheld or redacted by TxDMV during this process does not constitute a representation or guarantee that such information is excepted from disclosure under a public information request, and may be subject to release pursuant to a determination by the Office of the Texas Attorney General or a court of competent jurisdiction.

15.33 Restricted Employment for Certain State Personnel

Pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former State officer or employee who participated in a procurement or contract negotiation for TxDMV involving the Contractor within two years after the date the Contract is signed or the procurement is terminated or withdrawn. This certification only applies to former State officers or employees whose State service or employment ceased on or after September 1, 2015.

15.34 Signature Authority

Contractor represents and warrants that the individual signing the Signature Document and/or accepting the Purchase Order is authorized to sign and/or accept on behalf of Contractor and to bind the Contractor to the Contract, all Contract documents, and all duties, obligations, and responsibilities therein.

15.35 Surveillance, Intimidation, and Related Acts

Contractor certifies that neither it nor any of its employees, agents, representatives, or subcontractors, or their respective employees, agents, or representatives have engaged, or will engage, directly or indirectly through a third party, in surveillance targeting or engage in an act of intimidation, coercion, extortion, undue influence, or other similar conduct intended to influence, silence, or retaliate against: (a) a member of the state legislature or person employed to support the state legislature in any capacity; (b) a family member of a person described by (a); (c) a state agency employee; or (d) an individual making a complaint or raising concerns regarding state agency operations or contracting. Additionally, Contractor further certifies that neither it nor any of its employees, agents, representatives, or subcontractors, or their

respective employees, agents, or representatives have used, or will use, directly or indirectly through a third party, private or confidential information to manipulate or influence any Texas state contract, decision, or proceeding.

Contractor acknowledges that, pursuant to Section 2261.306 of the Texas Government Code, any violation of the prohibited activities described in Section 2261.302, may result in immediate termination of the Contract, administrative penalties up to \$2 million, and debarment from responding to or accepting Texas state contracts. The Contractor further acknowledges and understands these enforcement actions may be applied not only to the Contractor, but also to its employees, agents, representatives, Subcontractors, and their respective employees, agents, representatives, as well as to any other individual or entity acting on behalf of or associated with the Contractor, as outlined in Section 2261.306(c).

15.36 Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the *System for Award Management* (“SAM”) maintained by the General Services Administration.

15.37 Television Equipment Recycling Program

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

15.38 Unfair Business Practices

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

ARTICLE 16, MISCELLANEOUS PROVISIONS

16.1 Amendment

The Contract may only be modified by an Amendment executed by both Parties for a bilaterally executed Contracts, or a Purchase Order change notice for Purchase Order Contracts, and identifies itself as an Amendment to the Contract. No changes or modifications to the Contract will be valid unless incorporated into a written Amendment or Purchase Order change notice. All correspondence regarding proposed changes or modifications to the Contract must be provided to the TxDMV Contract Representative for review in advance of the effective date of the Amendment, though the TxDMV Contract Representative does not have the authority to bind TxDMV to changes, modifications, or Amendment to the Contract.

16.2 Assignments and Acquisitions

Contractor may not assign the Contract or assign, transfer, or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of TxDMV, which may be withheld or granted at the sole discretion of TxDMV, and any attempted or purported assignment, transfer or delegation thereof without such consent will be null and void. Except where otherwise agreed

in writing by TxDMV, assignment will not release Contractor from its obligations and liabilities under the Contract.

Additionally, Contractor understands and agrees that without consent from Contractor, TxDMV may, in one or more transactions, assign, pledge, or transfer the Contract. Upon receipt of TxDMV's notice of assignment, pledge, or transfer, the Contractor will cooperate with TxDMV in giving effect to such assignment, pledge, or transfer, at no cost to TxDMV or to the recipient entity.

16.3 Binding Effect

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

16.4 Change in Law and Compliance with Laws

Contractor will comply with all United States and State laws, rules, regulations, requirements, policies, and guidelines applicable to a vendor providing the type of services and products required by the Contract to the State, as these laws, rules, regulations, requirements, policies, and guidelines currently exist, and as amended, throughout the term of the Contract. TxDMV reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for TxDMV's compliance, as an agency of the State, with all applicable United States and State laws, rules, regulations, requirements, policies, and guidelines.

16.5 Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted United States and Texas laws governing equal employment opportunities. The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, national origin, creed, religion, political beliefs, sex, age, disability, genetic information, veteran status, income level, or limited English proficiency in the performance of the Contract.

16.6 Conflict with Applicable Law or Regulation

To the extent any term or condition in the Contract conflicts with applicable United States or Texas law, rule, or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains a conflicting term or condition, TxDMV makes no representations or warranties regarding the enforceability of such term or condition and TxDMV does not waive the applicable United States or Texas law, rule, or regulation which conflicts with the Contract term or condition.

16.7 Consulting Reports

At TxDMV's sole discretion, TxDMV, any other State agency, and the State legislature may distribute any consultant reports created under the Contract and may post any consultant reports on the agency's internet website or the website of a standing committee of the Texas legislature in accordance with Section 2254.041 of the Texas Government Code.

16.8 Counterparts

The Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract. In making proof of the Contract, it is not necessary to produce or account for more than one such counterpart.

16.9 Critical Infrastructure Subcontracts

For purposes of this Section, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Texas Governor as a threat to critical infrastructure. Pursuant to Section 117.002 of the Texas Business and Commercial Code, Contractor is prohibited from entering into a Subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 117.001 of the Texas Business and Commerce Code, in this State, other than access specifically allowed for product warranty and support purposes to any Subcontractor unless (1) neither the Subcontractor nor its parent company, nor any affiliate of the Subcontractor or its parent company, is majority-owned or controlled by citizens or governmental entities of a designated country, and (2) neither the Subcontractor nor its parent company, nor any affiliate of the Subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the TxDMV before entering into any Subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 117.001 of the Texas Business and Commerce Code, in this State.

16.10 Dispute Resolution and Escalation Procedure

The Parties will attempt to resolve disputes through the Parties' project team leaders before escalating to executive-level management. If a dispute arises, the Parties' project team leaders will meet to identify, discuss, and resolve the issue(s). If the dispute remains unresolved, the dispute resolution process will be escalated in the following manner:

- A. If the Parties' project team leaders cannot resolve the dispute within a reasonable time, the Parties' Contract Representatives will meet to discuss the issue(s).
- B. If the Parties' Contract Representatives cannot resolve the dispute, the TxDMV executive sponsor will meet with the Contractor to resolve the dispute.

Throughout the dispute resolution process, the Parties should make a good faith effort to work together towards a mutually beneficial resolution. Additionally, to the extent Chapter 2260 of the Texas Government Code applies to the Contract claim at issue, Contractor must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code and Title 43 of the Texas Administrative Code, Part 10, Chapter 210, Subchapter C, Section 210.41, to attempt to resolve all claims arising under the Contract. However, neither Party is required to use this escalation procedure prior to using any other right or remedy that is available to the Party under the Contract to resolve an issue.

16.11 Electrical Items

All electrical items provided under the Contract must meet all applicable Occupational Safety and Health Administration's ("OSHA") standards and regulations, and bear the appropriate certification, approval, or listing from either the Underwriters Laboratory ("UL"), Electronic Testing Laboratories ("ETL"), Factory Mutual Resource Corporation ("FMRC"), or National Electrical Manufacturers Association ("NEMA").

16.12 E-Verify Program

In accordance with Texas Executive Order No. RP-80, Contractor certifies that it utilizes, and will continue to utilize for the term of the Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including Subcontractors, assigned by Contractor to perform Work pursuant the Contract within the United States of America.

If it is determined that Contractor has violated the certifications set forth in this Section, then (1) Contractor will be in breach of the Contract, (2) TxDMV will have the option to terminate the Contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TxDMV under the Contract, Contractor will be responsible for all costs incurred by TxDMV to obtain substitute services to replace the terminated Contract.

16.13 Force Majeure

Neither Contractor nor TxDMV will be liable to the other for any delay in performance of, or failure to perform, any obligation or requirement contained within the Contract caused by Force Majeure (as defined within this Section), provided the Party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such Party's control; provided, further, that any action or inaction by a Subcontractor of a Party will not be considered to be outside the control of such Party except to the extent the Parties may expressly agree otherwise in the Contract. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform.

"Force Majeure" for the purpose of the Contract is defined as those causes beyond the control of the Party required to perform that are generally recognized under Texas law as a Force Majeure event, such as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, pandemics, epidemics, court orders, and 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. Contractor must immediately, upon discovery of any inability to perform under the Contract, notify the TxDMV Contract Representative in writing of any delay in the provision of Deliverables without regard to responsibility, fault, or negligence. This Section does not apply to Contractor's obligations regarding any disaster recovery Deliverables.

16.14 Governing Law and Venue

The Contract will be governed by and construed in accordance with the laws of the State, 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 directed otherwise by statute. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have, to the bringing of any action or proceeding in such jurisdiction in respect to the Contract or any document related hereto.

16.15 Legal Obligations

Contractor will comply with all applicable United States, State, and local government laws, ordinances, and regulations, including, but not limited to, all United States and State accessibility laws relating to direct and indirect use of information and communication technology. The Contractor will be deemed to have knowledge of all applicable laws, rules, and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section will constitute a material breach of the Contract.

16.16 Limitation on Authority; Other Obligations

The authority granted to the Contractor by TxDMV is limited to the terms and conditions of the Contract. The Contractor will not have any authority to act for or on behalf of TxDMV or the State except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Additionally, Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of TxDMV or the State.

16.17 Media Releases and Marketing Activities

Contractor will not use the name of the State or TxDMV's name, logo, or other likeness in any press release, promotional or marketing material, customer lists, business presentations, or other announcement, nor directly or indirectly refer to TxDMV, without TxDMV's prior written approval. The State and TxDMV do not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases, public announcements, or public disclosures pertaining to the Contract, or its subject matter, without TxDMV's prior written consent, and then only in accordance with explicit written instructions from TxDMV. However, notwithstanding the foregoing in this paragraph, Contractor may make any disclosure required by law or regulation without the approval of TxDMV.

Additionally, for the avoidance of doubt, the Contractor is prohibited from using the Work for any Contractor or third-party marketing, advertising, or promotional activities, without the prior written consent of TxDMV. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, training, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work under the Contract.

16.18 National Anthem

If Contractor is a professional sports team, as defined by Section 2277.001 of the Texas Government Code, Contractor must play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of the Contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, the Contractor may be debarred from contracting with the State. TxDMV or the Texas Office of the Attorney General may strictly enforce this provision. Section 2277.002 prohibits a governmental entity from entering into an agreement with a professional sports team that requires a financial commitment by the State or any governmental entity unless the agreement includes the preceding Texas model contract clause as drafted by the Texas Comptroller of Public Accounts.

16.19 No Implied Waiver

The failure of TxDMV to object to or to take affirmative action with respect to any conduct of the Contractor which is in violation or breach of the terms and conditions of the Contract will not be construed as a waiver of the violation or breach, or of any future violation or breach.

16.20 No Third-Party Beneficiaries

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

16.21 Partially Completed Work

No later than the first business day of the following month after the termination or expiration of the Contract, or at TxDMV's request, Contractor must deliver to TxDMV all completed or partially completed Work, and any and all documentation or other products and results of the Work. Failure to timely deliver such Work and all documentation or other products and results of the Work will constitute a material breach of the Contract. The Contractor must not make or retain any copies of the Work or any documentation or other products and results of the Work without the prior written consent of TxDMV.

16.22 Permits, Certifications, and Licenses

Contractor, at its sole expense, will procure and maintain for the duration of the Contract any United States, State, county, city, municipal, or local government license, authorization, insurance, waiver, permit, qualification, or certification required by applicable statute, rule, regulation, code, ordinance, and other law to be held by Contractor to provide the Deliverables required by the Contract.

Additionally, the Contractor will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Additionally, Contractor agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of the Contract.

16.23 Prohibition on Non-Compete Restrictions

Contractor will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State.

16.24 Rolling Estoppel

TxDMV will be conclusively deemed to have fulfilled its obligations under the Contract, unless TxDMV receives a deficiency report from Contractor within five business days of the occurrence of the alleged deficiency and Contractor identifies the specific deficiency in TxDMV's (to include any TxDMV contractor's) fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have impacted the specific performance requirement of Contractor. Contractor is estopped from claiming that any act or omission giving rise to a deficiency has arisen that might otherwise justify changes in the Project timetable, the standards of performance under the Contract, or any other provision of the Contract, if Contractor knew of the act or omission and failed to include it in the applicable report. The deficiency report must be sent to the TxDMV Contract Representative with a copy provided at the same time to the TxDMV Director of Purchasing.

In the event Contractor identifies an act or omission which impairs Contractor's ability to perform for any reason, Contractor's deficiency report must contain Contractor's suggested solution to resolve the impairment. This suggestion must be provided in sufficient detail so that the TxDMV Contract Representative can make a prompt decision as to the best method of resolving the act or omission and continuing the Project unimpeded.

The obligations and ramifications of this Section also apply to the acts and omissions of any other "Texas State Governmental Entity," as defined in Section 554.001(5) of the Texas Government Code that impacts Contractor's performance under the Contract. If Contractor fails to comply with the requirements in this Section, Contractor will be estopped from claiming any act or omission of TxDMV or any other Texas State Governmental Entity impacted Contractor's performance under the Contract.

16.25 Severability

If any provision of the Contract is held to be illegal, invalid, or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of the Contract. It is the intent and agreement of the Parties the Contract will be deemed amended by modifying such provision to the extent necessary to render it valid, legal, and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal, and enforceable and that achieves the same objective. All other provisions of the Contract will continue in full force and effect.

16.26 Sovereign Immunity

The Parties expressly agree that nothing in the Contract will be construed as a waiver of the State or TxDMV's sovereign immunity. The Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State or TxDMV. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the State or TxDMV under the Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDMV does not waive any privileges, rights, defenses, or immunities available to TxDMV by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

16.27 Survival

Termination or expiration of the Contract for any reason does not release Contractor from any obligation or liability set forth in the Contract: (i) that is expressly stated to survive any such termination or expiration; (ii) that remain to be performed; (iii) that by its nature would be intended to be applicable following any such termination or expiration, or (iv) that is necessary to fulfill the essential purpose of the Contract, including without limitation, the provisions regarding Warranties, Affirmations, and United States Requirements; Indemnification; Submission of Invoices; Confidential Information and Security Provisions; TxDMV Data Ownership, Use, and Return; Records and Audit Provisions; Contract Management and Enforcement Provisions; Contract Representatives and Notification Provisions; Insurance; State Property Provisions; Work Order Provisions; Remedies; Governing Law and Venue; Intellectual Property Provisions; Media Releases and Marketing Activities; Partially Completed Work; Rights and Remedies Upon Termination, and any other provisions of the Contract that impose continuing obligations on either of the Parties or that govern the rights and limitations of either of the Parties after the termination or expiration of the Contract.

16.28 Technical Guidance Letters

In the sole discretion of TxDMV, and in conformance with United States and State law, TxDMV may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter ("TGL"). A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by TxDMV will be incorporated into the Contract by reference for all purposes in its entirety, as if physically attached, when it is issued.

(End of Contract Uniform Terms and Conditions)