

Texas Civil Commitment Office, Terms & Conditions

Table of Contents

ARTICLE I: INTRODUCTION	6
SECTION 1.01 INDUCEMENTS	6
SECTION 1.02 CONSTRUCTION OF CONTRACT	6
SECTION 1.03 NO IMPLIED AUTHORITY	7
SECTION 1.04 LEGAL AUTHORITY	8
ARTICLE II: DEFINITIONS	8
ARTICLE III: GENERAL TERMS AND CONDITIONS	10
SECTION 3.01 CONTRACT ELEMENTS	10
SECTION 3.02 FUNDING	11
SECTION 3.03 NO QUANTITY GUARANTEES	11
SECTION 3.04 DELEGATION OF AUTHORITY	11
SECTION 3.05 BINDING EFFECT	11
SECTION 3.06 NO WAIVER OF SOVEREIGN IMMUNITY	11
SECTION 3.07 FORCE MAJEURE	12
SECTION 3.08 DISASTER RECOVERY PLAN	12
SECTION 3.09 MOST FAVORED CUSTOMER	12
SECTION 3.10 PUBLICITY	12
SECTION 3.11 ASSIGNMENT	12
SECTION 3.12 COOPERATION WITH OTHER VENDORS AND PROSPECTIVE VENDORS	13
SECTION 3.13 RENEGOTIATION AND REPROCUREMENT RIGHTS	13
SECTION 3.14 SOLICITATION ERRORS AND OMISSIONS	14
SECTION 3.15 ATTORNEYS’ FEES	14
SECTION 3.16 BUY TEXAS; PREFERENCES UNDER SERVICE CONTRACTS	14
SECTION 3.17 ENSURING TIMELY PERFORMANCE	14
SECTION 3.18 FREE EXERCISE OF RELIGION	14
SECTION 3.19 STATE USE OF IDEAS	14
SECTION 3.20 PROPERTY OF TCCO	14
SECTION 3.21 DELAY OF SERVICES	14

SECTION 3.22 TECHNICAL GUIDANCE LETTERS.....	15
SECTION 3.23 TERMS AND CONDITIONS ATTACHED TO RESPONSE.....	15
SECTION 3.24 TEXAS BIDDER AFFIRMATION	15
ARTICLE IV: CONTRACTOR PERSONNEL MANAGEMENT	15
SECTION 4.01 QUALIFICATIONS, RETENTION, AND REPLACEMENT OF CONTRACTOR EMPLOYMENT.....	15
SECTION 4.02 RESPONSIBILITY FOR CONTRACTOR PERSONNEL.....	15
SECTION 4.03 COOPERATION WITH TCCO AND STATE ADMINISTRATIVE AGENCIES.....	16
SECTION 4.04 CONDUCT OF AND RESPONSIBILITY FOR CONTRACTOR PERSONNEL	16
SECTION 4.05 RESPONSIBILITY FOR SUBCONTRACTORS	18
SECTION 4.06 TCCO’S ABILITY TO CONTRACT WITH SUBCONTRACTORS.....	19
ARTICLE V: GOVERNING LAW AND REGULATIONS	19
SECTION 5.01 GOVERNING LAW AND VENUE.....	19
SECTION 5.02 CONTRACTOR RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS.....	20
SECTION 5.03 CHANGE IN LAW AND COMPLIANCE WITH LAWS.....	20
SECTION 5.04 FORMER TCCO EMPLOYEES	20
SECTION 5.05 DISCLOSURE OF PRIOR STATE EMPLOYMENT.....	20
SECTION 5.06 COMPLIANCE WITH IMMIGRATION LAWS	20
SECTION 5.07 COMPLIANCE WITH ANTI-DISCRIMINATION LAWS, REGULATIONS, AND RULES	20
SECTION 5.08 COMPLIANCE WITH ENVIRONMENTAL PROTECTION LAWS	22
SECTION 5.09 COMPLIANCE WITH FRAUD, WASTE AND ABUSE REQUIREMENTS.....	22
SECTION 5.10 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.....	22
SECTION 5.11 CRIMINAL HISTORY RECORD INFORMATION	24
SECTION 5.12 PROHIBITION AGAINST PERFORMANCE OUTSIDE THE CONTIGUOUS UNITED STATES.....	25
SECTION 5.13 PROHIBITION OF A STATE AGENCY CONTRACTING WITH COMPANIES THAT BOYCOTT ISRAEL	27
SECTION 5.14 PROHIBITION OF A STATE AGENCY CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS.....	27
SECTION 5.15 HUMAN TRAFFICKING PROHIBITION.....	28
SECTION 5.16 SUSPENSION AND DEBARMENT	28
SECTION 5.17 SUSPENSION, DEBARMENT, AND TERRORISM.....	28
SECTION 5.18 CONTRACTING WITH EXECUTIVE HEAD OF STATE AGENCY	28

SECTION 5.19 FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION.....	28
SECTION 5.20 SPECIFIC DUTIES AND OBLIGATIONS.....	29
ARTICLE VI: CONTRACT MANAGEMENT AND PERFORMANCE MEASUREMENT	
.....	29
SECTION 6.01 CONTRACT MANAGEMENT	29
SECTION 6.02 PERFORMANCE MEASUREMENT	29
SECTION 6.03 DEFAULT BY THE CONTRACTOR.....	29
ARTICLE VII: AMENDMENTS, MODIFICATIONS, AND CHANGE ORDER	
REQUESTS	30
SECTION 7.01 AMENDMENTS AND MODIFICATIONS	30
SECTION 7.02 REQUIRED COMPLIANCE WITH AMENDMENT MODIFICATION PROCEDURES	31
ARTICLE VIII: AUDIT AND FINANCIAL COMPLIANCE.....	31
SECTION 8.01 RECORD RETENTION AND AUDIT	31
SECTION 8.02 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS	31
SECTION 8.03 AUDITS AND INSPECTIONS OF SERVICES AND DELIVERABLES	32
SECTION 8.04 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS.....	32
SECTION 8.05 AUDIT OF CONTRACTOR FEES.....	33
SECTION 8.06 SAO AUDIT.....	33
ARTICLE IX: TERMS AND CONDITIONS OF PAYMENT	33
SECTION 9.01 PAYMENT.....	33
SECTION 9.02 RIGHTS OF SET-OFF.....	34
SECTION 9.03 EXPENSES	34
SECTION 9.04 DISPUTED FEES	34
SECTION 9.05 LIABILITY FOR TAXES.....	34
SECTION 9.06 LIABILITY FOR EMPLOYMENT-RELATED CHARGES AND BENEFITS	34
SECTION 9.07 NO ADDITIONAL CONSIDERATION.....	35
SECTION 9.08 NO INCREASE IN RATES.....	35
SECTION 9.09 NO DEBT AGAINST THE STATE.....	35
ARTICLE X: DISCLOSURE AND CONFIDENTIALITY OF INFORMATION	35
SECTION 10.01 CONTRACTING INFORMATION RESPONSIBILITIES.....	35
SECTION 10.02 HHSC DATA USE AGREEMENT	35
SECTION 10.03 REQUESTS FOR PUBLIC INFORMATION.....	36
SECTION 10.04 PRIVILEGED WORK PRODUCT	37

SECTION 10.05 UNAUTHORIZED ACTS	37
SECTION 10.06 LEGAL ACTION.....	38
ARTICLE XI: REMEDIES AND DISPUTES	38
SECTION 11.01 UNDERSTANDING AND EXPECTATIONS.....	38
SECTION 11.02 TAILORED REMEDIES	38
SECTION 11.03 TERMINATION OF CONTRACT	41
SECTION 11.04 EFFECTIVE DATE OF TERMINATION	44
SECTION 11.05 EXTENSION OF TERMINATION EFFECTIVE DATE	44
SECTION 11.06 PAYMENT AND OTHER PROVISIONS AT CONTRACT TERMINATION.....	44
SECTION 11.07 MODIFICATION OF CONTRACT IN THE EVENT OF REMEDIES.....	45
SECTION 11.08 TURNOVER ASSISTANCE.....	45
SECTION 11.09 RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT	45
SECTION 11.10 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.....	46
SECTION 11.11 DISPUTE RESOLUTION.....	46
SECTION 11.12 LIABILITY OF CONTRACTOR	46
ARTICLE XII: ASSURANCES AND CERTIFICATIONS.....	47
SECTION 12.01 PROPOSAL CERTIFICATIONS	47
SECTION 12.02 CONFLICTS OF INTEREST	49
SECTION 12.03 ORGANIZATIONAL CONFLICTS OF INTEREST.....	49
SECTION 12.04 TCCO PERSONNEL RECRUITMENT PROHIBITION.....	50
SECTION 12.05 ANTI-KICKBACK PROVISION.....	51
SECTION 12.06 DEBT OR BACK TAXES OWED TO THE STATE OF TEXAS	51
SECTION 12.07 CERTIFICATION REGARDING STATUS OF LICENSE, CERTIFICATE OR PERMIT	51
SECTION 12.08 OUTSTANDING DEBTS AND JUDGMENTS.....	51
SECTION 12.09 ANTI-TRUST	51
SECTION 12.10 CERTIFICATION CONCERNING HURRICANE RELIEF.....	52
SECTION 12.11 CONTRACTOR STATUS.....	52
SECTION 12.12 FALSE STATEMENTS.....	52
ARTICLE XIII: REPRESENTATIONS AND WARRANTIES	52
SECTION 13.01 AUTHORIZATION.....	52
SECTION 13.02 ABILITY TO PERFORM	53
SECTION 13.03 WORKMANSHIP AND PERFORMANCE.....	53

SECTION 13.04 WARRANTY OF DELIVERABLES.....	53
SECTION 13.05 MANUFACTURERS' WARRANTIES	53
SECTION 13.06 COMPLIANCE WITH CONTRACT	53
ARTICLE XIV: INTELLECTUAL PROPERTY.....	54
SECTION 14.01 INFRINGEMENT AND MISAPPROPRIATION	54
SECTION 14.02 EXCEPTIONS	54
ARTICLE XV: LIABILITY	55
SECTION 15.01 NOTICE OF LEGAL MATTER OR LITIGATION.....	55
SECTION 15.02 PROPERTY DAMAGE.....	55
SECTION 15.03 RISK OF LOSS	55
SECTION 15.04 LIMITATION OF TCCO'S LIABILITY.....	55
SECTION 15.05 INDEMNIFICATION.....	56

ARTICLE I: INTRODUCTION

SECTION 1.01 INDUCEMENTS

In making the award of the Contract, the Texas Civil Commitment Office (TCCO) relies on Contractor's assurances of the following:

- A. Contractor and its subcontractors are established providers of the types of services described in the solicitation;
- B. Contractor and its subcontractors have the skills, qualifications, expertise, financial resources, and experience necessary to perform the services described in the solicitation, Contractor's proposal, and the Contract in an efficient, cost-effective manner with a high degree of quality and responsiveness, and has performed similar services for other public or private entities;
- C. Contractor has thoroughly reviewed, analyzed, and understood the solicitation, has timely raised all questions or objections to the solicitation, and has had the opportunity to review and fully understand TCCO's current program and operating environment for the activities that are the subject of the Contract and the needs and requirements of the State during the Contract term;
- D. Contractor has had the opportunity to review and understand the State's stated objectives in entering into the Contract and, based on such review and understanding, Contractor currently has the capability to perform in accordance with the terms and conditions of the Contract;
- E. Contractor has also reviewed and understands the risks associated with the TCCO programs as described in the solicitation, including the risk of non-appropriation of funds.

Accordingly, TCCO desires to engage Contractor to perform the services described in the Contract under the terms and conditions set forth in the Contract.

SECTION 1.02 CONSTRUCTION OF CONTRACT

- A. Scope of Introductory Article – The provisions of any introductory article to the Contract are intended to be a general introduction and are not intended to expand the scope of the Parties' obligations under the Contract or to alter the plain meaning of the terms and conditions of the Contract.
- B. References to the "State" – References in the Contract to the "State" mean the State of Texas unless otherwise indicated and will be interpreted, as appropriate, to mean or include TCCO and other agencies of the State of Texas that may participate in the administration of TCCO programs, provided, however, that no provision will be interpreted to include any entity other than TCCO as the contracting agency.
- C. Severability – If any provision of the Contract is for any reason held to be unenforceable, the rest of it remains fully enforceable.

D. Survival of Terms – Termination or expiration of the Contract for any reason will not release either party from any liabilities or obligations set forth in the Contract that:

1. The Parties agree will survive the termination or expiration; or
2. Remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

E. Headings – The article and section headings in the Contract are for reference and convenience only and may not be considered in the interpretation of the Contract.

F. Global Drafting Conventions

1. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
2. The terms “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
3. The terms “include,” “includes,” and “including” are terms of inclusion and enlargement and, where used in the Contract, should be read as if followed by the phrase “without limitation.”
4. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
5. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to those documents as amended, modified, or supplemented from time to time during the time of the Contract.

SECTION 1.03 NO IMPLIED AUTHORITY

The authority designated to Contractor by TCCO is limited to the terms of the Contract. TCCO is the state agency designated by the Legislature to administer the TCCO programs and no other state agency grants Contractor any authority related to the Contract unless directed through TCCO. Contractor may not rely upon implied authority and is not delegated authority under the Contract to:

- A. Make public policy;
- B. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of TCCO programs; or
- C. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of TCCO regarding TCCO programs or the Contract.

To the fullest extent possible, Contractor is required to assist TCCO in communications and negotiations with state and federal governments and agencies as directed by TCCO.

SECTION 1.04 LEGAL AUTHORITY

TCCO has the authority to contract through administrative attachment to the Health and Human Services Commission (HHSC) under Texas Government Code Chapter 420A, and the authority of HHSC under Texas Government Code Section 2155.14. Contractor is authorized to enter into the Contract pursuant to the authorization of its governing board or controlling owner or officer.

The person or persons signing and executing the Contract on behalf of the Parties, or representing themselves as signing and executing the Contract on behalf of the Parties, warrant and guarantee that he, she, or they have been duly authorized to execute the Contract and to validly and legally bind the Parties to all of its terms, performances, and provisions.

ARTICLE II: DEFINITIONS

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as defined herein.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Change” means any alteration, adjustment, exchange, substitution, or modification of the Services under the Contract that are authorized in accordance with the terms of the Contract.

“Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of TCCO that consists of or includes any or all of the following:

- A. Client information;
- B. Protected health information, in any form including without limitation, electronic protected health information or unsecured protected health information;
- C. Sensitive personal information defined by Texas Business and Commerce Code Chapter 521;
- D. Criminal history record information;
- E. Federal tax information;
- F. Personally identifiable information;
- G. Social security administration data, including, without limitation, Medicaid information;
- H. All privileged work product;
- I. All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health and Safety Code and the Texas Public Information Act, Texas Government Code Chapter 552; and
- J. Other confidential information as designated in the Contract.

“Contract” means the Signature Document, these Terms & Conditions, along with any Attachments, and any Amendments, purchase orders, Work Orders, or Technical Guidance Letters that may be issued by TCCO, to be incorporated by reference herein for all purposes if issued.

“Contractor” means the party identified in the Contract as the individual or entity required to perform the services and related obligations under the Contract.

“Corrective Action Plan” means the detailed written plan required by TCCO to correct or resolve a deficiency or breach of the Contract.

“Deliverable” means a work product prepared, developed, or procured by Contractor as part of the services under the Contract for the use or benefit of TCCO or the State of Texas.

“Disability” means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

“Effective Date” means the date of the complete execution of the Contract unless another date is agreed to by the Parties as the date on which the Contract takes effect. For purposes of the Contract, the term includes any period under which work is performed in accordance with a properly executed Letter of Intent between TCCO and Contractor.

“Initial Term” means the period between the effective date and the original expiration date of the Contract.

“Material Subcontract” means any subcontract that exceeds, or is reasonably expected to exceed, \$100,000 per year. Any subcontract between Contractor and a single entity that are split into separate agreements by time period, program, or service area etc. may be consolidated for the purpose of this definition.

“Parties” means TCCO and Contractor, collectively.

“Party” means either TCCO or Contractor, individually.

“Proposal” means the proposal submitted by Contractor in response to the Solicitation.

“Public Information” has the meaning assigned by Texas Government Code Chapter 552.

“Scope of Work” means the description of Services and Deliverables specified in the Contract, the solicitation, and any agreed modifications.

“Services” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

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

“Software” means all operating system and applications software used or created by Contractor to provide the services under the Contract.

“Solicitation” means the document issued by HHSC on behalf of TCCO under which the goods or services 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 attachments and addenda.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

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

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

“Subcontractor” means any individual or entity that has entered into a subcontract with Contractor.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by TCCO to the Contractor.

“Turnover Plan” means the written plan developed by Contractor, approved by TCCO, and to be employed in the event the work described in the Contract transfers to the State or another vendor from Contractor. TCCO may require Contractor to develop a turnover plan at any time during the term of the Contract at TCCO’s discretion. The turnover plan describes Contractor’s policies and procedures that will assure 1) the least disruption in the delivery of services during the transition to a substitute vendor, and 2) cooperation with TCCO and the substitute vendor in transferring information and services to a substitute vendor.

ARTICLE III: GENERAL TERMS AND CONDITIONS

SECTION 3.01 CONTRACT ELEMENTS

A. Entire Agreement

The Contract between the Parties will consist of the document bearing the signatures of the Parties, Exhibits, or Attachments to that document, these Terms and Conditions, the Solicitation, Contractor’s Proposal, and any agreed to modifications (incorporated by reference).

B. Order of Precedence

Unless otherwise agreed, in the event of any conflict or contradiction between or among these documents, the documents will control in the following order of precedence:

1. The final executed document that bears the signature of the Parties, including any Exhibits or Attachments, and all amendments to that document;
2. These Terms and Conditions, including any attachments;
3. The solicitation and any addendums, corrections, and clarifications;
4. Contractor's proposal and any agreed to modifications.

SECTION 3.02 FUNDING

This Contract is conditioned on the availability of state and federal appropriated funds. Contractor will have no right of action against TCCO in the event TCCO is unable to perform its obligations under the Contract as a result of the suspension, termination, or withdrawal of funding to TCCO, the failure to fund TCCO, or lack of sufficient funding of TCCO for any activities or functions contained within the scope of the Contract.

If funds become unavailable, the provisions of Article XI Remedies and Disputes will apply. TCCO will use all reasonable efforts to ensure that such funds are available and will negotiate in good faith with Contractor to resolve any Contractor claims for payment that represent accepted services or deliverables pending at the time funds become unavailable. TCCO will make best efforts to provide reasonable written advance notice to Contractor upon learning funding for the Contract may be discontinued. If funds for the continued fulfillment of this Contract by TCCO are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then TCCO will have the right to terminate this Contract at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding.

SECTION 3.03 NO QUANTITY GUARANTEES

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

SECTION 3.04 DELEGATION OF AUTHORITY

State and federal laws generally limit TCCO's ability to delegate certain decisions and functions to a Contractor, including, but not limited to: (1) policy-making authority; and (2) final decision-making authority on the acceptance or rejection of contracted services.

SECTION 3.05 BINDING EFFECT

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

SECTION 3.06 NO WAIVER OF SOVEREIGN IMMUNITY

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

SECTION 3.07 FORCE MAJEURE

A Party will not be liable for any failure or delay in performing its obligations under the Agreement if such failure or delay is due to any cause beyond the reasonable control of the Party, including, but not limited to, unusually severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within three (3) business days of the existence of a force majeure event as described above or otherwise waive this right as a defense.

SECTION 3.08 DISASTER RECOVERY PLAN

Upon request of TCCO, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

SECTION 3.09 MOST FAVORED CUSTOMER

The Contractor agrees that if, during the term of the Contract, the Contractor enters into any agreement with any other governmental customer or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, the Contract will, at TCCO's option, be amended to afford equivalent advantage to TCCO.

SECTION 3.10 PUBLICITY

A. No Use

Except as provided in the paragraphs below, Contractor must not use the name of, or directly or indirectly refer to, TCCO, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to TCCO, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the Federal Government).

B. Limited Exception

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with TCCO's prior review and approval, which TCCO may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from TCCO and any federal agency, as appropriate. Contractor will provide TCCO at least three (3) copies of any such publication prior to public release. Contractor will provide additional copies at the request of TCCO. Contractor may include information concerning the Contract's terms, subject matter, and estimated value in any report to a governmental body to which the Contractor is required by law to report such information.

SECTION 3.11 ASSIGNMENT

A. Assignment by Contractor

Contractor will not assign all or any portion of its rights under or interests in the Contract or delegate any of its duties without prior written consent of TCCO. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed

in writing by TCCO, assignment or delegation will not release Contractor from its obligations under the Contract.

B. Assignment by TCCO

Contractor understands and agrees TCCO may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency contracted to perform agency support.

C. Assumption.

SECTION 3.12 COOPERATION WITH OTHER VENDORS AND PROSPECTIVE VENDORS

A. Supplemental Contracts

TCCO may award supplemental contracts for work related to the Contract, or any portion thereof, TCCO reserves the right to award the Contract as a joint venture between two or more potential vendors, if such an agreement is in the best interest of TCCO. Contractor agrees to cooperate with such other vendors and will not commit or permit any act that may interfere with the performance of work by any other vendor.

B. Access

At TCCO's request, Contractor will allow parties interested in responding to TCCO solicitations to have reasonable access during business hours to software, systems documentation, and site visits to the Contractor's facilities. All such parties inspecting the facilities and software and systems documentation may be required to agree to use the information so obtained only in the State of Texas and only for the purpose of responding to the solicitation.

SECTION 3.13 RENEGOTIATION AND REPROCUREMENT RIGHTS

A. Renegotiation of Contract Terms

Notwithstanding anything in the Contract to the contrary, TCCO may at any time during the term of the Contract exercise the option to notify Contractor TCCO has elected to renegotiate certain terms of the Contract within the scope of the Contract and as permitted by law. Upon Contractor's receipt of any notice under this section, Contractor and TCCO will undertake good faith negotiations of the subject terms of the Contract.

B. Reprourement of the Services or Procurement of Additional Services

Notwithstanding anything in the Contract to the contrary, whether or not TCCO has accepted or rejected Contractor's Services or Deliverables provided during any period of the Contract, TCCO may at any time issue requests for proposals or offers to other potential contractors for performance of any portion of the services covered by the Contract or services similar or comparable to the Services performed by Contractor under the Contract.

C. Termination Rights Upon Reprourement

If TCCO elects to procure the services or any portion of the services from another vendor in accordance with this section, TCCO will have the termination rights set forth in Article XI.

SECTION 3.14 SOLICITATION ERRORS AND OMISSIONS

Contractor will not take advantage of any errors or omissions in the solicitation or the resulting Contract. Contractor must promptly notify TCCO of any errors or omissions that are discovered. Failure to notify TCCO of any errors will constitute a waiver of those errors.

SECTION 3.15 ATTORNEYS' FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the Contract, Contractor agrees to pay all expenses of such action, including attorneys' fees and costs, if TCCO is the prevailing or substantially prevailing party.

SECTION 3.16 BUY TEXAS; PREFERENCES UNDER SERVICE CONTRACTS

In accordance with Texas Government Code Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the State.

SECTION 3.17 ENSURING TIMELY PERFORMANCE

The Parties acknowledge the need to ensure uninterrupted and continuous performance of the Scope of Work under the Contract; therefore, TCCO may terminate the Contract or apply any other remedy as noted in Article XI Remedies and Disputes if Contractor's performance is not timely.

SECTION 3.18 FREE EXERCISE OF RELIGION

Contractor is prohibited from substantially and unduly burdening an employee or TCCO client's Free Exercise of Religion or lack of religion.

SECTION 3.19 STATE USE OF IDEAS

TCCO reserves the right to use any and all ideas presented in Contractor's proposal unless the Contractor presents a valid legal case that such ideas are trade secret or confidential information and identifies the information as such in its proposal. Contractor may not object to the use of ideas that are not the contractor's intellectual property and so designated in the proposal that: (1) were known to TCCO before the submission of the proposal; (2) were in the public domain through no fault of TCCO; or (3) became properly known to TCCO after proposal submission through other sources or through acceptance of the proposal.

SECTION 3.20 PROPERTY OF TCCO

Except as otherwise provided in this contract, all products produced by contractor, including, without limitations, the proposal, all plans, designs, software, and other contract deliverables, become the sole property of TCCO.

SECTION 3.21 DELAY OF SERVICES

The Contractor shall meet its obligations to commence services within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined in the Contract, absent extensions from TCCO, TCCO will have the right to obtain the services from another source and charge the cost thereof to the Contractor for each day services are not performed due to delays caused by Contractor's nonperformance. TCCO will provide written notification to the Contractor

by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

SECTION 3.22 TECHNICAL GUIDANCE LETTERS

In the sole discretion of TCCO and in conformance with federal and state law, TCCO 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 TCCO will be incorporated into the Contract by reference herein for all purposes when it is issued.

SECTION 3.23 TERMS AND CONDITIONS ATTACHED TO RESPONSE

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

SECTION 3.24 TEXAS BIDDER AFFIRMATION

Contractor certifies that if a Texas address is shown as the address of the Contractor on this Response, Respondent qualifies as a Texas Bidder as defined in Texas Government Code Section 2155.444(c).

ARTICLE IV: CONTRACTOR PERSONNEL MANAGEMENT

SECTION 4.01 QUALIFICATIONS, RETENTION, AND REPLACEMENT OF CONTRACTOR EMPLOYMENT

Contractor agrees to maintain the organization and administrative capacity and capabilities to carry out all duties and responsibilities under the Contract. The personnel Contractor assigns to perform the duties and responsibilities under the Contract will be properly trained and qualified for the functions they are to perform. Contractor does not warrant the quality of training for which the State is responsible. Notwithstanding transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in accordance with the terms of the Contract.

SECTION 4.02 RESPONSIBILITY FOR CONTRACTOR PERSONNEL

A. Employment and Agency

Contractor’s employees and subcontractors will not in any sense be considered employees of TCCO or the State of Texas, but will be considered Contractor’s employees for all purposes. Except as provided in the Contract, neither Contractor nor any of Contractor’s employees or subcontractors may act in any sense as agents or representatives of TCCO or the State of Texas.

B. E-Verify System

By entering into this Contract, the Contractor certifies and ensures it uses, and will continue to use for the term of the Contract, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of:

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

C. Liability

Contractor's employees must be paid exclusively by Contractor for all services performed. Contractor is responsible for and must comply with all requirements and obligations related to such employees under local, state, or federal law, including minimum wage, social security, unemployment insurance, state and federal income tax, and workers' compensation obligations. Contractor assumes sole and full responsibility for its acts and omissions and the acts and omissions of its personnel and subcontractors.

CONTRACTOR AGREES THAT ANY CLAIM ON BEHALF OF ANY PERSON ARISING OUT OF EMPLOYMENT OR ALLEGED EMPLOYMENT (INCLUDING, BUT NOT LIMITED TO, CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS) ARE THE SOLE RESPONSIBILITY OF CONTRACTOR AND ARE NOT THE RESPONSIBILITY OF TCCO, AND CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE STATE FROM ANY AND ALL SUCH CLAIMS ASSERTED AGAINST THE STATE.

Contractor understands any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from TCCO (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

SECTION 4.03 COOPERATION WITH TCCO AND STATE ADMINISTRATIVE AGENCIES

A. Cooperation with TCCO Contractors

Contractor agrees to reasonably cooperate with and work with the State's contractors, subcontractors, and third-party representatives as requested by TCCO. To the extent permitted by TCCO's financial and personnel resources, TCCO agrees to reasonably cooperate with Contractor and to use its best efforts to ensure TCCO's other program contractors reasonably cooperate with Contractor.

B. Cooperation with State and Federal Administrative Agencies

Contractor must ensure contractor personnel will cooperate with TCCO or other state or federal administrative agency personnel at no charge to TCCO for purposes relating to the administration of TCCO programs including, but not limited to, the following purposes:

1. The investigation and prosecution of fraud, waste, and abuse in TCCO programs;
2. Audit, inspection, or other investigative purposes; and
3. Testimony in judicial or quasi-judicial proceedings related to the services under the Contract or other delivery of information to TCCO or other agencies' investigators or legal staff.

SECTION 4.04 CONDUCT OF AND RESPONSIBILITY FOR CONTRACTOR PERSONNEL

A. Conduct

While performing the Services or Deliverables, Contractor's personnel and subcontractors must:

1. Comply with applicable Contract terms, State and Federal rules, regulations, TCCO policies and TCCO requests regarding personal and professional conduct; and Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements set forth in this Contract and the Department's rules of general applicability and other applicable state and federal statutes and rules as such statutes and rules currently exist and as they may be lawfully amended.
2. Otherwise conduct themselves in a businesslike and professional manner.

B. Removal

If TCCO determines in good faith a particular employee or subcontractor is not conducting himself or herself in accordance with this Section, TCCO may provide Contractor with notice and documentation concerning such conduct. Upon receipt of such notice, Contractor must promptly investigate the matter and, at TCCO's request, take appropriate action that may include:

1. Removing the employee from the project;
2. Providing TCCO with written notice of such removal; and
3. Replacing the employee with a similarly qualified individual acceptable to TCCO.

Nothing in the Contract will prevent Contractor, at the request of TCCO, from replacing any personnel TCCO determines are not adequately performing their assigned responsibilities or who, in the reasonable opinion of TCCO, after consultation with Contractor, are unable to work effectively with the members of TCCO's staff. In such event, Contractor will provide replacement personnel with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of key personnel will be subject to TCCO review and approval. The parties will work together in the event of any such required replacement so as not to disrupt the overall project schedule.

C. Sole Control

Contractor agrees anyone employed by Contractor to fulfill the terms of the Contract is an employee of Contractor and remains under Contractor's sole direction and control. Contractor agrees to be responsible for the following with respect to its employees:

1. Any and all employment taxes or other payroll withholding;
2. Damages caused by Contractor's employees acting within or outside the scope of their duties under the Agreement; and
3. Determination of the hours to be worked and the duties to be performed by Contractor's employees.

Contractor agrees and will inform its employees and subcontractor(s) there is no right of action against TCCO for any duty owed by Contractor under the Contract. Contractor understands TCCO does not assume liability for the actions of, or judgments rendered against, the Contractor, its employees, agents, or subcontractors. Contractor agrees it has no right to indemnification or contribution from TCCO for any judgments rendered against Contractor or its subcontractors. TCCO's liability to the Contractor's employees, agents, and subcontractors, if any, will be governed by the Texas Tort Claims Act, as amended or modified (Tex. Civ. Prac. & Rem. Code § 101.001 et seq.).

SECTION 4.05 RESPONSIBILITY FOR SUBCONTRACTORS

- A. The Contractor shall assume full responsibility for all deliverables under the contract. TCCO shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under the contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.
- B. Subcontractors providing services under the contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the contract shall relieve the Contractor of the responsibility for ensuring the requested services are provided. Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- C. The Contractor shall not delegate any duties under the contract to a subcontractor unless TCCO has given written consent to the delegation. TCCO shall approve all subcontractors and require the Contractor to replace any subcontractor found, in the opinion of TCCO, either initially or based on performance, to be unacceptable.
- D. The management of any subcontractor shall be the sole responsibility of the Contractor and failure by a subcontractor to perform shall be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. TCCO shall not direct payments for deliverables acquired in connection with the contract other than to the Contractor, nor shall TCCO release the Contractor from having to perform any obligations under the contract, notwithstanding the fact a subcontractor may have been engaged by the Contractor to perform those obligations.
- E. The Contractor shall furnish to TCCO copies of all subcontracts. All subcontracts shall include all applicable provisions contained in the contract and any provisions required by law.
- F. Contractor must not disclose Confidential Information of TCCO or the State of Texas to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of Contractor under the Contract.
- G. Contractor must identify any subcontractor that is a newly-formed subsidiary or entity, whether or not an affiliate of Contractor, substantiate the proposed subcontractor's ability to perform the subcontracted Services, and certify to TCCO no loss of service will occur as a result of the performance of such subcontractor. The Contractor will assume responsibility for all contractual responsibilities whether or not the Contractor performs them. Further, TCCO considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.
- H. At least 30 days prior to executing a Material Subcontract or other agreement with a third party with a value greater than \$100,000.00, Contractor must submit a copy of the

agreement to TCCO for TCCO's review. TCCO reserves the right to: (1) reject the agreement or require changes to any provisions that do not comply with the requirements or duties and responsibilities of the Contract or create significant barriers for TCCO in monitoring compliance with the Contract; (2) object to the selection of the subcontractor; or (3) object to the subcontracting of the Services and Deliverables proposed to be subcontracted.

SECTION 4.06 TCCO'S ABILITY TO CONTRACT WITH SUBCONTRACTORS

The Contractor may not limit or restrict, through a covenant not to compete, employment agreement or other contractual arrangement, TCCO's ability to contract with subcontractors or former employees of the Contractor.

ARTICLE V: GOVERNING LAW AND REGULATIONS

SECTION 5.01 GOVERNING LAW AND VENUE

Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

All Contractors shall ensure the location where services are provided is in compliance with all applicable local, state, and federal zoning, building, health, fire, and safety standards.

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

Contractor shall provide services to TCCO that are in compliance with all applicable, local, state, and federal laws, rules and regulations now in effect or that become effective during the term hereof including but not limited to: the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination in Employment Act; The Immigration Reform and Control Act of 1986; Code of Federal Regulations, Title 42, Part 2 (regarding information about drug and alcohol abuse); Environmental Protection Agency Rules and Regulations; Texas Health and Safety Code Chapters 85, 595, and 611; the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; Occupational Safety and Health Act of 1970; Texas Family Code Section 231.006; Texas Government Code Chapters 783, 2254, 2259, and 2260; Health and Safety Code Chapter 841; Texas Administrative Code Title 37, Part 16, Chapter 810; any and all relevant federal and state financial cost principles and audit requirements; and any and all rules, policies, and procedures established from time to time by the TCCO regarding the operations of CRF facilities.

SECTION 5.02 CONTRACTOR RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS

Contractor is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions.

Contractor is responsible for ensuring each of its employees, agents, or subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Services.

Contractor warrants the Services and Deliverables comply with all applicable Federal, State, and County laws, regulations, codes, ordinances, guidelines, and policies. CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS TCCO FROM AND AGAINST ANY LOSSES, LIABILITY, CLAIMS, DAMAGES, PENALTIES, COSTS, FEES, OR EXPENSES ARISING FROM OR IN CONNECTION WITH CONTRACTOR'S NEGLIGENCE OR CONTRACTOR'S FAILURE TO COMPLY WITH OR VIOLATION OF ANY SUCH LAW, REGULATION, CODE, ORDINANCE, OR POLICY.

SECTION 5.03 CHANGE IN LAW AND COMPLIANCE WITH LAWS

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

SECTION 5.04 FORMER TCCO EMPLOYEES

In accordance with Texas Government Code Section 2252.901, Contractor represents and warrants none of its employees, including, but not limited to, those authorized to provide services under the contract, were former employees of TCCO during the twelve (12) month period immediately prior to the date of execution of the contract.

SECTION 5.05 DISCLOSURE OF PRIOR STATE EMPLOYMENT

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

SECTION 5.06 COMPLIANCE WITH IMMIGRATION LAWS

Contractor must comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

SECTION 5.07 COMPLIANCE WITH ANTI-DISCRIMINATION LAWS, REGULATIONS, AND RULES

Contractor shall provide services for TCCO that are in compliance with all applicable local, state, and federal laws, rules, and regulations now in effect or that become effective during the term hereof including but not limited to, Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age of Discrimination in Employment Act; the Immigration Reform and Control Act

of 1986; Code of Federal Regulations, Title 42, Part 2 (regarding information about drug and alcohol abuse); Environmental Protection Agency (EPA) Rules and Regulations; Texas Health and Safety Code Chapters 85, 595, and 611; the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; Occupational Safety and Health Act (OSHA) of 1970; Texas Family Code Section 231.006; Texas Government Code Chapters 783, 2254, 2259, and 2260; Health and Safety Code Chapter 841; Texas Administrative Code, Title 37, Part 16, Chapter 810; any and all relevant federal and state financial cost principles and audit requirements; and any and all rules, policies, and procedures established from time to time by TCCO.

The Contractor shall not deviate in any material respect from applicable TCCO Policies in the provision of services without the prior written approval of TCCO. Contractor's written request for deviations from said policies shall originate from the Authorized Representative of the Contractor and shall be forwarded to TCCO. The Contractor's written requests for deviation shall contain language which details the specific deviation with reference to the policy number, section, paragraph, etc., as well as the justification for such deviation.

Contractor must comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued under these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

Contractor must comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 and 7 C.F.R. Part 15 prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor must ensure its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. Contractor also must take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English in order to ensure persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

Contractor must comply with Executive Order 13279 and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services will not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Upon request, Contractor will provide TCCO with copies of all of the Contractor's civil rights policies and procedures.

Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under the Agreement. This notice must be delivered no more than ten calendar days after receipt of a complaint. Notice provided under this section must be directed to: HHSC

Civil Rights Office 701 W. 51st Street, Mail Code W206 Austin, Texas 78751 Phone Toll Free: (888) 388-6332 Phone: (512) 438-4313 TTY Toll Free: (877) 432-7232 Fax: (512) 438-5885.

SECTION 5.08 COMPLIANCE WITH ENVIRONMENTAL PROTECTION LAWS

Contractor must comply with state and federal environmental laws, including, without limitation:

- A. Pro-Children Act of 1994. Contractor must comply with the Pro-Children Act of 1994 (20 U.S.C. § 6081 et seq.), as applicable, regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.
- B. National Environmental Policy Act of 1969. Contractor must comply with any applicable provisions relating to the institution of environmental quality control measures contained in the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) and Executive Order 11514 (“Protection and Enhancement of Environmental Quality”).
- C. Clean Air Act and Water Pollution Control Act regulations. Contractor must comply with any applicable provisions relating to required notification of facilities violating the requirements of Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans”).
- D. State Clean Air Implementation Plan. Contractor must comply with any applicable provisions requiring conformity of federal actions to State (Clean Air) Implementation Plans under §176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.).
- E. Safe Drinking Water Act of 1974. Contractor must comply with applicable provisions relating to the protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (21 U.S.C. § 349; 42 U.S.C. §§ 300f to 300j- 9).

SECTION 5.09 COMPLIANCE WITH FRAUD, WASTE AND ABUSE REQUIREMENTS

In accordance with Texas Government Code Chapter 321, the State Auditor’s Office is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.

If there is reasonable cause to believe that fraud, waste, or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO’s website: <http://www.sao.state.tx.us/>.

The Contractor shall comply with the Texas Comptroller of Public Accounts Anti-Fraud Policy found at <https://comptroller.texas.gov/about/policies/ethics.php>

SECTION 5.10 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS

A. Applicability.

The following Electronic and Information Resources (EIR) requirements apply to the Agreement because Contractor performs services that include EIR that: (i) TCCO employees are required or permitted to access; or (ii) members of the public are required or permitted to access. This Section does not apply to incidental uses of EIR in the

performance of the Agreement unless the Parties agree the EIR will become property of the State of Texas or will be used by TCCO's clients or recipients after completion of the Agreement. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a Product.

B. Definitions.

For purposes of this Section:

“Accessibility Standards” means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in Texas Administrative Code Title 1, Chapter 206 and/or Chapter 213

“Electronic and Information Resources” means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

“Electronic and Information Resources Accessibility Standards” means the accessibility standards for electronic and information resources contained in Texas Administrative Code Title 1, Chapter 213.

“Product” means information resources technology that is, or is related to, EIR.

“Web Site Accessibility Standards/ Specifications” means standards contained in Texas Administrative Code Title 1, Chapter 206. Accessibility Requirements. Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, TCCO must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

C. Evaluation, Testing, and Monitoring

1. TCCO may review, test, evaluate and monitor Contractor's Products and services as set forth in this Solicitation, as well as associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor (2) the absence of review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Contractor's assertion of compliance with the Accessibility Standards.

2. Contractor agrees to cooperate fully and provide TCCO and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

D. Representations and Warranties

1. Contractor represents and warrants that: (i) as of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or TCCO's client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless TCCO or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.
2. In the event Contractor becomes aware, or is notified the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, Contractor represents and warrants it will, in a timely manner and at no cost to TCCO, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.
3. Contractor acknowledges and agrees these representations and warranties are essential inducements on which TCCO relies in awarding this Contract.
4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the product.

E. Remedies

1. Under Texas Government Code Section 2054.465, neither contractor nor any other person has cause of action against TCCO for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of Contractor's representations and warranties, Contractor will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which TCCO may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which TCCO may be entitled under this Contract and other applicable law.

SECTION 5.11 CRIMINAL HISTORY RECORD INFORMATION

The parties hereto acknowledge and agree that in order for the Contractor to perform the services contemplated herein, TCCO may have to provide the Contractor with or the Contractor may have access to, certain information regarding TCCO clients and former TCCO clients known as "criminal history record information" ("CHRI").

CHRI means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal charges and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records.

In the event TCCO provides the Contractor with CHRI, the Contractor agrees to comply with all confidentiality requirements of 28 CFR Parts 20 and 906, Texas Government Code Section 411.084, the FBI Criminal Justice Information Services (CJIS) Security Policy, and all other applicable federal and state statutes, rules, and regulations.

More specifically the Contractor agrees and acknowledges as follows:

- A. TCCO hereby specifically authorizes the Contractor to have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the services contemplated herein.
- B. The Contractor agrees to limit the use of such information for the purposes set forth herein.
- C. The Contractor agrees to maintain the confidentiality and security of the CHRI in compliance with state and federal statutes, rules and regulations, and to return or destroy such information when it is no longer needed to perform the services contemplated herein.
- D. In the event that the Contractor's employee fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to TCCO. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for TCCO's approval the Contractor's corrective action plan to ensure full compliance with the terms hereof.

SECTION 5.12 PROHIBITION AGAINST PERFORMANCE OUTSIDE THE CONTIGUOUS UNITED STATES

A. Authority

TCCO is responsible for administering programs that require the collection and maintenance of information relating to TCCO clients. The information consists of, among other things, personal financial and medical information, and information designated "Confidential Information." Some of this information may, within the limits of the law and this Contract, be shared from time to time with Contractor or a subcontractor for purposes of performing the Services or providing the Deliverables under this Contract.

TCCO is responsible for maintaining the confidentiality and integrity of information relating to TCCO clients and ensuring any person or entity that receives such information, including Contractor and any subcontractor, is similarly bound by these obligations.

B. Prohibition

In view of these obligations and to ensure accountability, integrity, and security of the information maintained by or for TCCO and the work performed on behalf of TCCO, TCCO determines it is necessary and appropriate to require:

1. All work performed under this Contract must be performed exclusively within the contiguous United States; and

2. All information obtained by Contractor or a subcontractor under this Contract must be maintained exclusively within the contiguous United States.

TCCO, without prior written approval, forbids the performance of any work or the maintenance of any information relating or obtained pursuant to this Contract to occur outside the contiguous United States except as specifically authorized or approved by TCCO.

C. Meaning of “within the contiguous United States” and “outside the contiguous United States”

1. As used in this Section, the term “within the contiguous United States” means any location within the 48 coterminous states of the United States and the District of Columbia.
2. Conversely, the phrase “outside the contiguous United States” means any location not within any of the 48 coterminous states in the United States or the District of Columbia.

D. Maintenance of Confidential Information

1. Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must not allow any Confidential Information that Contractor receives from or on behalf of TCCO to leave the United States by any means (physical or electronic) at any time, for any period of time, for any reason.
2. Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must not permit any person to have remote access to TCCO information, systems, or Deliverables from a location outside the United States.

E. Performance of Work under Agreement

Unless otherwise approved in advance by TCCO in writing and subject to the exceptions specified in paragraph (e) of this Section, Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must perform all services under this Contract, including all tasks, functions, and responsibilities assigned and delegated to Contractor under this Contract, within the Contiguous United States. This obligation includes all services including, but not limited to, information technology services, processing, transmission, storage, archiving, data center services, disaster recovery sites and services, customer support, medical, dental, laboratory, and clinical services. All custom software prepared for performance of this Contract and all modifications of custom, third party, or vendor proprietary software must be performed within the Contiguous United States.

Unless otherwise approved in advance by TCCO in writing and subject to the exceptions specified in this Section, Contractor and all subcontractors, vendors, agents, and service providers of or for Contractor must not permit any person to perform work under this Contract from a location outside the Contiguous United States.

F. Exceptions

1. COTS Software. The foregoing requirements will not preclude the acquisition or use of commercial off-the-shelf (COTS) software that is developed outside the Contiguous

United States or hardware that is generically configured outside the Contiguous United States.

2. Foreign-made Products and Supplies. The foregoing requirements will not preclude Contractor from acquiring, using, or reimbursing products or supplies manufactured outside the Contiguous United States, provided such products or supplies are commercially available within the Contiguous United States for acquisition or reimbursement by TCCO.
3. TCCO Prior Approval. The foregoing requirements will not preclude Contractor from performing work outside the United States that TCCO has approved in writing and that TCCO has confirmed will not involve the sharing of Confidential Information outside the United States.

G. Disclosure

Contractor must disclose all Services and Deliverables under or related to this Contract that Contractor intends to perform or has performed outside the Contiguous United States, whether directly or via subcontractors, vendors, agents, or service providers.

H. Remedy

Contractor's violation of this Section will constitute a material breach of the Contract. Contractor will be liable to TCCO for all actual and consequential damages in accordance with these terms and conditions. For breach of the requirements under this Section, TCCO may terminate the Contract with notice to Contractor at least one calendar day before the effective date of such termination.

SECTION 5.13 PROHIBITION OF A STATE AGENCY CONTRACTING WITH COMPANIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Texas Government Code Section 2271.001, Contractor certifies Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

SECTION 5.14 PROHIBITION OF A STATE AGENCY CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS

The Contractor certifies they are in compliance with Texas Government Code Chapter 2252.152 relating to the prohibition of a State Agency contracting with companies engaged in business with Iran, Sudan, or foreign terrorist organizations. The Contractor certifies the individual or business entity named in this offer or Contract is not ineligible to receive the specified Contract and acknowledges this Contract may be terminated and Payment withheld if this certification is inaccurate.

SECTION 5.15 HUMAN TRAFFICKING PROHIBITION

Pursuant to Texas Government Code Section 2155.0061, the Contractor certifies the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges this Contract may be terminated and Payment withheld if this certification is inaccurate.

SECTION 5.16 SUSPENSION AND DEBARMENT

Contractor certifies 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.

SECTION 5.17 SUSPENSION, DEBARMENT, AND TERRORISM

TCCO is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SON) list.

SECTION 5.18 CONTRACTING WITH EXECUTIVE HEAD OF STATE AGENCY

- A The Contractor represents and certifies they follow Texas Government Code Section 669.003 relating to contracting with the executive head of a State Agency.
- B. If Texas Government Code Section 669.003 applies, the Contractor shall complete the following information for the offer to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Contractor: _____

SECTION 5.19 FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION

Pursuant to Texas Government Code Section 2155.004(a), Contractor certifies neither Contractor nor any person or entity represented by Contractor has received compensation from Agency to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Texas Government Code Section 2155.004(b), Contractor certifies the individual or business entity named in this Response or contract is not ineligible to receive the

specified contract and acknowledges the contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit a Contractor or contract participant from providing free technical assistance.

SECTION 5.20 SPECIFIC DUTIES AND OBLIGATIONS

The Contractor shall provide services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereinafter implemented. The Contractor shall comply with TCCO policies and regulations during the contract term. The Contractor shall comply with TCCO's safety requirements and reporting procedures, as well as all applicable local and state standards, codes and regulations, including zoning, building, fire, health and sanitation.

ARTICLE VI: CONTRACT MANAGEMENT AND PERFORMANCE MEASUREMENT

SECTION 6.01 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, TCCO may take actions including:

- A. Suspending all or part of the Contract;
- B. Requiring the Contractor to take specific corrective actions in order to remain in compliance with the term of the Contract;
- C. Recouping payments made to the Contractor found to be in error;
- D. Suspending, limiting, or placing conditions on the continued performance of Work;
- E. Imposing any other remedies authorized under this Contract; and
- F. Imposing any other remedies, sanctions, or penalties permitted by federal or state statute, law, regulation, or rule.

SECTION 6.02 PERFORMANCE MEASUREMENT

Satisfactory performance of the Contract will be measured by:

- A. Adherence to the Contract, including all representations and warranties;
- B. Compliance with project work plans, schedules and milestones as proposed by Contractor in its Proposal and as revised by Contractor and finally approved by TCCO;
- C. Delivery of the Services and Deliverables in accordance with the service levels and availability proposed in Contractor's proposal and as finally approved or accepted by TCCO;
- D. Results of audits performed by TCCO or its representatives in accordance with Article 8;
- E. Timeliness, completeness, and accuracy of required Deliverables; and
- F. Achievement of performance measures developed by Contractor and TCCO and as modified from time to time by written agreement during the initial term of the Contract.

SECTION 6.03 DEFAULT BY THE CONTRACTOR

Each of the following shall constitute an Event of Default on the part of the Contractor.

- A. A Material Failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Contract to be kept, observed, met, performed, or complied with by the Contractor hereunder, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof.
- B. A Material Failure to meet or comply with TCCO Policy, any Court Order, federal or state requirement or law, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof.
- C. A Material Failure to secure and maintain any required business permits or licenses.
- D. A Material Failure to comply with any TCCO Policies for which the Contractor has been expressly required to comply, and for which the Contractor has not received a prior written waiver from the TCCO, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof.
- E. Insolvency of the Contractor as evidenced by any of the following occurrences:
 - 1. Its inability to pay its debts;
 - 2. Any general assignment for the benefit of creditors;
 - 3. Any decree or order appointing a receiver or trustee for it or substantially all its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) Days;
 - 4. Any proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) Days; or
 - 5. Any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within sixty (60) Days after issue or levy.
- F. The discovery by TCCO that any statement, representation, or warranty in this Contract is false, misleading, or erroneous in any material respect
- G. A failure by the Contractor to comply with contractual terms and conditions, resulting in a breach of security or health and safety standards. This Event of Default may result in the immediate termination of this Contract.

ARTICLE VII: AMENDMENTS, MODIFICATIONS, AND CHANGE ORDER REQUESTS

SECTION 7.01 AMENDMENTS AND MODIFICATIONS

- A. Amendments and Modifications Resulting from Changes in Law or Contract
The Contract may be amended by mutual written agreement of the Parties if changes in federal or state laws, rules, regulations, policies, guidelines or circumstances affect the performance of the work. The Parties will develop a business plan for negotiating appropriate change order and amendment procedures.
- B. Modifications Resulting from Imposition of Remedies
The Contract may be modified under the terms of Article XI relating to Remedies and Disputes.

SECTION 7.02 REQUIRED COMPLIANCE WITH AMENDMENT MODIFICATION PROCEDURES

No different or additional services, work, or products will be authorized or performed except those that are within scope and that are memorialized in an amendment or modification of the Contract that is executed in compliance with this article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this article. Contractor will not be entitled to payment for any services, work or products that are not authorized by a properly executed Contract amendment or modification, or through the express authorization of TCCO.

ARTICLE VIII: AUDIT AND FINANCIAL COMPLIANCE

SECTION 8.01 RECORD RETENTION AND AUDIT

Contractor must maintain, and require its subcontractors to maintain, supporting information and documents that are adequate to ensure that payments are made and paid in accordance with applicable Federal and State requirements, and are sufficient to ensure the accuracy and validity of Contractor invoices. These documents, including all original claims forms, will be maintained and retained by Contractor or its subcontractors for a period of seven years after the date of submission of the final billing or until the resolution of all litigation, claim, financial management review, or audit pertaining to the Contract, whichever is longer. Contractor agrees to timely repay any undisputed audit exceptions taken by TCCO in any audit of the Contract.

SECTION 8.02 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

A. Notice

Upon reasonable notice, Contractor must provide, and cause its subcontractors to provide, the officials and entities identified in this Section with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of the Contract.

B. Access

Contractor and its subcontractors must provide the access described in this section upon TCCO's request. This request may include the following purposes:

1. Examination;
2. Audit;
3. Investigation;
4. Contract administration; or
5. The making of copies, excerpts, or transcripts.

In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Office of the Inspector General at HHSC (OIG) and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or services are performed and all records (including client and patient records, if any), books, papers or documents related to the Contract.

C. Entities

Contractor shall provide entry at all times by TCCO's authorized employees/agents for inspections, and any other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial departments of the State, as well as any other persons designated by TCCO, will be admitted into Contractor's place of business at any time.

D. Accommodations

Contractor agrees to provide the access described wherever Contractor maintains the books, records, and supporting documentation described above. Contractor further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section. Contractor will require its subcontractors to provide comparable access and accommodations.

Upon request, Contractor must provide copies of the information described in this Section free of charge to TCCO and the entities described in subsection (c).

SECTION 8.03 AUDITS AND INSPECTIONS OF SERVICES AND DELIVERABLES

Upon notice from TCCO where possible, Contractor will provide, and will cause its subcontractors to provide, such auditors and inspectors as TCCO may from time to time designate with access to:

- A. Contractor service locations, facilities, or installations;
- B. Contractor software and equipment; and
- C. Contractor records.

Contractor must provide as part of the Services any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.

SECTION 8.04 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Contractor must take action to ensure its or a subcontractor's compliance with a correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under the Contract. This action will include Contractor's delivery to TCCO, for TCCO's approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).
- B. Contractor must bear the expense of compliance with any finding of noncompliance under the Contract that is:
 - 1. Required by a Texas or federal law, regulation, rule or other audit requirement relating to Contractor's business;
 - 2. Performed by Contractor as part of the Services and Deliverables; or
 - 3. Necessary due to Contractor's noncompliance with any law, regulation, rule or audit requirement imposed on Contractor.

- C. As part of the services, Contractor must provide to TCCO upon request a copy of those portions of Contractor's and subcontractor's internal audit reports relating to the Services and Deliverables provided to the State under the Agreement.

SECTION 8.05 AUDIT OF CONTRACTOR FEES

- A. Contractor will provide, and will cause its subcontractors to provide, to TCCO and its designees access to financial records and supporting documentation reasonably requested by TCCO.
- B. In addition to the normal monthly review and payment of administrative vouchers, TCCO may audit the fees charged to TCCO to determine whether such fees are accurate and in accordance with the Contract.
- C. If, as a result of such audit, TCCO determines that Contractor has overcharged the State, TCCO will notify Contractor of the amount of such overcharge and Contractor will promptly pay to TCCO the amount of the overcharge, plus interest. Interest on such overpayment amount will be calculated from the date of receipt by the Contractor of the overcharged amount until the date of payment to TCCO, and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed, but no in no event to exceed the highest lawful rate of interest. In the event any such audit reveals an overcharge to TCCO, Contractor will reimburse TCCO for the cost of such audit.

SECTION 8.06 SAO AUDIT

Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

ARTICLE IX: TERMS AND CONDITIONS OF PAYMENT

SECTION 9.01 PAYMENT

TCCO will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code Chapter 2251.

SECTION 9.02 RIGHTS OF SET-OFF

A. General Right of Set-Off

With respect to any undisputed amount that a part in good faith determines should be reimbursed to it or is otherwise payable to it by the other party under the Contract, the party seeking the set-off may deduct the entire amount owed against charges otherwise payable or expenses owed to it under the Contract until such time as the entire amount determined to be owed has been paid.

B. Duty to Make Payments

TCCO will be relieved of its obligation to make any payments to the Contractor until such time as all set-off amounts have been credited to TCCO and the Contractor will be relieved of its obligation to make any payments to TCCO until such time as such amounts have been created to the Contractor.

SECTION 9.03 EXPENSES

Except as provided in the Contract, all other expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will not be reimbursed by TCCO unless agreed to by TCCO. Contractor will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its staff. In addition, the costs associated with transportation, delivery, and insurance for each Deliverable will be paid by Contractor.

SECTION 9.04 DISPUTED FEES

If TCCO disputes payment of all or any portion of an invoice from the Contractor, TCCO will notify the Contractor of the dispute and both parties will attempt in good faith to resolve the dispute. TCCO will not be required to pay any disputed portion of a Contractor invoice unless and until the dispute is resolved. Notwithstanding any such dispute, the Contractor must continue to perform the Services and produce Deliverables in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

SECTION 9.05 LIABILITY FOR TAXES

TCCO is not responsible in any way for the payment of any federal, state or local taxes related to or incurred in connection with the Contractor's performance of the Contract. Contractor must pay and discharge any and all such taxes, including any penalties and interest. In addition, TCCO is exempt from Federal excise taxes, and will not pay for any personal property taxes or income taxes levied on Contractor or on any taxes levied on employee wages.

SECTION 9.06 LIABILITY FOR EMPLOYMENT-RELATED CHARGES AND BENEFITS

Contractor will perform work under the Contract as an independent contractor and not as agent or representative of TCCO. Contractor is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of the Contract. TCCO will not be liable for any employment-related charges or benefits of Contractor, such as workers' compensation benefits, unemployment insurance and benefits, or fringe benefits.

SECTION 9.07 NO ADDITIONAL CONSIDERATION

Contractor will not be entitled to nor receive from TCCO any additional consideration, compensation, salary, wages, or any other type of remuneration for services rendered under the Contract. Contractor will not be entitled by virtue of the Contract to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, the costs associated with transportation, delivery, and insurance relating to the Contractor’s performance of the Contract will be paid for by the Contractor.

SECTION 9.08 NO INCREASE IN RATES

Contractor will not increase rates during the term of the Contract, except as authorized in Article 7.

SECTION 9.09 NO DEBT AGAINST THE STATE

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

ARTICLE X: DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

SECTION 10.01 CONTRACTING INFORMATION RESPONSIBILITIES

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

SECTION 10.02 HHSC DATA USE AGREEMENT

The HHSC Data Use Agreement, available at: <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/providers/long-term-care/nf/data-use-agreement.pdf> is incorporated into the Contract and describes Contractor’s rights and obligations with respect to the Confidential Information and limited purposes for which Contractor may create, receive, maintain, use, disclose, or have access to Confidential Information.

SECTION 10.03 REQUESTS FOR PUBLIC INFORMATION

- A. Notwithstanding any provisions of the Contract to the contrary, Contractor understands that TCCO will comply with the Texas Public Information Act, Texas Government Code Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of Texas.
- B. TCCO agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this Contract.
- C. Contractor shall cooperate with TCCO in the production of documents responsive to the request. TCCO will make a determination whether to submit a Public Information Act Opinion request to the Attorney General. Contractor shall notify TCCO General Counsel within twenty-four (24) hours of receipt of any third party requests for information that were provided by the State of Texas for use in performing this Contract.
- D. The Agreement and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act.
- E. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information, particularly, but not limited to social security numbers.
- F. With respect to any information the subject to a request for disclosure, Contractor is required to demonstrate to the Texas Office of Attorney General the specific reasons why the requested information is confidential or otherwise excepted from required public disclosure under law. Contractor will provide TCCO with copies of all such communications.
- G. Contractor must make information defined as public information not otherwise excepted from disclosure under the Texas Public Information Act, Texas Government Code Chapter 552, available to TCCO in a format agreeable to TCCO, accessible by the public, and at no additional charge to TCCO.
- H. To the extent authorized under the Texas Public Information Act, TCCO agrees to safeguard from disclosure information received from Contractor that the Contractor believes to be Confidential Information. Contractor must clearly mark such information as Confidential Information or provide written notice to TCCO that it considers the information confidential.
- I. To the extent allowed under the Texas Public Information Act, Texas Government Code Chapter 552, Contractor agrees that any consultant reports received by TCCO in connection with the Agreement, may be distributed by TCCO, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on TCCO's website or the website of a standing committee of the legislature.

- J. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code Chapter 552 (the “Public Information Act”). In accordance with Texas Government Code Section 2252.907, Contractor is required to make any information created or exchanged with the State 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.

SECTION 10.04 PRIVILEGED WORK PRODUCT

- A. Contractor acknowledges that TCCO asserts that Privileged Work Product may be prepared in anticipation of litigation and that Contractor is performing the Services with respect to Privileged Work Product as an agent of TCCO, and that all matter related thereto is protected from disclosure by the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure, or Federal Rules of Evidence.
- B. TCCO will notify Contractor of any Privileged Work Product to which Contractor has or may have access. After the Contractor is notified or otherwise becomes aware that such documents, data, database, or communications are Privileged Work Product, only Contractor personnel for whom such access is necessary for the purposes of providing the Services may have access to Privileged Work Product.
- C. If Contractor receives notice of any judicial or other proceeding seeking to obtain access to TCCO’s Privileged Work Product, Contractor will: (1) Immediately notify TCCO; and (2) Use all reasonable efforts to resist providing such access.
- D. If Contractor resists disclosure of TCCO’s Privileged Work Product in accordance with this Section, TCCO will, to the extent authorized under Civil Practices and Remedies Code or other applicable State law, have the right and duty (i) to represent Contractor in such resistance; (ii) to retain counsel to so represent Contractor; or (iii) to reimburse Contractor for reasonable attorneys' fees and expenses incurred in resisting such access. TCCO will make the sole determination as to which of the preceding duties it will undertake.
- E. If a court of competent jurisdiction orders Contractor to produce documents, disclose data, or otherwise breach Contractor's confidentiality obligations or maintenance obligations regarding the confidentiality, proprietary nature, and secrecy of Privileged Work Product, Contractor will not be liable for breach of such obligation.

SECTION 10.05 UNAUTHORIZED ACTS

Each Party agrees to:

- A. Notify the other Party promptly of any unauthorized possession, use, or knowledge, or attempt thereof, of any of the other Party's Confidential Information by any person or entity that may become known to it;
- B. Promptly furnish to the other Party full details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in

investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information;

- C. Cooperate with the other Party in any litigation and investigation against third Parties deemed necessary by such Party to protect its proprietary rights; and
- D. Promptly prevent a reoccurrence of any such unauthorized possession, use, or knowledge of Confidential Information.

SECTION 10.06 LEGAL ACTION

A party may not commence any legal action or proceeding with a third party with respect to any unauthorized possession, use, or knowledge, or attempt thereof, of the other Party's Confidential Information by any such person or entity, if that action or proceeding identifies the other Party or its Confidential Information without such Party's consent.

ARTICLE XI: REMEDIES AND DISPUTES

SECTION 11.01 UNDERSTANDING AND EXPECTATIONS

The remedies described in this Article are directed to Contractor's timely and responsive performance of the Services and Deliverables, and to the creation of a flexible and responsive relationship between the Parties.

SECTION 11.02 TAILORED REMEDIES

- A. Understanding of the Parties
Contractor agrees and understands that TCCO may pursue tailored contractual remedies for noncompliance with the Contract. At any time and at its discretion, TCCO may impose or pursue one or more remedies for each action of noncompliance and will determine remedies on a case-by-case basis. TCCO's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that TCCO may have at law or equity.
- B. Notice and Opportunity to Cure for Non-Material Breach
 1. TCCO will notify Contractor in writing of specific areas of Contractor performance that fail to meet performance expectations, standards, or schedules but that, in the determination of TCCO, do not result in a material deficiency or delay in the implementation or operation of the Services.
 2. Contractor will, within three (3) business days (or another date approved by TCCO) of receipt of written notice of a non-material deficiency, provide TCCO a written response that:
 - a. Explains the reasons for the deficiency, Contractor's plans to address or cure the deficiency, and the date and time by which the deficiency will be cured; or
 - b. If Contractor disagrees with TCCO's findings, explains its reasons for disagreeing with TCCO's findings.

3. Contractor's proposed cure of a non-material deficiency is subject to the approval of TCCO. Contractor's repeated commission of non-material deficiencies or repeated failure to resolve any such deficiencies may be regarded by TCCO as a material deficiency and entitle TCCO to pursue any other remedy provided in the Contract or any other appropriate remedy TCCO may have at law or equity.

C. Corrective Action Plan

1. At its option, TCCO may require Contractor to submit to TCCO a detailed written plan (the "corrective action plan") to correct or resolve a material deficiency or breach of the Contract.
2. The Corrective Action Plan must provide:
 - a. A detailed explanation of the reasons for the cited deficiency;
 - b. Contractor's assessment or diagnosis of the cause;
 - c. A specific proposal to cure or resolve the deficiency; and
 - d. Contractor's timeline for cure or resolution of the deficiency.
3. The Corrective Action Plan must be submitted by the deadline set forth in TCCO's request for a Corrective Action Plan. The Corrective Action Plan is subject to approval by TCCO, which will not be withheld unnecessarily.
4. TCCO will notify Contractor in writing of TCCO's final disposition of TCCO's concerns regarding the Corrective Action Plan. If TCCO accepts Contractor's proposed Corrective Action Plan, TCCO may:
 - a. Condition such approval on completion of tasks in the order of priority that TCCO may prescribe;
 - b. Disapprove portions of Contractor's proposed Corrective Action Plan; or
 - c. Require additional or different corrective action(s).
5. At any time during this remedial process, TCCO reserves the right to:
 - a. Suspend all, or part of, the Contract, and to withhold further payment for the suspended portions of the Contract; or
 - b. Prohibit Contractor from incurring additional obligations of funds during investigation of the pending corrective action, if necessary by Contractor or a decision by TCCO to terminate the Contract for cause.
6. If TCCO rejects Contractor's written explanation or proposed Corrective Action Plan, TCCO may issue a Stop Work Order to Contractor or any of its subcontractors or suppliers. TCCO may delay the implementation of the Stop Work Order if it affects the completion of any of the Services in accordance with the approved scheduled or work plan.
7. TCCO's acceptance of a Corrective Action Plan under this Section will not:
 - a. Excuse Contractor's prior substandard performance;
 - b. Relieve Contractor of its duty to comply with performance standards; or
 - c. Prohibit TCCO from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.

D. Administrative Remedies

1. At its discretion, TCCO may impose one or more of the following remedies for each item of noncompliance and will determine the scope and severity of the remedy on a case-by-case basis:
 - a. Assess liquidated damages in accordance with the terms of the Contract if provided in the Contract;
 - b. Conduct accelerated monitoring of the Contractor. Accelerated monitoring includes more frequent or more extensive monitoring by TCCO or its agent;
 - c. Require additional, more detailed, financial or programmatic reports to be submitted by Contractor;
 - d. Decline to renew or extend the Contract;
 - e. Withhold or recoup payment for the noncompliant Service or Deliverable; or
 - f. Terminate the Contract in accordance with Section 11.03.
2. For purposes of the Contract, an item of noncompliance means a specific action of Contractor that:
 - a. Violations a provision of the Contract;
 - b. Fails to meet an agreed measure of performance; or
 - c. Represents a failure of Contractor to be reasonably responsive to a reasonable request of TCCO relating to the Services and Deliverables for information, assistance, or support within the timeframe specified by TCCO.
3. TCCO will provide notice to Contractor of the imposition of an administrative remedy in accordance with this Section, with the exception of accelerated monitoring, which may be unannounced. TCCO may require Contractor to file a written response as part of the Tailored Remedy approach.
4. The Parties agree that a State or Federal statute, rule, regulation, or Federal guideline will prevail over the provisions of this Section unless the statute, rule, regulation, or guidelines can be read together with this Section to give effect to both.

E. Damages

1. TCCO will be entitled to actual and consequential damages resulting from the Contractor's failure to comply with any of the terms of the Contract.
2. In some cases, the actual damage to TCCO or the State of Texas as a result of Contractor's failure to meet any aspect of the responsibilities of the Contract or to meet specific performance standards set forth in the Contract are difficult or impossible to determine with precise accuracy. Therefore, liquidated damages may be assessed in writing against and paid by the Contractor for failure to meet any aspect of the responsibilities of the Contract or to meet the specific performance standards identified by TCCO. Liquidated damages may be assessed if HHSC determines such failure is the fault of the Contractor (including the Contractor's subcontractors or consultants) and is not materially caused or contributed to by TCCO or its agents. If at any time, TCCO determines the Contractor has not met any aspect of the responsibilities of the Agreement or the specific performance standards due to mitigating circumstances, TCCO reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and be signed by the appropriate executive of TCCO. The liquidated damages prescribed in this Section are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of TCCO's projected financial loss and damage resulting from the Contractor's nonperformance,

including financial loss as a result of project delays. Accordingly, in the event Contractor fails to perform in accordance with the Agreement, TCCO may assess liquidated damages as provided in this Section.

3. If Contractor fails to perform any of the Services described in the Contract, TCCO may assess liquidated damages for each occurrence of a liquidated damages event, to the extent consistent with TCCO's tailored approach to remedies and Texas Law.
4. TCCO may elect to collect liquidated damages:
 - a. Through direct assessment and demand for payment delivered to Contractor; or
 - b. By deduction of amounts assessed as liquidated damages as set-off against payments then due to Contractor for the Services or Deliverables or that become due at any time after assessment of liquidated damages. TCCO will make deductions until the full amount payable by Contractor is received by the State.

F. Equitable Remedies

1. Contractor acknowledges that, if Contractor breaches (or attempts or threatens to breach) its obligation under the Contract, the State will be irreparably harmed. In such a circumstance, TCCO may proceed directly to court.
2. If a court of competent jurisdiction finds that Contractor breached (or attempted or threatened to breach) any such obligations, Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate order compelling performance by Contractor and restraining it from any further breaches (or attempted or threatened breaches).

G. Suspension of Contract

1. TCCO may suspend performance of all or any part of the Contract if:
 - a. TCCO determines that Contractor has committed a material breach of the Contract;
 - b. TCCO has reason to believe that Contractor has committed, assisted in the commission of, or failed to take appropriate action concerning fraud, abuse, malfeasance, misfeasance, or nonfeasance by any party concerning the Contract; or
 - c. TCCO determines that suspension of the Contract in whole or in part is convenient or in the best interests of the State of Texas or the TCCO Programs.
2. TCCO will notify Contractor in writing of its intention to suspend the Contract in whole or in part. Such notice will:
 - a. Be delivered in writing to Contractor;
 - b. Include a concise description of the facts or matter leading to TCCO's decision; and
 - c. Unless TCCO is suspending the contract for convenience, request a Corrective Action Plan from Contractor or describe actions that Contractor must take to avoid the contemplated suspension of the Contract.

SECTION 11.03 TERMINATION OF CONTRACT

In addition to other provisions of this article allowing termination, the Contract will terminate upon the expiration date unless extended in accordance with the terms of the Contract, or terminated sooner under the terms of the Contract. Prior to completion of the Initial Term and any extensions or renewal thereof, all or a part of the Contract may be terminated for any of the following reasons:

- A. Termination by Mutual Agreement of the Parties.
The Contract may be terminated by mutual agreement of the Parties. Such agreement must be in writing.
- B. Termination for Convenience.
TCCO may, in its sole discretion, terminate this Contract with or without cause, by providing the Contractor with sixty (60) Days prior written notice of such termination.
- C. Termination in the Best Interest of the State.
TCCO may terminate the Contract at any time when, in its sole discretion, TCCO determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in TCCO's notice of termination.
- D. Termination for Cause.
Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, TCCO may terminate the Contract, in whole or in part, upon the following conditions:
1. Assignment for the benefit of all or substantially all of its creditors, appointment of receiver, or inability to pay debts. TCCO may terminate the Contract if Contractor:
 - a. Makes an assignment for the benefit of its creditors;
 - b. Admits in writing its inability to pay its debts generally as they become due; or
 - c. Consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property.
 2. Failure to adhere to laws, rules, ordinances, or orders. TCCO may terminate the Contract if a court of competent jurisdiction finds Contractor 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.
 3. Breach of confidentiality. TCCO may terminate the Contract if Contractor breaches confidentiality obligations with respect to the Services and Deliverables provided under the Contract.
 4. Failure to maintain adequate personnel or resources. TCCO may terminate the Contract if, after providing notice and an opportunity to correct, TCCO determines that Contractor has failed to supply personnel or resources and such failure results in Contractor's inability to fulfill its duties under the Contract.
 5. Termination for gifts and gratuities.
 - a. TCCO may terminate the Contract following the determination by a competent judicial or quasi-judicial authority and Contractor's exhaustion of all legal remedies that Contractor, its employees, agents or representatives have either offered or given anything of value to an officer or employee of TCCO or the State of Texas in violation of state law.
 - b. Contractor must include a similar provision in each of its subcontracts and will enforce this provision against a subcontractor who has offered or given anything of value to any of the persons or entities described in this Section, whether or not the offer or gift was in Contractor's behalf.

- c. Termination of a subcontract by Contractor under this provision will not be a cause for termination of the Contract unless Contractor fails to replace such terminated subcontractor within a reasonable time.
 - d. For purposes of this Section, a “thing of value” means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with State or Federal law.
 - e. Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, or service to a HHSC or TCCO official or employee in connection with this Contract.
6. Termination for non-appropriation of funds. Notwithstanding any other provision of the Contract, if funds for the continued fulfillment of the Contract by TCCO are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then TCCO will have the right to terminate the Contract at no additional cost and with no penalty whatsoever. TCCO will make best efforts to provide reasonable written advance notice to Contractor upon learning that funding for the Contract may be discontinued.
7. Termination for lack of financial viability. TCCO may terminate the Contract if, in its sole discretion, TCCO has a good faith belief that Contractor no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform the Contract.
8. Judgment and execution.
 - a. TCCO may terminate the Contract if judgment for the payment of money in excess of \$500,000.00 that is not covered by insurance, is rendered by any court or governmental body against Contractor, and Contractor does not:
 - i. Discharge the judgment or provide for its discharge in accordance with the terms of the judgment;
 - ii. Procure a stay of execution of the judgment within 30 days from the date of entry thereof; or
 - iii. Perfect an appeal of such judgment and cause the execution of such judgment to be stayed during the appeal, providing such financial reserves as may be required under generally accepted accounting principles.
 - b. If a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within 30 days after its entry, TCCO may terminate the Contract in accordance with this Section.
9. Termination for Contractor’s material breach of the Contract. TCCO will have the right to terminate the Contract in whole or in part if TCCO determines, at its sole discretion, that Contractor has materially breached the Contract.
10. Termination Procedures.

- E. Upon Termination for Default, Termination for Convenience, Termination by Mutual Agreement, or Termination for Unavailability of Funds as heretofore mentioned, the following procedures will be adhered to.
 - 1. TCCO will immediately notify the Contractor in writing specifying the effective termination date.
 - 2. After receipt of the Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - a. Place no further subcontracts or orders in support of this Contract;
 - b. Terminate all subcontracts; and
 - c. Cancel all orders as applicable.

- F. Upon termination, the Contractor shall be entitled to receive from TCCO Payment for all Services satisfactorily furnished under this Contract, up to and including the date of termination. Claims submitted after one hundred eighty (180) Days from the date of termination will not be considered.

SECTION 11.04 EFFECTIVE DATE OF TERMINATION

Except as otherwise provided in the Contract, termination will be effective as of the date specified in the notice of termination.

SECTION 11.05 EXTENSION OF TERMINATION EFFECTIVE DATE

TCCO may extend the effective date of termination one or more times as it elects, in its sole discretion.

SECTION 11.06 PAYMENT AND OTHER PROVISIONS AT CONTRACT TERMINATION

- A. If TCCO terminates the Contract, TCCO will pay Contractor on the effective date of termination (or as soon as possible thereafter taking into account appropriation and fund accounting requirements) any undisputed amounts due for all completed, approved, and accepted Services or Deliverables.

- B. TCCO further agrees to negotiate in good faith with Contractor to equitably adjust and settle any accrued or outstanding liabilities for any unaccepted Service or deliverable and Change Order Requests that:
 - 1. Is due or delivered prior to or upon contract termination;
 - 2. Is complete or substantially complete, or for which Contractor can document to the satisfaction of TCCO substantial progress; and
 - 3. Benefits TCCO or the State of Texas, notwithstanding its unaccepted status.

- C. Contractor must provide TCCO all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under the Contract.

- D. Contractor must prepare a turnover plan, which is acceptable to and approved by TCCO. That turnover plan will be implemented during the time period between receipt of notice and the termination date.

SECTION 11.07 MODIFICATION OF CONTRACT IN THE EVENT OF REMEDIES

TCCO may propose a modification of the Contract in response to the imposition of a remedy under this article. Any modifications under this Section must be reasonable, limited to the matters causing the exercise of a remedy, within the scope of the Contract, and in writing. Contractor must negotiate such proposed modifications in good faith.

SECTION 11.08 TURNOVER ASSISTANCE

Upon receipt of notice of termination of the Contract by TCCO, Contractor will provide any turnover assistance reasonably necessary to enable TCCO or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself.

SECTION 11.09 RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event that the Contract is terminated for any reason, or upon its expiration, TCCO will, at TCCO's discretion, retain ownership of any and all associated work products, Deliverables or Documentation in whatever form that they exist.

For the purposes of this Contract, the term "work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property, or other property developed, produced, or generated, in connection with this Contract.

All work performed pursuant to this Contract is made the exclusive property of TCCO. All right, title, and interest in and to said property shall vest in TCCO upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TCCO, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TCCO. TCCO shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give TCCO and/or the State of Texas, as well as any person designated by TCCO and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other record relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later.

Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Work as defined above. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and othersupporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing or

evaluating by TCCO and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

SECTION 11.10 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS

If TCCO terminates the Contract for Cause, the Contractor will be responsible to TCCO for all costs incurred by TCCO, the State of Texas, or any of its administrative agencies to replace the 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 Service in accordance with the terms of the Contract.

SECTION 11.11 DISPUTE RESOLUTION

Any claims for breach of this Contract by Contractor the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by Subchapter B, to the Office of General Counsel, Texas Civil Commitment Office, 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78728. Said notice shall also be given to all other representatives of TCCO and Contractor otherwise entitled to notice under this contract. Compliance by Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code Chapter 2260, Subchapter C, and TCCO rules.

SECTION 11.12 LIABILITY OF CONTRACTOR

- A. Contractor bears all risk of loss or damage due to:
 - 1. Defects in products, Services or Deliverables;
 - 2. Unfitness or obsolescence of products, Services or Deliverables; or
 - 3. The negligence or intentional misconduct of Contractor or its employees, agents, subcontractors, or representatives.

- B. CONTRACTOR MUST, AT THE CONTRACTOR'S OWN EXPENSE, DEFEND WITH COUNSEL APPROVED BY THE STATE, INDEMNIFY, AND HOLD HARMLESS THE STATE AND STATE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, AND EXPENSES FROM ANY CLAIM OR ACTION FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH, TO THE EXTENT CAUSED BY OR ARISING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR AND ITS EMPLOYEES, OFFICERS, AGENTS, OR SUBCONTRACTORS.

- C. Contractor will not be liable to TCCO for any loss, damages or liabilities attributable to or arising from:
 - 1. The failure of TCCO or any state agency or TCCO Contractor to perform a service or activity in connection with the Contract; or
 - 2. Contractor's prudent and diligent performance of the Services in compliance with instructions given by TCCO in accordance with Section 1.03 (relating to implied authority) and Section 3.03 (relating to delegation of authority) of the Contract.

- D. Contractor will ship all Equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, Free on Board Destination (FOB) TCCO's destination. The method of shipment will be consistent with the nature of the Equipment and Software and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of Deliverables, in whole or in part, ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to TCCO's fault or negligence; and such loss, damage, or destruction will not release Contractor from any obligation hereunder. After Acceptance, the risk of loss or damage will be borne by TCCO, except loss or damage attributable to Contractor's fault or negligence.

ARTICLE XII: ASSURANCES AND CERTIFICATIONS

SECTION 12.01 PROPOSAL CERTIFICATIONS

Contractor acknowledges its continuing obligation to comply with the requirements of any certifications contained in the Contract, and will immediately notify TCCO of any changes in circumstances affecting those certifications.

Contractor certifies the individual or business entity named in this Contract is not ineligible to receive this Contract under Texas Government Code § 2155.004 (concerning financial participation by a person who received compensation from HHSC related to this transaction) or Texas Government Code §§ 2155.006 or 2261.053 (concerning certain federal disaster-related contracts) and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate. Contractor further certifies that neither Contractor nor its principals is disqualified or ineligible for participation in a federal or state assistance program; neither Contractor nor its principals is debarred, suspended, or voluntarily excluded from participation in this transaction by federal or state department or agency.

Contractor certifies by execution of this Contract to the following:

- a. it is not disqualified under 2 CFR § 376.935 or ineligible for participation in federal or state assistance programs;
- b. neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);
- c. it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d. it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e. it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
- f. that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
- g. neither it, nor its principals have within the three (3)-year period preceding this Contract,

has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;

- h. neither it, nor its principals are presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
- i. neither it, nor its principals within a three (3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include these certifications in this Contract, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Contract, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Contract changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by TCCO and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach asserted by Contractor. If the Contractor's claim for breach cannot be resolved by the parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260 to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent for the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach by the TCCO if the parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Contract by the TCCO nor any other conduct of any representative of the TCCO relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach claims or disputes under the Contract, the TCCO and the Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the TCCO and the Contractor within

fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the TCCO in its sole good faith discretion approves its payment of all or part of such costs. By mutual agreement, the TCCO and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this section is to reasonably ensure that the TCCO and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The TCCO participation in or, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the TCCO of 1) any rights, privileges, defenses, remedies or immunities available to the TCCO as an agency of the State of Texas or otherwise available to the TCCO; 2) the TCCO termination rights; or 3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the TCCO the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

SECTION 12.02 CONFLICTS OF INTEREST

- A. Representation. Contractor agrees to comply with applicable state and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under the Contract. Contractor warrants that it, its subcontractors, and employees, officers, directors and agents of Contractor and Contractor's subcontractors have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under the Contract.
- B. General duty regarding conflicts of interest. Contractor will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Contractor will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under the Contract with the State of Texas.
- C. Contractor has disclosed in writing to TCCO all existing or potential conflicts of interest relative to the performance of the contract.

SECTION 12.03 ORGANIZATIONAL CONFLICTS OF INTEREST

- A. Definition. An organizational conflict of interest is a set of facts or circumstances, a relationship, or other situation under which a contractor, or a subcontractor has past, present, or currently planned personal or financial activities or interests that either directly or indirectly:
 - 1. Impairs or diminishes the offeror's, contractor's, or subcontractor's ability to render impartial or objective assistance or advice to TCCO; or

2. Provides the contractor or subcontractor an unfair competitive advantage in future TCCO procurements.
- B. Warranty. Except as otherwise disclosed and approved by TCCO prior to the Effective Date of the Contract, Contractor warrants that, as of the Effective Date and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to organizational conflict of interest affecting the Contract. Contractor affirms that it has neither given, 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 or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant state and federal law.
- C. Continuing duty to disclose.
1. Contractor agrees that, if after the Effective Date, Contractor discovers is made aware of an organizational conflict of interest, Contractor will immediately and fully disclose such interest in writing to the TCCO project manager. In addition, Contractor must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by TCCO as a potential conflict. TCCO reserves the right to make a final determination regarding the existence of conflicts of interest, and Contractor agrees to abide by TCCO's decision.
 2. The disclosure will include a description of the action(s) that Contractor has taken or proposes to take to avoid or mitigate such conflicts.
- D. Remedy. If TCCO determines that an organizational conflict of interest exists, TCCO may, at its discretion, terminate the contract. If TCCO determines that Contractor was aware of an organizational conflict of interest before the award of the Agreement and did not disclose the conflict to the contracting officer, such nondisclosure will be considered a material breach of the Agreement. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or Federal law enforcement officials for further action.
- E. Flow down obligation. Contractor must include the provisions of this Section 12.03 in all subcontracts for work to be performed similar to the service provided by Contractor, and the terms "Contract," "Contractor," and "project manager" modified appropriately to preserve the State's rights.

SECTION 12.04 TCCO PERSONNEL RECRUITMENT PROHIBITION

Contractor has not retained or promised to retain any person or company, or utilized or promised to utilize a consultant that participated in TCCO's development of specific criteria of the Contract or who participated in the selection of the Contractor for the Contract.

Contractor will not recruit or employ any TCCO professional or technical personnel who have worked on projects relating to the subject matter of the Contract, or who have had any influence on decisions affecting the subject matter of the Contract, for two (2) years following the completion of the Contract.

SECTION 12.05 ANTI-KICKBACK PROVISION

Contractor certifies that it will comply with the Anti-Kickback Act of 1986, 41 USC §51-58 and Federal Acquisition Regulation 52.203-7.

SECTION 12.06 DEBT OR BACK TAXES OWED TO THE STATE OF TEXAS

Contractor agrees that any payments due under the contract shall be applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

As required by Texas Government Code Section 2252.903, Contractor certifies by the execution of this Contract that it is not prohibited from entering into a contract because of indebtedness to the state, including but not limited to, tax delinquency, student loan delinquency, or child support delinquency. If the Contractor is indebted to the state or becomes indebted to the state during the terms of this Contract, Contractor agrees that any payments under the Contract will be applied directly toward eliminating the debt until it is paid in full.

Under Family Code Section 231.006, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.

SECTION 12.07 CERTIFICATION REGARDING STATUS OF LICENSE, CERTIFICATE OR PERMIT

Article IX, Section 163 of the General Appropriations Act for the 1998/1999 state fiscal biennium prohibits an agency that receives an appropriation under either Article II or V of the General Appropriations Act from awarding a Contract with the owner, operator, or administrator of a facility that has had a license, certificate, or permit revoked by another Article II or V agency. Contractor certifies it is not ineligible for an award under this provision.

SECTION 12.08 OUTSTANDING DEBTS AND JUDGMENTS

Contractor certifies that it is not presently indebted to the State of Texas, and that Contractor is not subject to an outstanding judgment in a suit by the State of Texas against Contractor for collection of the balance. For purposes of this Section, an indebtedness is any amount sum of money that is due and owing to the State of Texas and is not currently under dispute. A false statement regarding Contractor's status will be treated as a material breach of the Agreement and may be grounds for termination at the option of TCCO.

SECTION 12.09 ANTI-TRUST

In submitting a proposal, and in accepting the Contract or purchase order, Contractor certifies and agrees as follows:

- A. Neither the Contractor, nor the person represented by the Contractor, nor any person acting for the represented person has: (a) violated the antitrust laws codified by Chapter 15, Business & Commerce Code, or the federal antitrust laws; or (b) directly or indirectly

communicated the bid/offer associated with this contract to a competitor or other person engaged in the same line of business.

- B. Contractor assigns to TCCO 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 contract.

SECTION 12.10 CERTIFICATION CONCERNING HURRICANE RELIEF

Texas Government Code Sections 2155.006 and 2261.05 prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster as defined by Texas Government Code Section 418.004, occurring after September 24, 2005. Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this Contract is not ineligible and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

SECTION 12.11 CONTRACTOR STATUS

Contractor certifies by the execution of this Contract that it is not ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor further certifies that it has not been debarred from the receipt of an agency contract by any action taken by the State of Texas. A false statement regarding Contractor's status will be treated as a material breach of contract and may be grounds for termination.

SECTION 12.12 FALSE STATEMENTS

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

ARTICLE XIII: REPRESENTATIONS AND WARRANTIES

SECTION 13.01 AUTHORIZATION

- A. The execution, delivery and performance of the Contract has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into the Contract and perform its obligations under the Contract.
- B. Contractor has obtained and will maintain all licenses, certifications, permits, and authorizations necessary to perform the Services under the Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Contract. Contractor will maintain all required certifications, licenses, permits, and authorizations to remain in good standing during the term of the Contract.

Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this

Contract. Any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registrations or approval shall constitute grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

SECTION 13.02 ABILITY TO PERFORM

Contractor warrants that it has the financial resources to fund the capital expenditures required under the Contract without advances by TCCO or assignment of any payments by TCCO to a financing source.

SECTION 13.03 WORKMANSHIP AND PERFORMANCE

- A. All Services and Deliverables provided under the Contract will be provided in a manner consistent with standards of quality and integrity as outlined in the Contract, the Solicitation, and Contractor's proposal.
- B. All Services and Deliverables must meet or exceed the required levels of performance specified in or under the Contract and will meet or exceed TCCO's Missions and Objectives as set forth in the Solicitation.
- C. Contractor will perform the Services in a workmanlike manner, in accordance with best practices and high professional standards used in well-managed operations performing services similar to the services described in the Contract.

SECTION 13.04 WARRANTY OF DELIVERABLES

Contractor warrants that Deliverables developed and delivered under the Contract will meet the specifications as described in the Contract during the period following its acceptance by TCCO, through the term of the Contract, including any extensions as provided in the Contract that are subsequently negotiated by Contractor and TCCO. Contractor will promptly repair or replace any such deliverables not in compliance with this warranty at no charge to TCCO.

SECTION 13.05 MANUFACTURERS' WARRANTIES

Contractor assigns to TCCO all the manufacturers' warranties and indemnities relating to all products, including without limitation, Third Party Software to the extent Contractor is permitted by the manufacturers to make such assignments to TCCO. Such assignment is subject to all of the terms and conditions imposed by the manufacturers with respect thereto.

SECTION 13.06 COMPLIANCE WITH CONTRACT

Contractor will not take any action substantially or materially inconsistent with any of the terms and conditions set forth in the Contract without the written approval of TCCO.

ARTICLE XIV: INTELLECTUAL PROPERTY

SECTION 14.01 INFRINGEMENT AND MISAPPROPRIATION

- A. Contractor warrants that all Deliverables provided by Contractor will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.

- B. CONTRACTOR WILL, AT ITS EXPENSE, DEFEND WITH COUNSEL APPROVED BY TCCO, INDEMNIFY, AND HOLD HARMLESS TCCO, ITS EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES, FROM ANY CLAIM OR ACTION AGAINST TCCO THAT IS BASED ON A CLAIM OF BREACH OF THE WARRANTY SET FORTH IN THE PRECEDING PARAGRAPH. TCCO WILL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF THE CLAIM, PROVIDE CONTRACTOR A COPY OF ALL INFORMATION RECEIVED BY TCCO WITH RESPECT TO THE CLAIM, AND COOPERATE WITH CONTRACTOR IN DEFENDING OR SETTLING THE CLAIM.

- C. In case the Deliverables, or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to Contractor to be likely to be brought, Contractor will, at its own expense, either:
 - 1. Procure for TCCO the right to continue using the Deliverables; or
 - 2. Modify or replace the Deliverables to comply with the Specifications and to not violate any intellectual property rights.

If neither of the alternatives set forth in (1) or (2) above are available to the Contractor on commercially reasonable terms, Contractor may require that TCCO return the allegedly infringing Deliverable(s) in which case Contractor will refund all amounts paid for all such Deliverables and reimburse TCCO for any related direct and indirect damages incurred by TCCO due to the infringing Deliverable(s).

SECTION 14.02 EXCEPTIONS

Contractor is not responsible for any claimed breaches of the warranties set forth in Section 14.01 to the extent caused by:

- A. Modifications made to the item in question by anyone other than Contractor or its subcontractors or TCCO or its Contractors working at Contractor's direction or in accordance with the specifications; or

- B. The combination, operation, or use of the item with other items if Contractor did not supply or approve for use with the item; or

- C. TCCO's failure to use any new or corrected versions of the item made available by Contractor.

ARTICLE XV: LIABILITY

SECTION 15.01 NOTICE OF LEGAL MATTER OR LITIGATION

Contractor shall notify TCCO of any litigation or legal matter related to or affecting this Contract within seven (7) calendar days of becoming aware of the litigation or legal matter.

SECTION 15.02 PROPERTY DAMAGE

- A. Contractor will protect TCCO's real and personal property from damage arising from Contractor's, its agent's, employees' and subcontractors' performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to TCCO's property that results from or is caused by Contractor's, its agents', employees' or subcontractors' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of TCCO, Contractor will notify the TCCO Project Manager thereof and, subject to direction from the Project Manager or her or his designee, will take all reasonable steps to protect that property from further damage.
- B. Contractor agrees to observe and require its employees and agents to observe safety measures and proper operating procedures at TCCO sites at all times.
- C. Contractor will distribute a policy statement to all of its employees and agents that directs the employee or agent to immediately report to TCCO or to Contractor any special defect or unsafe condition encountered while on TCCO premises. Contractor will immediately report to TCCO any special defect or an unsafe condition it encounters or otherwise learns about.

SECTION 15.03 RISK OF LOSS

During the period Deliverables are in transit and in possession of Contractor, its carriers or TCCO prior to being accepted by TCCO, Contractor will bear the risk of loss or damage thereto, unless such loss or damage is caused by the negligence or intentional misconduct of TCCO. After TCCO accepts a Deliverable, the risk of loss or damage to the Deliverable will be borne by TCCO, except loss or damage attributable to the negligence or intentional misconduct of Contractor's agents, employees or subcontractors.

SECTION 15.04 LIMITATION OF TCCO'S LIABILITY

TCCO WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY. THIS WILL APPLY REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF TCCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TCCO'S LIABILITY TO CONTRACTOR UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL CHARGES TO BE PAID BY TCCO TO CONTRACTOR UNDER THE CONTRACT, INCLUDING CHANGE ORDER REQUEST PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

SECTION 15.05 INDEMNIFICATION

A. Acts or Omissions

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TCCO, 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 THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE 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 OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

B. Infringements

1. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TCCO, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TCCO AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

2. CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATIONS MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TCCO'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TCCOS, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY TCCO THAT IS

NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

3. IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TCCO PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TCCO, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR TCCO THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TCCO'S USE IS NON-INFRINGEMENT.

C. Taxes/Workers' Compensation/Unemployment Insurance - Including Indemnity

1. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL CUSTOMER.
2. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE 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 OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TCCO AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.