

APPENDIX A-1

Texas Department of Insurance (TDI) Purchase Order (PO) Terms and Conditions

By accepting the PO and providing goods and/or services to the TDI, the Vendor agrees to comply with the TDI Purchase Order Terms and Conditions (POT/Cs). In the event of any conflict or inconsistency between these POT/Cs and any other part of the PO, the terms of the POT/Cs shall prevail unless otherwise stated on the PO. TDI disclaims any terms and conditions provided by the Vendor, unless agreed upon in writing by both parties. In the event of any conflict between these POT/Cs and any terms and conditions provided by Vendor, the terms and conditions provided herein shall prevail. Purchase Orders that result from a solicitation, which contains a set of Terms and Conditions, shall be governed by those Terms and Conditions unless otherwise specified.

PURCHASE ORDER (PO) REQUIREMENTS.

- 1.1. Vendor (Contractor) shall comply with all rules, regulations, and statutes relating to purchasing in the State of Texas, in addition to the requirements of the PO.
- 1.2. Inquiries pertaining to POs must include the PO number and the PO issue date or the PO Change Notice (POCN) date.

2. SPECIFICATIONS OR STATEMENT OF WORK.

- 2.1. The Vendor shall comply with the specifications as outlined in the PO and any attachments to the PO.
- 2.2. NEW AND UNUSED. Unless otherwise specified, goods/products shall be new and unused and of current production, as applicable.
- 2.3. SAFETY. All electrical items must meet all applicable Occupational Safety and Health Act (OSHA) standards and regulations and bear the appropriate listing from Underwriter Laboratories (UL), the Factory Mutual Research Corporation (FMRC), or the National Electrical Manufacturing Association (NEMA). Vendor warrants the goods/products conform to any standards promulgated by the U.S. Department of Labor under the OSHA of 1970 or other applicable standards, and as applicable to goods or products, as applicable.
- 2.4. TDI will not be bound by any oral statement or representation contrary to the written specifications or Statement of Work in a solicitation document or the resulting Contract or of the PO.
- 2.5. In the event of a conflict between the specifications, drawings, and descriptions, the Statement of Work or specifications shall govern.
- 2.6. Manufacturer's standard warranty shall apply unless otherwise stated in in the PO, as applicable to goods and products.

3. SHIPMENT AND DELIVERY.

- 3.1. DELIVERY TIME FRAMES AND DAYS. The Vendor shall provide or deliver the goods/products or services within the timeframes as stated in the solicitation document or as indicated on the PO, and in accordance with the delivery timeframes quoted to TDI, for delivery of products and goods, as applicable. "Delivery days" mean calendar days, unless otherwise specified. Failure to provide the goods/products or services within the timeframe stated may cause the PO to be cancelled.
- 3.2. LATE DELIVERY. If delay is foreseen, Vendor shall give written notice to TDI no later than five (5) business days in advance or expected delivery date. Vendor shall keep TDI advised at all times of the status of order. Default on promised delivery (without accepted reasons) or failure to meet specifications authorizes TDI to

purchase the goods/products or services elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor, as applicable to goods and products.

- 3.3. PLACE OF DELIVERY. The place of delivery shall be that set forth in the block of the PO entitled "Ship To" or as described in the solicitation document, when applicable. Any change shall be effected through a POCN/modification. The terms of the PO are "no arrival, no sale", as applicable to goods and products.
- 3.4. TRANSPORTATION CHARGES. Freight on Board (F.O.B.) Destination. Freight prepaid and allowed unless delivery terms are specified otherwise and accepted by TDI. Transportation costs shall be included in the invoice, if applicable. If transportation costs are based on actual costs, a copy of the freight billing showing actual charges for the shipment must be attached to the invoice, applicable to goods and products.
- 3.5. TITLE AND RISK OF LOSS. Title and risk of loss of goods shall not pass to TDI until TDI actually receives and takes possession of the goods at the place of delivery (see Section 3.3 above), as applicable to goods and products.
- 3.6. SHIPMENT UNDER RESERVATION PROHIBITED. Vendor shall not ship goods under reservation. No tender of a bill of lading will operate as a tender of goods or products, as applicable.
- 3.7. PACKAGING AND LABELING. Vendor at Vendor's cost will package goods in accordance with commercial practice to secure the lowest appropriate transportation cost, with requirement of the common carrier and with applicable specifications. Each shipped package/container shall be clearly and permanently marked as follows:
 - i. Vendor's name and address,
 - ii. Vendor's name and address of the place of delivery,
 - iii. PO Number,
 - iv. The package/container number and total number of packages/containers (i.e. "box 1 of 4 boxes"); and
 - v. the package/container bearing the packing list.

Vendor's count or weight shall be conclusive on shipments not accompanied by a packing list, as applicable to goods and products.

- 3.8. SUBSTITUTIONS. No substitutions permitted without prior written approval of TDI.
- 3.9. TIME OF DELIVERY. Delivery shall be made during normal working hours (8:00 AM to 5:00 PM Central Time), unless prior written approval has been obtained from TDI.

4. INSPECTION AND TESTS.

- 4.1. All products and goods will be subject to inspection and test by TDI. Tests may be performed on samples submitted with the bid or quote, if requested, or on samples taken from regular shipment.
- 4.2. All costs shall be borne by the Vendor, in the event products or goods fail to meet or exceed all conditions and requirements specified in the solicitation for which the PO is issued, or the specifications of the manufacturer.
- 4.3. Goods or products delivered and rejected in whole or in part may, at TDI's option, be returned to the Vendor or held for disposition at Vendor's expense.
- 4.4. Latent defects may result in revocation of acceptance, as applicable to products and goods.

5. **AWARD OF PURCHASE ORDER OR CONTRACT.** The PO shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Sections 2155.074, 2156.007, and/or 2157.003, as applicable, shall also be considered in making an award when specified.

6. **INVOICES AND PAYMENT.**

6.1. Vendor shall submit two (2) copies of an itemized invoice showing TDI's PO number on all copies. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment will be made in accordance with Chapter 2251, Texas Government Code, following satisfactory delivery and acceptance of goods/services and TDI's receipt of a properly completed and correct invoice. No invoice shall be paid in excess of the net amount of the PO. Each invoice must include the following:

- i. the Vendor's name, address, and telephone number,
- ii. the Vendor's Vendor Identification Number referenced on the PO,
- iii. the PO Number,
- iv. description of goods/products or services, quantity(ies), applicable unit prices, extended pricing, and invoice total, and
- v. the shipment date of goods/products.

6.2. All invoices must be sent to the address specified in the PO: invoices@tdi.texas.gov.

7. **PAYMENT OF TAXES BY TDI.**

7.1. Pursuant to Texas Tax Code 151.309, relating to Government Entities, TDI is exempt from most sales, excise, and use taxes. TDI shall furnish tax-exemption certificates upon request.

7.2. Vendor shall not collect or cause TDI to pay taxes in the absence of any tax-exemption certificate.

8. **PRICE.** The prices to be paid by TDI shall be those contained in Vendor's quote, bid proposal, or offer, and in PO or Contract and Vendor warrants that such prices are no higher than Vendor's current prices on orders by other purchasers for goods/products or services of the kind and specifications covered by the PO for similar quantities under similar or like conditions and methods and purchase.

9. **PRICE INCREASES.**

9.1. If Vendor submits an invoice for goods/services that reflect pricing that is higher than originally quoted in the Vendor's Cost Proposal and subsequently specified in the PO, TDI shall have the right to reject such increased pricing.

9.2. If Vendor determines that prices will be higher than originally quoted, the increased pricing must be approved in writing by TDI prior to shipment of the goods or products or delivery of services. In relation to a Cost Proposal received in relation to a solicitation for goods, products, or services, price escalation may or may not be allowed and if allowed, TDI shall reserve the right to reject any and all price escalations and will reject any price escalation that is not in conformance with the advertised and accepted price escalation maximum allowed in the solicitation document, if applicable.

10. **WITHHOLDING/RECOUPMENT OF PAYMENT.**

10.1. TDI may withhold or recoup payments due or paid under the PO, in whole or in part, in the event of the Vendor's noncompliance with any terms or provisions of the PO, any Federal or State law or regulation, or any TDI rules or standards, including but not limited to, the requirements specifically stated in any solicitation for which the PO has been issued against, or the PO itself, relating to the Vendor's performance.

- 10.2. TDI may withhold or recoup payment due to Vendor's failure to return materials or supplies given to Vendor for the sole purpose of carrying out the services required under a solicitation and the withholding or recoupment of payment shall be for the replacement cost of such materials or supplies and not the original purchase price.
- 11. STATE DEBT OR DELINQUENT TAXES.** If the Vendor is indebted to or owes delinquent taxes to the State, pursuant to Section 403.0551 of the Texas Government Code, any payments owed to the Vendor under the resulting Contract or the PO will be applied toward the elimination of the Vendor's indebtedness to the State, delinquency in payment of taxes to the State, or delinquency in payment of taxes that the Texas Comptroller of Public Accounts administers or collects, until the indebtedness or delinquency is paid in full.
- 12. WARRANTIES.**
- 12.1. **PRODUCTS OR GOODS.** Vendor shall not limit or exclude any implied warranties and any attempt to do so shall render the resulting contract or the PO voidable as the option of TDI. Vendor warrants the goods furnished will conform to Vendor's quotation and to any samples furnished by the Vendor, if any, and shall be fit for TDI's purposes under the PO, as applicable to products or goods.
- 12.2. **WARRANTY OF TITLE.** Vendor warrants that the title to all material, supplies, and equipment furnished is free of liens and encumbrances, as applicable to products or goods.
- 12.3. **PATENTS OR COPYRIGHTS.** The Vendor agrees to defend and indemnify protect TDI from claims involving infringement of patents, trademarks, trade secrets, copyrights, existing licenses, or other proprietary rights, arising out of TDI's or the State's use of any good or service provided by the Vendor, as a result of PO issued to the Vendor for the goods/services.
- 13. VENDOR ASSIGNMENTS.** Vendor hereby assigns to TDI any and all claims for overcharges associated with the resulting Contract or the PO arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).
- 14. DISPUTE RESOLUTION.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TDI and the Vendor to attempt to resolve all disputes arising under any resulting contract or the PO.
- 15. PUBLIC INFORMATION.**
- 15.1. Information, documentation, and other material in connection with the PO or the resulting Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").
- 15.2. Vendor shall make any information created or exchanged with the state pursuant to the PO or the resulting Contract, and not otherwise exempted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 16. NON-APPROPRIATION OF FUNDS.** The PO or any resulting Contract is subject to termination or cancellation, without penalty to TDI, either in whole or in part, subject to the availability of state or grant funds. TDI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TDI becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated or grant funds which would render TDI's or Vendor's delivery or performance under the resulting Contract or the PO impossible or unnecessary, TDI may immediately terminate the resulting Contract or the PO without penalty to or any liability whatsoever on the part of TDI, the State of Texas, and the United States, if these funds become unavailable to TDI.

17. CODE OF ETHICS AND CONFLICT OF INTEREST. Under §2155.003, Gov't Code, a TDI employee may not have an interest in, or in any manner be connected with a PO or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a PO may be awarded, directly or indirectly, anything of value or a promise, obligation, or PO for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and Vendors who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers.

18. FORCE MAJEURE.

- 18.1. Neither the Vendor nor TDI shall be liable to the other for any delay in, or failure of performance, of any requirement included in the resulting Contract or the PO caused by force majeure.
- 18.2. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.
- 18.3. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, terrorism, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- 18.4. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

19. INDEPENDENT CONTRACTOR.

- 19.1. Vendor and its employees, representatives, agents and any subcontractor(s) shall serve as an independent contractor in providing goods/products or services under the resulting Contract or the PO.
- 19.2. Vendor and its employees, representatives, agents and any subcontractors shall not be employees of TDI.
- 19.3. Should Vendor subcontract any of the services provided under the resulting Contract or the PO, Vendor expressly understands and acknowledges that in entering into such subcontracts, TDI is in no manner liable to any subcontractor(s) of Vendor.
- 19.4. In no event shall this provision relieve Vendor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with the resulting Contract or these PO Terms and Conditions.

20. ABANDONMENT OR DEFAULT.

- 20.1. If Vendor defaults on tasks and deliverables outlined in the Statement of Work for a solicitation for which the Vendor responded and was awarded a Contract or the Purchase Order Terms and Conditions, TDI reserves the right to cancel the resulting Contract, in whole or in part, and the PO without notice and either re-solicit or award the Contract or PO to the next best responsive and responsible Vendor.
- 20.2. The defaulting Vendor will not be considered in the re-solicitation for the same type of services, products, or goods, and may not be considered in future solicitations for the same type of services, products or goods, unless the specifications or Statement of Work are significantly changed from the specifications or Statement of Work initially provided under the original solicitation or PO that was cancelled or suspended.

20.3. The period of suspension will be determined by TDI based upon the seriousness of the default.

21. ASSIGNMENT. Without the prior written consent of TDI, Vendor may not assign the resulting Contract or the PO, in whole or in part, and may not assign any right or duty required under the resulting Contract or PO.

22. NOTICES.

22.1. Any written notices required under the resulting Contract or the PO will be by email, hand delivery to Vendor's office address specified on the respective Attachment of the solicitation document or Page 1 of the PO or by U.S. Mail, certified, return receipt requested.

22.2. Notice to TDI, shall be delivered to Purchasing and Contract Administration Manager, 333 Guadalupe Street, Austin, Texas 78701, Mail Code 108-1B, addressed "to the attention of the Purchasing and Contract Administration Manager".

22.3. Notice will be effective on receipt by the affected party.

22.4. Either party may change the designated notice address in this Section by written notification to the other party.

23. U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM.

23.1. By entering into a Contract with TDI under a signed Contract or through the issuance of a PO, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of the resulting Contract or PO, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- a) All persons employed to perform duties within Texas, during the term of the PO; and
- b) All persons (including subcontractors) assigned by the Vendor to perform work pursuant to the PO, within the United States of America.

23.2. The Vendor shall provide, upon request of TDI, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed. **If this certification is falsely made, the PO or resulting Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated PO or resulting Contract.**

24. VENDOR PERFORMANCE.

24.1. The factors listed in Sections 2155.074, 2155.144, 2156.007, and 2157.003 of the Texas Government Code shall be considered in making an award, when specified. Vendor Performance Requirements: State agencies are required by Rule (34 TAC, Subchapter 20.108(b)) to report vendor performance through the Comptroller of Public Accounts (CPA) Vendor Performance Tracking System (VPTS) on every purchase over \$25,000, including delegated purchases, state use contracts (i.e. Department of Information Resources (DIR) contracts, Texas Multiple Award Schedule (TxMAS) contracts, Council on Competitive Government (CCG) contracts, or Smart Buy contracts), and exempt purchases. VPTS entries provide state agencies with important vendor information prior to making a contract award. TDI, in its sole discretion, will report vendor performance through the VPTS, even if the resulting Contract or PO is issued for less than \$25,000.00.

25. BUY TEXAS. In accordance with Section 2155.4441, Texas Government Code, Vendor agrees that upon the provision of goods/products or the performance of services under the resulting Contract or PO, it shall purchase products and materials produced in Texas, when they are available at a price and time comparable to products and materials produced outside of this state.

26. ACCESSIBILITY-ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.

26.1. Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources, as required by Title 1, Part 10, Chapter 213, of the Texas Administrative Code, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation, when applicable.

26.2. If this Section is applicable, Vendor shall provide TDI with the Uniform Resource Locator (URL) to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based upon the Federal standards established under Section 508 of the Rehabilitation Act), upon request by TDI, or indicate that the products/service accessibility information is available from the General Services Administration (GSA) "Buy Accessible Wizard": <http://www.buyaccessible.gov>.

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

27. VENDOR AFFIRMATIONS.

27.1. By acceptance of a resulting Contract or a PO, the Vendor hereby certifies that:

27.1.1. The Vendor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the PO.

27.1.2. The Vendor has not violated the antitrust laws of this State or the Federal Antitrust Laws nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

27.1.3. Under Section 2155.004, Government Code, the Vendor certifies that the individual or business entity named in the resulting Contract or PO is not ineligible to receive the specified PO and acknowledges that the resulting Contract or PO may be terminated by TDI and payment withheld if this certification is inaccurate.

27.1.4. The Vendor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Vendor or any agent, employee, subcontractor, or supplier of Vendor in the execution or performance of the resulting Contract or PO.

27.1.5. Vendor agrees to comply with Section 2155.4441 of the Texas Government Code, pertaining to service contract use of products produced in the State of Texas.

27.1.6. Vendor understands that acceptance of funds under the resulting Contract or PO acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an

audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

- 27.1.7. Vendor is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a State agency. If Section 669.003 applies, Vendor must provide the following information with its proposal/bid if required or within three (3) business days of award, whichever comes first:
- i. Name of Former executive,
 - ii. Name of State agency,
 - iii. Date of separation from State agency,
 - iv. Position with bidder; and
 - v. Date of Employment with Vendor.
- 27.1.8. If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the Vendor certifies that the individual or business entity named in the resulting Contract or PO is not ineligible to receive the specified payment and acknowledges that the resulting Contract or PO may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Vendor subject to Section 231.006 must provide TDI with names and Social Security numbers of each person with at least 25% ownership of the business entity accepting the resulting Contract or PO. Vendors who have pre-registered this information on the Centralized Master Bidders List (CMBL) have satisfied this requirement. The resulting Contract or PO is not valid until this information is provided. Failure to comply with this Section renders the resulting Contract or PO null and void.
- 27.1.9. Vendor agrees that any payments due under the resulting Contract or PO will be applied towards any debt, including but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 27.1.10. Under Section 2261.053 and 2155.006, Texas Government Code, the Vendor certifies that the individual or business entity named in its bid/proposal or PO is not ineligible to receive the specified PO and acknowledges that the resulting Contract or PO may be terminated and payment withheld if this certification is inaccurate.
- 27.1.11. Vendor represents and warrants that any electronic and information resources products developed, procured, maintained, or used by TDI directly or used by the Vendor under any PO which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product, complies with the applicable State of Texas Accessibility requirements for Electronic and Information Resources specified in the Department of Information Resources' Rules at Title 1, Part 10, Chapter 213, of the Texas Administrative Code (TAC).
- 27.1.12. Vendor represents and warrants that payment to the Vendor and the Vendor's receipt of appropriated or other funds under any PO resulting from the solicitation for which the resulting Contract or PO relates, is not prohibited by Sections 556.005 or 556.008, Texas Government Code, relating to the prohibition of using state funds for lobbying activities.

- 27.1.13. Vendor represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TDI under the PO, and that Vendor's provision of the requested items under the PO would not reasonably create an appearance of impropriety.
- 27.1.14. Vendor certifies that to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it, will have a material adverse effect on its ability to fulfill its obligations under the resulting Contract or PO.
- 27.1.15. To the extent applicable to the scope of the resulting Contract or PO, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code, related to the Computer Equipment Recycling Program and its rules, Chapter 328, Subchapter 30 TAC.
- 27.1.16. Vendor certifies that the entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Vendor is in compliance with the State of Texas statutes and rules relating to procurement and that Vendor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <https://www.sam.gov/portal/SAM#1>.

28. SOVEREIGN IMMUNITY. Nothing in the resulting Contract or PO shall constitute a waiver of the State's sovereign immunity, including immunity from suit, except to the extent that such immunity is waived by the Texas Legislature.

29. TERMINATION, SUSPENSION, AND CANCELLATION.

Notwithstanding the reasons for termination under the solicitation document (if applicable), the PO or the Contract may be terminated, suspended, canceled, or specific services may be canceled, in whole or in part by TDI, in any one of the following circumstances:

- (1) **Mutual Agreement.** Upon the mutual written agreement of TDI and Vendor, the PO or the Contract may be terminated or canceled.
- (2) **TDI Cancel upon Thirty (30) Days' Notice.** TDI may, in its sole discretion, terminate, suspend, or cancel the Contract, or cancel specific services of the Contract, with thirty (30) calendar days' written notice to Contractor.
 - a) No additional charges or fees will be assessed to TDI for the termination, suspension, or cancellation.
 - b) Upon termination, suspension, or cancellation under this provision, Contractor shall refund to TDI any amounts attributable to the terminated, suspended, or canceled time period within thirty (30) calendar days of the termination or cancellation. If TDI does not receive the refund within thirty (30) calendar days, the PO or Contract amount and monthly invoice will be reduced during the next billing cycle based on the services canceled.
 - c) TDI may, in its sole discretion, reinstate terminated, suspended, or canceled services with thirty (30) calendar days' notice to Contractor.
- (3) **Breach of Material Term.** Either Party may, upon giving thirty (30) calendar days' written notice identifying specifically the basis of such notice, terminate the PO or Contract for breach of a material term or condition of the PO or Contract, provided the breaching Party must not have cured such breach within thirty (30) calendar day period. In the event of such termination, Vendor will be paid for all services accepted prior to the date of the termination.
- (4) **Contractor's Nonperformance.** If Vendor fails to comply with any requirement of the PO or Contract or fails to provide goods, deliverables, or services as required, including, but not limited to, this Contract, TDI may immediately terminate, suspend, or cancel all or any part of the PO or Contract.

- (1) **Availability of State Funds, Legislative Action, Necessity of Performance.** TDI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. The PO or Contract is subject to termination, suspension, or cancellation, without penalty to TDI, in either whole or in part, subject to the availability of state funds. If TDI becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TDI's or Contractor's delivery or performance under the PO or Contract impossible or unnecessary, the PO or Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Section, TDI will not be liable to Contractor for any damages which are caused or associated with such termination, suspension, or cancellation. **The Vendor acknowledges that TDI's ability to make payments under the PO or Contract is contingent upon the continued availability of funds. The Vendor further acknowledges that funds may not specifically be appropriated for the PO or Contract and TDI's continual ability to make payments under the PO or Contract is contingent upon funding levels appropriated to TDI.**

(a.) In the event of termination, cancellation, or suspension, the following provisions may apply:

- (1) **Legal Remedies and Damages Resulting from Breach of Contract.** TDI expressly reserves any and all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of Contract or PO by Vendor or any of its agents, representatives, consultants, subcontractors, employees, or any other Party acting on behalf of the Vendor. TDI reserves the right to pursue any and all applicable rights and remedies if the PO or Contract is terminated for any reason and TDI expressly waives no such rights or remedies.
- (2) **Recovery of Funds.** TDI reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to TDI under the terms and conditions of the PO or Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Vendor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to TDI under the PO or Contract or under applicable law. TDI reserves the right to pursue any and all applicable rights and remedies if the PO or Contract is terminated for any reason, and TDI expressly waives no such rights or remedies.
- (3) **Notice of Termination or Cancellation Delivery.** Any termination by TDI of the PO or Contract, which requires written notice, may be accomplished by TDI's delivery to Vendor of a Notice of Termination or Cancellation specifying that the PO or Contract is terminated or canceled.
- (4) **Substitution of Services.** In the event TDI terminates or cancels the PO or Contract for any reason other than convenience or force majeure, Vendor shall be liable to TDI for any excess or additional costs incurred by TDI in acquiring substitute services similar to those so terminated or canceled plus court costs and attorneys' fees. TDI's recovery of costs under this Section is in addition to any other remedies available to TDI under the PO or Contract and/or under applicable law.
- (5) **Implementation of Termination.** Vendor shall terminate all work under the PO or Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do only such work as may be necessary, and will be compensated only for such work as may be necessary, as determined by TDI's Contract Administrator or his/her designated representative, to preserve the work in progress.

30. NO LIABILITY UPON TERMINATION. If the PO or Contract is terminated for any reason, TDI and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code Chapter 2260.

31. APPLICABLE LAW AND VENUE. Any legal actions must be filed in Travis County, Texas.