

ORDER FORM No. 1**ORDER FOR SERVICES
UNDER SERVICES AGREEMENT**

PURSUANT TO THE MARCH 13, 2020 PROCLAMATION BY GOVERNOR GREG ABBOTT AND EXECUTIVE ORDER GA 08 RELATING TO COVID-19 PREPAREDNESS AND MITIGATION RENEWED ON OCTOBER 7, 2020.

On March 13, 2020, Greg Abbott, Governor of the State of Texas, issued a proclamation declaring a disaster in the state of Texas due to the Coronavirus (COVID-19). Pursuant to the Texas Disaster Act of 1975, Section 418.017 of the Texas Government Code, in Executive Order GA 08, Governor Abbott authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster. Also, pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business, or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with the disaster, Governor Abbott suspended such statutes and rules for the duration of this declared disaster for that limited purpose.

This Order Form is entered into as of October 30, 2020 (the "**Order Effective Date**") by and between ID.me, Inc. ("**ID.me**") and Texas Workforce Commission ("**Customer**"). This Order Form is incorporated into and subject to the terms and conditions of that certain Services Agreement dated October 30, 2020 (the "**Agreement**") by and between ID.me and Customer. To the extent that an express term of this Order is inconsistent with a term of the Agreement, such term of this Order Form prevails over and supersedes such inconsistent term of the Agreement with respect to this Order Form only. Any capitalized term used but not defined in this Order Form has the meaning assigned to such term in the Agreement.

1. Description of Services:

- a. Location(s) Where Services Will Be Provided: Virtual
- b. Start Date: Upon execution of contract
- c. Term: Unless otherwise earlier terminated pursuant to the terms of the Agreement, until the earlier of (i) the date on which ID.me has performed and delivered a total of [REDACTED] credentials to Customer and (ii) a period of 25 months from the Effective Date (the "Term").
- d. Services: ID.me will provide Customer with the following multifactor authentication capabilities.
 - ID.me will provide Customer with credentialing capabilities that comply with [REDACTED] remote self-serve, supervised remote

proofing via ID.me’s Referee app, and supervised in-person proofing via certified Customer personnel using ID.me’s Referee app.

2. Description of Deliverables:

ID.me will provide identity proofing results to Customer [REDACTED] or via another acceptable method of delivery upon mutual agreement between the parties. Regardless of whether there are Deliverables described in this Section 2, the term “Deliverable” means all items or materials provided by or on behalf of ID.me to Customer under this Order.

The attributes ID.me returns in the identity proofing results will include:

- [REDACTED]

3. Fees:

[REDACTED], broken down as follows:

LINE NO.	PART NO.	DESCRIPTION	LIST PRICE	QUOTE PRICE	QTY	EXTENDED
1	IDME-LOA3I-0005	Identity Proofing LOA 3 CSP & TM with Support	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	Included	LOA3 Legal Identity Proofing	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	Included	Single Sign On	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	Included	Multifactor Authentication	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	Included	Virtual In-Person Proofing	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	Included	User Support	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	IDME Integration	ID.me configuration and technical integration	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL PRICE:						\$1,750,000.00

- The quote price will be variable as explained in Attachment 2, attached hereto and incorporated herein for all purposes.

5. Payment:

- Identity Proofing fees are due 30 days after Customer receipt of invoice.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Order Form No.1 as of the Order Effective Date.

ID.ME:

ID.ME, INC.

By: Michelle Graffum


Name: Michelle Graffum

Title: General Counsel

Date: 10/30/2020

CUSTOMER:

TEXAS WORKFORCE COMMISSION

By: 

Name: Edward Serna

Title: Executive Director

Date: 10/30/2020

SERVICES AGREEMENT

This SERVICES AGREEMENT (the “Agreement”) is made as of October 30, 2020, (the “Effective Date”), by and between ID.me, Inc., a Delaware Corporation (“ID.me”), and the Texas Workforce Commission (“Customer”).

WITNESSETH:

WHEREAS, ID.me provides certain services to permit its Customers to verify the legal identity and certain additional attributes of Customer End Users in accordance with NIST standards (the “Verification Product”); and

WHEREAS, Customer may desire to utilize the Verification Product or other Services provided by ID.me; and

WHEREAS, ID.me and Customer wish to enter into a relationship by which Customer will receive certain Services from ID.me in exchange for payment of fees or consideration for future business, all upon the terms specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, ID.me and Customer agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1. “Affiliate” means any corporation, company, partnership, joint venture and/or firm which controls, is controlled by or is under common control with a Party. For purposes of this Section 1.1, “control” shall mean (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares entitled to vote for the election of directors; and (b) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interests with the power to direct the management and policies of such non-corporate entities.

1.2. “Confidential Information” means, to the extent allowed by Texas Law, any (i) information that is designated in writing as confidential, (ii) information with respect to which the receiving party is notified in writing that the information is being transmitted on a confidential basis, (iii) the course of dealing between Customer and its Affiliates that the disclosing party or any of its Affiliates makes reasonable efforts to protect from disclosure to third parties, regardless of the medium or media on which such information is stored, recorded, conveyed, or communicated, including without limitation, (A) production figures; (B) technical drawings, product designs, and unpublished product specifications; (C) ideas for research and development; (D) computer software (including software that is proprietary to third parties and as to which Customer or ID.me, as applicable, has undertaken non-disclosure obligations to such third parties; (E) inventions, whether or not patentable; (F) cost, profit, and other financial data; (G) trade secrets; (H) any information to which a party has access while on the other party’s business premises or using or accessing the other party’s technology systems; and (I) any other proprietary and/or confidential information which may relate to the products, technology, trade secrets, know-how, and/or other valuable business or technical

information of a Party, whether disclosed prior to or after the Effective Date. The Parties agree that the ID.me Database and all information contained therein are deemed to be Confidential Information of ID.me.

1.3. “Derivative” shall mean any improvement, discovery, innovation, enhancement, derivative work, or modification of or to any Pre-Existing Technology that is made solely by or on behalf of one Party without contribution from the other Party in accordance with this Agreement.

1.4. “Fees” has the meaning set forth in ORDER FORM No. 1.

1.5. “ID.me Database” means ID.me’s database and list of individuals and their personally identifiable information, email addresses, group affiliation and other information.

1.6. “ID.me Derivative” has the meaning set forth in Section 4.1.

1.7. “ID.me Scan” means ID.me’s personal identification document scanning API and/or verification app and/or SDK solution used to perform certain identification scans and or provide certain verification results.

1.8. “ID.me Trademarks” has the meaning set forth in Section 4.2.

1.9. “Intellectual Property Rights” means any and all now known or hereafter existing: (a) rights associated with works of authorship throughout the universe, including exclusive exploitation rights, copyrights, moral rights, and mask works; (b) trademark and trade name rights; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual property and proprietary rights of every kind and nature throughout the universe, whether arising by operation of law, by contract or license, or otherwise; and (f) all registrations, applications, renewals, extensions, combinations, divisions, or reissues of the foregoing.

1.10. “Order Form” means one or more written orders for Services, which will be in the form of work orders or purchase orders issued Customer and accepted by ID.me and which, upon execution by both parties, will become part of this Agreement.

1.11. “Customer End User” means any person who accesses Customer applications through Customer’s brick and mortar locations, Customer websites, mobile phones and tablets and any other points of entry.

1.12. “Customer Websites” means the digital properties, to include websites and mobile applications, of Customer.

1.13. “Party” means ID.me or Customer; and “Parties” means ID.me and Customer, in each case, as applicable.

1.14. “Person” means a corporation, limited liability company, partnership or other entity or an individual person.

1.15. “Personal Information” means information provided to ID.me in the course of ID.me’s performance under this Agreement that: (a) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses,

telephone numbers, e-mail addresses and other unique identifiers); or (b) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers (including social security numbers, driver's license numbers or state-issued identification numbers), passwords or PINs, financial account numbers, credit card numbers, debit card numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers).

1.16. "Pre-Existing Technology" shall mean technology, know-how and Intellectual Property Rights owned or developed by a Party (or to which such Party has a license to use, other than pursuant to this Agreement) prior to the development efforts undertaken hereunder by the Party, and all intellectual property rights inherent therein.

1.17. "Services" means the Verification Product services, credentialing services or other services provided by ID.me to Customer, which shall be specified from time to time on an Order Form.

1.18. "Termination Date" means the date on which this Agreement terminates or expires, as set forth in this Agreement.

1.19. "Verification Product" has the meaning set forth in the Recitals.

ARTICLE II – RESPONSIBILITIES OF THE PARTIES

2.1. ID.me Responsibilities. ID.me shall provide certain Services to Customer as specified on an applicable Order Form, which Order Form shall be incorporated into and become part of this Agreement. ID.me shall comply with the Terms and Conditions, Attachment

1, attached hereto and incorporated herein for all purposes.

2.2. Customer Responsibilities. Customer shall perform the responsibilities as set forth on any applicable Order Form and shall pay the Fees for any Services as set forth in the applicable Order Form.

ARTICLE III – PRICING

3.1. Fees. In connection with the Services and any products provided by ID.me to Customer as provided in this Agreement and any applicable Order Form, Customer hereby agrees to pay ID.me any Fees as set forth in the applicable Order Form for those Services and/ or products specified in such Order Form.

ARTICLE IV – INTELLECTUAL PROPERTY; TRADEMARKS

4.1. ID.me Intellectual Property Rights. ID.me shall retain all right, title, and interest in and to ID.me's Pre-Existing Technology and any Derivative made by ID.me or for ID.me ("ID.me Derivative") and any Intellectual Property Rights related thereto. ID.me shall have the exclusive right, and shall be solely responsible, to apply for or register, maintain and bear all costs and expenses associated with, any patents, mask work rights, copyrights, and such other proprietary protections with respect to ID.me's Pre-Existing Technology and ID.me Derivatives. To the extent allowed by Texas Law, Customer shall execute such documents, render reasonable assistance, and take such other actions as ID.me may reasonably request, at ID.me's expense, to apply for, register, perfect, confirm, and protect ID.me's rights in the foregoing. Without limiting the scope

of the foregoing, Customer agrees and acknowledges that any and all ownership rights in ID.me Scan, and all Intellectual Property Rights therein, shall remain with ID.me and (as applicable) its licensors, and Customer shall only have the limited rights of use thereof as expressly set forth in this Agreement.

4.2. ID.me Trademarks. Customer acknowledges the great value of the goodwill associated with the ID.me's trade names, trademarks and branding (the "ID.me Trademarks") and agrees that the ID.me Trademarks are the sole property of ID.me. Customer agrees that it shall not assert any claim of ownership to the ID.me Trademarks or otherwise interfere with ID.me's sole and exclusive rights to said ID.me Trademarks. Any use and display of ID.me Trademarks by Customer shall inure to the benefit of ID.me.

ARTICLE V - CONFIDENTIALITY AND NON-DISCLOSURE

5.1. Treatment of Confidential Information. ID.me and Customer acknowledge that in the course of their dealings under this Agreement, each Party, (as such, the "Disclosing Party") will provide and will permit the other Party (as such, the "Receiving Party") to have access to Confidential Information of the Disclosing Party. Each Party in its capacity as Receiving Party, agrees that it will, to the extent allowed by Texas Law: (a) hold all Confidential Information that it receives from the Disclosing Party in strict confidence; (b) use such Confidential Information solely for the proper performance of its functions and obligations under this Agreement; (c) upon termination of this Agreement it will return to the Disclosing Party all copies of such Confidential Information in the possession of the Receiving Party; (d) advise those to whom disclosure of the Confidential Information is made of the confidential nature of the Confidential Information and of the prohibitions contained herein; (e) not duplicate Confidential Information, except as reasonably necessary to perform its duties under this Agreement; and (f) not remove or destroy any proprietary or copyright notice appearing on Confidential Information. Each Party, in its capacity as Receiving Party, will cause each of its agents or employees who or which has access to the Confidential Information of the Disclosing Party to comply with the restrictions of confidentiality and non-use that are applicable to the Receiving Party in this Article V. Each Party, in its capacity as Receiving Party, acknowledges and agrees that a breach of its commitments in this Article V may result in damage to the other Party that may be irreparable in nature and is not susceptible on monetary determination and that, accordingly, in the event of any such breach, the non-breaching Party will have the right, in addition to all other rights and remedies permitted under applicable law, to seek and secure compliance by the breaching Party with such commitments through the order for injunctive relief by a court of competent jurisdiction.

5.2. Release from Restrictions. The provisions of Section 5.1 shall not apply to any Confidential Information disclosed hereunder which:

(a) was known or used by the Receiving Party prior to its date of disclosure to the Receiving Party, as evidenced by the prior written records of the Receiving Party; or

(b) either before or after the date of the disclosure to the Receiving Party, is lawfully disclosed to the Receiving Party by an independent, unaffiliated third party rightfully in possession of the Confidential Information; or

(c) either before or after the date of the disclosure to the Receiving Party, becomes published or generally known to the public through no fault or omission on the part of the Receiving Party or its Affiliates and under no obligation of confidentiality; or

(d) is required to be disclosed by the Receiving Party to comply with applicable laws, judicial order or to comply with governmental regulations, provided that the Receiving Party provides prior written notice of such disclosure to the Disclosing Party and reasonably cooperates with Disclosing Party's efforts and actions to avoid and/or minimize the degree of such disclosure.

5.3. Survival of Confidentiality Obligations. The foregoing confidentiality obligations of the Parties shall remain binding on both Parties after termination of the Agreement for a period of one (1) year. The Parties acknowledge that any breach of this Article V may constitute irreparable harm, and that either party shall be entitled to seek specific performance or injunctive relief to enforce this Article V in addition to whatever remedies such party may otherwise be entitled to at law or in equity.

ARTICLE VI - TERM AND TERMINATION

6.1. Term. Unless otherwise earlier terminated pursuant to the terms of this Agreement, this Agreement shall be effective upon the date that both parties sign this Agreement until the earlier of (i) the date on which ID.me has performed and delivered a total of XXXX credentials to Customer and (ii) a period of 25 months from the Effective Date (the "Term").

6.2. Mutual Termination. This Agreement may be terminated at any time by a written agreement signed by both Parties.

6.3. Termination for Breach. Upon any material breach or default under this Agreement by either Party, the Party not in default or breach (the "Non-Breaching Party") may terminate this Agreement upon thirty (30) days written notice to the Party in default or breach (the "Breaching Party"), with such termination to become effective upon expiration of said thirty (30) day period, unless within said thirty (30) day period the Breaching Party shall have cured such breach or default.

6.4. Consequences of Termination.

(a) Upon the expiration or termination of this Agreement:

(i) Customer will pay ID.me earned but unpaid Fees (if any) as of the Termination Date.

(ii) Any licenses granted hereunder shall immediately and automatically terminate.

(iii) Each Receiving Party shall destroy or return, at the Disclosing Party's option, all of the Confidential Information, and any copies thereof, of the Disclosing Party within the Receiving Party's possession or control.

(iv) Customer shall return any hardware or remove any software provided by ID.me to Customer within thirty (30) days of the termination of this

agreement. Customer shall have the option to purchase any hardware provided from ID.me upon the mutual agreement of both parties.

(b) The provisions of Articles IV through XI, will survive the expiration or termination of this Agreement.

(c) Any termination or expiration of this Agreement shall not serve to eliminate any liability arising out of conduct prior to the actual date of termination or expiration, and either Party may, following such termination or expiration, pursue such remedies as may be available with respect to such liabilities. In addition, notwithstanding the termination or expiration of this Agreement, any provisions of this Agreement specifically providing for survival shall continue in full force and effect.

ARTICLE VII - REPRESENTATIONS AND WARRANTIES

7.1 Authorization. Each Party represents and warrants to the other that it has the legal right, authority and power to enter into this Agreement, to extend the rights granted or to be granted to the other in this Agreement, and to fully perform its obligations hereunder, and that it has not made and will not make any commitments to others in conflict with or in derogation of such rights or this Agreement. Each Party further represents to the other that, as of the Effective Date, and to its actual knowledge, it is not aware of any legal obstacles, including, without limitation, patent rights of others, which could reasonably be expected to prevent it from carrying out its obligations under this Agreement. In addition, each Party represents and warrants that it will adhere to all applicable laws, rules, and regulations in performing its obligations to the other Party hereunder.

7.2 Customer agrees to not use ID.me's Services in any way which: violates or infringes ID.me's or any third party's intellectual property rights; transmits software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;

7.3 ID.me Representations. ID.me represents and warrants that (i) any products and services provided by ID.me hereunder do not infringe on any Intellectual Property rights of any third party; (ii) it will provide its services to Customer in a manner consistent with the generally accepted industry standards reasonably applicable to this Agreement; (iii) ID.me's services will be performed in accordance with any applicable Order Form; and (iv) any products and services provided by ID.me hereunder are and will remain in compliance with applicable laws, rules, regulations, and any industry security standards.

7.4 Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT (INCLUDING ANY EXHIBIT OR ORDER FORM HERETO) AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY AGREES THAT THE FOREGOING REPRESENTATIONS AND WARRANTIES CONSTITUTE SUCH PARTY'S SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT. EACH PARTY, WITH RESPECT TO ITS OWN PRODUCTS, MAKES NO, AND DISCLAIMS ANY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND ANY WARRANTY AGAINST INTERFERENCE WITH

QUIET ENJOYMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SUCH PARTY SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE AFOREMENTIONED REPRESENTATIONS AND WARRANTIES. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL EXPRESS WARRANTIES, IF ANY, MADE BY SUCH PARTY. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT. FURTHERMORE, NEITHER PARTY WARRANTS THAT ITS PRODUCTS, SERVICES OR CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE.

ARTICLE VIII

8.1 [reserved]

ARTICLE IX – LIMITATION OF LIABILITY

9.1 EXCEPT FOR LIABILITY ARISING FROM, IN CONNECTION WITH, OR AS A RESULT OF INSTANCES OF (I) GROSS NEGLIGENCE, FRAUD, WILLFUL OR CRIMINAL MISCONDUCT BY A PARTY, INCLUDING ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS; (II) DAMAGES AWARDED TO A THIRD PARTY FOR WHICH A PARTY IS OBLIGATED TO INDEMNIFY THE OTHER PARTY UNDER THIS AGREEMENT; (III) BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS; OR (IV) INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY, NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES, SHALL BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE, INJURY TO PROPERTY, LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PARTY SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING. EXCEPT FOR LIABILITY ARISING FROM, IN CONNECTION WITH, OR AS A RESULT OF INSTANCES OF (I) GROSS NEGLIGENCE, FRAUD, WILLFUL OR CRIMINAL MISCONDUCT BY A PARTY, INCLUDING ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS; (II) DAMAGES AWARDED TO A THIRD PARTY FOR WHICH A PARTY IS OBLIGATED TO INDEMNIFY THE OTHER PARTY UNDER THIS AGREEMENT; (III) BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS; OR (IV) INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EACH PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND WHETHER IN CONNECTION WITH THIS AGREEMENT OR ANY COLLATERAL CONTRACT, SHALL IN NO CIRCUMSTANCES EXCEED A SUM EQUAL TO ONE MILLION SEVEN HUNDRED FIFTY THOUSAND (\$1,750,000) DOLLARS.

ARTICLE X - NOTICES AND OTHER COMMUNICATIONS

10.1 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by

courier, overnight delivery service, electronic mail or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the Party to be notified at such Party's address or facsimile number as set forth below, or as subsequently modified by written notice:

(a) if to Customer:

Customer Name

[REDACTED]
101 E. 15th Street
Austin, TX 78778-0001
Attention: POC Name
E-mail: POC E-Mail

(b) if to ID.me, to:

ID.me, Inc.
8281 Greensboro Drive
Suite 600
Tysons Corner, VA 22102
Attention: General Counsel
Email: legal@ID.me

ARTICLE XI - MISCELLANEOUS PROVISIONS

11.1 Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

11.2 Governing Law. This Agreement shall be construed, governed, interpreted and applied in accordance with the internal laws of the State of Texas without reference to its conflicts of law provisions.

11.3 Entire Agreement. The Parties hereto acknowledge that this Agreement and all Exhibits and Schedules attached hereto set forth the entire agreement and understanding of the Parties hereto as to the subject matter hereof and supersede all prior understandings and writings related thereto.

11.4 Amendment Waiver. This Agreement and shall not be modified or amended except by the execution of a written instrument signed by the Parties hereto. Any waiver, consent or approval of any kind or character on the part of any Party of any provisions or conditions of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in such writing. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

11.5 Counterparts. This Agreement may be executed in any number of counterparts (including facsimile or .pdf format), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11.6 Independent Contractors. The Parties hereto are independent contractors and nothing contained in this Agreement shall be deemed to create the relationship of Customers, joint venturers, or of principal and agent, franchiser and franchisee, or of any association or relationship between the Parties other than as expressly provided in this Agreement. Customer acknowledges that it does not have, and Customer shall not make representations to any third party, either directly or indirectly, indicating that Customer has any authority to act for or on behalf of ID.me or to obligate ID.me in any way whatsoever. ID.me acknowledges that it does not have, and it shall not make any representations to any third party, either directly or indirectly, indicating that it has any authority to act for or on behalf of Customer or to obligate Customer in any way whatsoever.

11.7 Severability. If any provision of this Agreement is or becomes, at any time or for any reason, unenforceable or invalid, no other provision of this Agreement shall be affected thereby, and the remaining provisions of this Agreement shall be construed and reformed and shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted in this Agreement.

11.8 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party without the prior written consent of the other Party; provided that either Party may freely assign or sublicense its rights hereunder to an Affiliate of such Party upon prior written notice to the other Party; provided, however, that such assignee: (i) is not a competitor of the non-assigning Party; (ii) agrees in writing to be bound by and comply with the terms and conditions of this Agreement prior to the effective date of the assignment; and (iii) the assigning Party demonstrates to the other Party's reasonable satisfaction that the assignee possesses a technical competence and financial net worth equal to or greater than those of the assigning Party. Any assignment in violation of this Section 11.10 shall be void.

11.9 Attorney's Fees. In any legal action or other proceeding (including any arbitration proceeding) brought to enforce or interpret the terms of this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees and other costs and expenses incurred in that proceeding and in any subsequent appeals, in addition to any other relief to which it is entitled.

11.10 Successors and Assigns. Subject to Section 11.10 hereof, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this Services Agreement under seal as of the day and year set forth above.

ID.ME:

ID.ME, INC.

By: Michelle Graffum

Name: Michelle Graffum

Title: General Counsel

Date: 10/30/2020

CUSTOMER:

TEXAS WORKFORCE COMMISSION

By: 

Name: Edward Serna

Title: Executive Director

Date: 10/30/2020

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Texas Workforce Commission (TWC) – Terms & Conditions (04/24/2020)
Attachment 1

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

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

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

1. SOLICITATION RESPONSE REQUIREMENTS

- 1.1. **Written Specifications:** TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the solicitation.
- 1.2. **Incomplete Responses:** Late, illegible, incomplete and/or unsigned responses may be deemed non-responsive and may not be considered.
- 1.3. **Freight:** Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.
- 1.4. **Firm Pricing:** Prices submitted are expected to be firm for TWC acceptance for ninety (90) days from the solicitation deadline. "Discount from list" offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the low offer. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the term of the PO/contract.
- 1.5. **Ties:** In the case of tie bids, the award will be made in accordance with the preferences listed under 34 Texas Administrative Code (TAC) §20.306.
- 1.6. **Preferences:** In making an award, TWC shall apply the preferences listed at 34 TAC §20.306. For purchase or lease of computer equipment TWC shall apply a preference for manufacturers that have a computer recycling program as described in 1 TAC §217.11.
- 1.7. **Bid Alteration/Withdrawal:** A submitted response to a solicitation cannot be altered or amended after the solicitation deadline, except by formal negotiation via the RFO/RFP processes. Any alteration made before the solicitation deadline is to be initialed by Vendor or the Vendor's authorized agent. Vendors are not allowed to withdraw their submitted response after the solicitation deadline without approval by TWC.
- 1.8. **Rejection of Bids:** In accordance with Texas Government Code §2156.008, TWC reserves the right to reject a bid in which there is a material failure to comply with specification requirements. TWC may reject all bids or parts of bids if the rejection serves the State's best interest.
- 1.9. **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. **Other Entities:** TWC requests that the Vendor extend the same contract prices and conditions to Local Workforce Development Boards (LWDB) and Child Care Management Services (CCMS) entities contractually linked with TWC, if awarded the contract.
- 1.11. **Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the agreement.
- 1.12. **No Travel:** TWC will not reimburse a Vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.

2. GENERAL CONDITIONS

- 2.1. **Certain Construction Liability Claims.** TWC will comply with the provisions of Texas Government Code, Chapter 2272 in the event that a claim for damages arises to which that chapter applies.
- 2.2. **Damage to Grounds and Buildings:** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to the TWC grounds and buildings. Vendor is

- responsible for the removal of all debris resulting from work performed under the contract.
- 2.3. **Disclosure of Information:** TWC, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records which are directly pertinent to this procurement.
- 2.4. **Texas Public Information Act:**
- 2.4.1. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the "Public Information Act").
- 2.4.2. All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the Vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by the Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.
- 2.4.3. All information, documentation and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the Vendor who submitted it during the retention period time.
- 2.4.4. Vendor is required to make any public information created or exchanged with the State pursuant to any contract with TWC, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TWC.
- 2.5. **Award of Contract:**
- 2.5.1. Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted and an award is made by TWC Procurement and Hub-Services and a PO or a fully executed contract is issued to the Vendor.
- 2.5.2. TWC reserves the right to negotiate price and terms with any and all Vendors, to accept or reject all or any part of a Vendor's response, waive minor technicalities, to request Best and Final Offers from all or any Vendors, and make an award that represents Best Value to the agency or the State.
- 2.5.3. Subsequent to award, TWC may, at its sole option, request the Vendor to negotiate contract amendments or renewals as is determined to be in the best interest of the agency or the State.
- 2.5.4. TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.
- 2.5.5. TWC reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.
- 2.6. **Vendor Assignments:** No assignment is permitted by the Vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code §2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment.
- 2.7. **TWC Assignments:** TWC may sub-lease or assign equipment and related services provided via the contract to other entities which contract with TWC to provide agency support or services.
- 2.8. **INDEMNIFICATION**
- 2.8.1. **ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DISIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS**

STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

2.8.2. Infringements:

2.8.2.1. VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR 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 VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

2.8.2.2. VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (1) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (2) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT VENDOR'S WRITTEN APPROVAL, (3) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE VENDOR PURSUANT TO TWC'S SPECIFIC INSTRUCTIONS, (4) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TWC, OR (5) ANY USE OF THE PRODUCT OR SERVICE BY TWC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

2.8.2.3. IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TWC PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TWC, SHALL), AT VENDOR'S SOLE OPTION AND EXPENSE; (1) PROCURE FOR TWC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALITY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TWC'S USE IS NON-INFRINGEMENT.

2.8.3. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY:

2.8.3.1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS AND/OR TWC SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2.8.3.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND

ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 2.9. **Vendor Performance:** In accordance with Texas Government Code §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.10. **Force Majeure:** TWC may grant relief from performance of an awarded contract or PO, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.
- 2.11. **Dispute Resolution Procedures:**
- 2.11.1. **Procurement Disputes:** In accordance with Texas Government Code, §2155.076, TWC has established protest procedures for resolving vendor protests relating to the solicitation, evaluation or award of a contract for goods and/or services. Such protests must be made via certified mail and received in the Director of Business Operations' office within ten (10) business days from the date of the announcement of the award. The written protest must include: the number of the solicitation being protested; the grounds for the protest, including a description of any alleged acts or omissions by TWC that form the basis for the protest; any written information which the protestor believes is relevant to the award; and the basis for the protestor's interest in the procurement. TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law. TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The protestor will be provided an opportunity for an informal meeting with the Director or his designee, to discuss the protest, however, TWC may limit the amount of time allocated for the meeting. The Director will issue the final written decision to the protestor
- 2.11.2. **Contract Disputes:** Disputes arising under this Contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.
- 2.12. **Debt to the State:** Vendor agrees that any payments due under this contract will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 2.13. **Hold-Over Contract Extension:** In the event contract renewal negotiations are not completed prior to the contract expiration date, both parties agree that services shall be provided by the Vendor and accepted by TWC, subject to all original terms and conditions of the contract, for a period not to exceed ninety (90) days following the original contract expiration date. During the hold over extension period, service costs shall be provided at the pro-rated rates, as applicable, in effect immediately prior to expiration of the original contract period and all other terms and conditions shall remain in effect. TWC may terminate such hold over extension period by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.
- 2.14. **Records Retention:** Vendor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor agrees to provide at no cost to TWC all contracting information related to the Contract that is in the custody or possession of Vendor or any of its subcontractors.
- 2.15. **Agency's Right to Audit:** Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this Contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and the subcontractors shall provide the State Auditor with any information that the State Auditor

- deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this Contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC and any authorized agency of the State of Texas, including an investigation of audit by the State Auditor.
- 2.16. **State Auditor:** Vendor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Vendor's failure to comply with this Section shall constitute a material breach of Contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code §2262.154, the acceptance of funds by Vendor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract shall constitute acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Vendor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the director of the legislative audit committee, an entity that is subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.
- 2.17. **Limitation on TWC's Liability:** TWC will not be liable for any incidental, indirect, special, or consequential damages under contract, Tort, (including negligence), or other legal theory. TWC's liability to Vendor under the contract will not exceed the total charges to be paid by TWC to Vendor under the contract.
- 2.18. **State Ownership:** The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, and documentation developed by the Vendor in connection with the contract.
- 2.18.1. All work products including deliverables, and documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.
- 2.18.2. To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.
- 2.18.3. Vendor will assist TWC or its nominees to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.
- 2.18.4. Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by Vendor on such copies, in whole or in part, or on any form of the work products or deliverables.
- 2.19. **License:** In accordance with 2 C.F.R. §200.315, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including but not limited to those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system, provided, in each case, that such licensed materials, deliverables and work product will only be used for the originally-authorized purpose.
- 2.20. **Most Favored Customer:** If during the term of the contract, the Vendor enters into another contract with any customer, except for contracts with an Exempt Customer (as defined below), for substantially similar services at prices more favorable than those provided to TWC, the contract may be amended to provide the more favorable prices to TWC. Exempt Customer means any customer of Vendor that is (i) a not for profit entity or (ii) any small business or start up entity with 12-month trailing revenue of less than \$10,000,000.
- 2.21. **Governing Law and Venue:** The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.

- 2.22. **Survival:** Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
- 2.23. **Severability:** If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.
- 2.24. TWC and the Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>
- 2.25. **No Waiver:** Nothing in this contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TWC or the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this contract or by its conduct prior to or subsequent to entering into this contract.
- 2.26. **Redacted Electronic Copy:** Texas Government Code §322.020 and as per the following requirements, no later than two (2) business days after Vendor's receipt of notice from TWC, the Vendor must deliver to TWC two (2) electronic copies of its complete proposal. Vendor shall deliver these electronic copies to TWC via overnight delivery in compliance with all of the following requirements:
- 2.26.1. Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database.
- 2.26.2. TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than ten (10) days after date of contract award. By submitting a response to this solicitation, Vendors acknowledge that they understand and accept this requirement. See the LBB website at <http://www.lbb.state.tx.us/>.
- 2.26.3. **American Recovery and Reinvestment Act (ARRA or the Recovery Act)**
- 2.26.3.1. Buy American Requirements for Construction Material prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- 2.26.3.2. Whistleblower Protection: Pursuant to Section 1553 of the American Recovery and Reinvestment Act, Vendors shall promptly refer to the U.S. Department of Labor, Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds
- 2.27 Preserved for numbering continuity
- 2.28**Privacy:** Vendor who has access to sensitive personally identifiable information ("Sensitive PII"), including anyone who views contracts, collects, uses, maintains, stores or destroys Sensitive PII of TWC employees, job seekers, employers, customers or partners, must safeguard that information.
- 2.28.1 Sensitive PII is anything that alone or in combination with available information can identify an individual, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience or unfairness to an individual.
- 2.28.2 Awarded Vendor must have a Non-Disclosure Agreement (NDA) on file with TWC prior to handling Sensitive PII.
- 2.28.3 In order to safeguard Sensitive PII, Awarded Vendor must:
- 2.28.1.1 Collect Sensitive PII only as authorized.
- 2.28.1.2 Limit the use of Sensitive PII.
- 2.28.1.3 Minimize the proliferation of Sensitive PII.
- 2.28.1.4 Secure Sensitive PII both physically and in electronic form.
- 2.28.1.5 Report suspected privacy incidents within twenty four (24) hours to the TWC

Contract Manager or, email the TWC Information Security Office at CISO@twc.state.tx.us.

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

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

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

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

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

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

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

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

2.35. Contracting Information Responsibilities: If this contract has a stated value equal to or in excess of \$1 million or results in the expenditure of an amount equal to or in excess of \$1 million in public funds, in accordance with Texas Government Code §552.372, Vendor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirement applicable to TWC for the duration of the Contract, (2) promptly provide to TWC any contracting information related to the contract that is in the custody or possession of the Vendor on request of TWC, and (3) on termination or expiration of the contract, either provide at no cost to TWC all contracting information related to the contract that is in the custody or possession of the Vendor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to TWC. Except as provided by Texas Government Code §552.374(c), the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the contract and Vendor agrees that the contract may be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

2.36. Disaster Recovery Plan. In accordance with 13 TAC §6.94(a)(9), Vendor shall provide to TWC the descriptions of its business continuity and disaster recovery plans.

2.37. Media Releases. Vendor shall not use TWC's name, logo, or other likeness in any press release, marketing material, or other announcement without TWC's prior written approval. TWC does not endorse any vendor, commodity, or service. Vendor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instruction from TWC.

2.38. Specific Conditions for Disclosing Federal Funding in Public Announcements. The parties agree that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money from the U.S. Department of Education, the parties shall clearly state:

2.38.1 the percentage of the total costs of the program or project which will be financed with Federal money;

2.38.2 the dollar amount of Federal funds for the project or program; and,

2.38.3 the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

2.39. Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business. The parties and their employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official contract business, or from using government supplied electronic equipment to text message or email when driving. The parties must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

3. REQUIRED CERTIFICATIONS

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

- 3.1. Vendor represents and warrants that all statements and information prepared and submitted in this Proposal are current, complete, true and accurate. Submitting a Proposal with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.
- 3.2. **All Terms and Conditions Met:** that all terms and conditions listed in the solicitation will be met.
- 3.3. By submitting the Proposal, Vendor represents and warrants that the individual submitting this document and the documents made part of this Proposal is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract that may result from the submission of this Proposal
- 3.4. **U.S. Department of Homeland Security's E-Verify System:** By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of:
 - 3.4.1. All persons employed to perform duties within Texas, during the term of the Contract; and
 - 3.4.2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
 - 3.4.3. The Contractor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.
 - 3.4.4. **If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**
- 3.5. **Inducements/Dealings with Public Servants:** that the Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response.
- 3.6. **Lobbying:** that the Vendor will not and has not used any federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. Vendor certifies that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. Further, Vendor certifies that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.
- 3.7. **Not Ineligible:** that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in this contract by any state or federal agency.
- 3.8. **Non-Discrimination:** The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Vendor certifies compliance with the Rehabilitation Act of 1998 § 508, 29 U.S.C. §794d, relating to the use of electronic and information technology for individuals with disabilities; the Housing and Urban Development Act §3, 12 USC §1701u Sec. 1701u, relating to economic opportunities for low- and very low-income persons; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor."; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.
- 3.9. **Drug-Free Workplace:** The Vendor agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. §81, Title V, Subtitle D).
- 3.10. **Franchise Tax:** The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.

- 3.11. Child Support:** The Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code §231.006 (relating to child support) and acknowledges that the contract may be terminated and payment may be withheld if certification is inaccurate. Pursuant to Texas Family Code §231.006(c), Vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.
- 3.12. Certain Bids and Contracts Prohibited:** Under Texas Government Code §2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.13. Fair Business Practices:** The Vendor has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The Vendor further affirms that no officer of the Vendor has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.14. Antitrust Affirmation:** Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.
- 3.15. No Compensation:** The Vendor has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.
- 3.16. Conflict of Interest:** Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.
- 3.17. Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita:** Under Texas Government Code §2155.006, the Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
- 3.18. Independent Contractor:** Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and Vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.
- 3.19. Workers' Compensation Insurance.** Vendor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.
- Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease – Each Employee \$1,000,000
Disease – Policy Limit \$1,000,000
Commercial General Liability:
Occurrence based:
Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000
Aggregate limit: \$2,000,000
Medical Expense each person: \$5,000
Personal Injury and Advertising Liability: \$1,000,000
Products/Completed Operations Aggregate Limit: \$2,000,000
Damage to Premises Rented to You: \$50,000
NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.

- 3.20. Felony Criminal Convictions:** Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.
- 3.21. Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069:** Vendor certifies that it has not employed and will not employ a former TWC or state officer who participated in a procurement or contract negotiations for TWC involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 3.22.** Vendor certifies that both of the following statements are true and correct and that the Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:
- 3.22.1. Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.
- 3.22.2. Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.
- 3.23. Entities that Boycott Israel:** In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code §808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor represents and warrants that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.
- 3.24. Foreign Terrorist Organizations:** Vendor represents and warrants that it is not engaged in business with Iran, Sudan or a foreign terrorist organization, as prohibited by Texas Government Code §2252.152.
- 3.25. Executive:** Vendor certifies it is in compliance with Texas Government Code §669.003, relating to contracting with the executive head of a State agency. If applicable, Vendor will complete the following for TWC evaluation:
- Former Executive
Name: _____
State Agency Name: _____
Date Separated from Agency: _____
Position with Vendor: _____
Date employed with Vendor: _____
- 3.26. Buy Texas:** Vendor agrees to comply with Texas Government Code §2155.4441, pertaining to purchasing products and materials produced in the State of Texas.
- 3.27. Human Trafficking.** Under Texas Government Code §2155.0061, Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the Contract, TWC may immediately terminate the contract without further obligation to Vendor.
- 3.28. Trafficking in Persons.** The parties acknowledge the requirements of 2 C.F.R. §175, including the U.S. Department of Education's modifications to these requirements, and agree to comply with the requirements regarding trafficking in persons.
- 3.29. Disclosure of Prior State Employment.** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the previous employment with TWC or the other agency; (b) the date employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.
- 3.30. Former Agency Employees.** In accordance with Texas Government Code §2252.0901, Vendor represents and warrants that none of its employees, including but not limited to those authorized to

- provide services under the contract were former employees of TWC during the twelve (12) month period immediately prior to the date of execution of the contract.
- 3.31. Vendor represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Texas Government Code §2252.908.
- 3.32. **Cybersecurity Training:** Vendor represents and warrants that it will comply with the requirement of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee or subcontractor employee has access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code §2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.
- 3.33. **Computer Equipment Recycling Program:** Vendor hereby certifies its compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act located in Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328.
Failure of a Vendor to provide this certification shall render the Vendor ineligible to participate in the bidding process. TWC shall reject the related bid and not evaluate it.
- 3.34. **Television Equipment Recycling Program:** Vendor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

4. SPECIFICATIONS

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

5. DELIVERY

- 5.1. Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.
- 5.2. If delay is foreseen, Vendor shall give written notice to TWC who reserves the right to extend

delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting Vendor.

- 5.3. Delivery shall be made on State business days between 8:00 am and 5:00 pm, unless prior approval has been obtained from TWC.

6. VALIDATION, INSPECTION & TESTS

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

7. INVOICING INSTRUCTIONS

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

8. PAYMENT

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

9. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

- 9.1. Vendor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright trade secret or other proprietary rights, violations or infringements arising from the State's or Vendor's use of acquisition of any services or other items provided to the State of Texas by Vendor or otherwise to which the State of Texas has access as a result of Vendor's performance under this Contract, provided that the State shall notify Vendor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Vendor is notified of any claim subject to this section, Vendor shall notify TWC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Vendor without TWC prior written approval. Vendor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including but not limited to, attorney's fees and court costs, arising from such claim. Vendor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest.
- 9.2. Should the goods, or use of the goods, become the subject of a claim of infringement of a United States patent, trademark, copyright, trade secret or other proprietary rights, TWC may require the

Vendor to procure for TWC the right to continue using the goods, to replace or modify the same to remove the infringement, or to accept return of the goods.

- 9.3. Vendor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.
- 9.4. Vendor agrees that for the exclusive use by TWC for State business, TWC is free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

10. TERMINATION PROVISIONS

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

11. INFORMATION TECHNOLOGY (IT) PURCHASES:

- 11.1. During the term of the contract, the Vendor must notify TWC whenever an engineering change is made that may affect TWC's use of the product. It will be the sole option of TWC to accept the change.
- 11.2. Vendor represents that the product and all its elements, including, but not limited to, documentation and source code, meet the standards issued by the American National Standards Institute.
- 11.3. Vendor agrees that TWC owns the source code to any jointly-developed application(s) resulting from the contract.
- 11.4. As required by 1 TAC, Chapter 213:
- 11.4.1 Effective September 1, 2006, state agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
 - 11.4.2 Vendor shall provide TWC with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act of 1973, as amended (29 USC § 794d)), or indicate that the product/services accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TWC with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
 - 11.4.3 TWC will use either VPAT or the Buy Accessible Wizard to assess the degree of accessibility of a proposed product when making the procurement decision.
- 11.5. Vendor shall follow Web Content and Accessibility Guidelines. (WCAG 2.0) as applicable for new websites, applications or redesigns.
- 11.6. Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to

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securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC, Chapter 202.