

## Recommended Contract Clauses

In accordance with Section 2262.051(d)(1) of the Texas Government Code, this document identifies the recommended provisions that an agency may include in a contract. The Recommended Clauses are terms commonly found in agency solicitations and contracts. For reference, this compendium provides Sample Text for each Recommended Clause.

This compendium does not serve as a substitute for legal counsel. The determination as to the appropriateness of a particular contract term is dependent on the characteristics of the transaction. Accordingly, legal counsel should be consulted to not only ensure that the text of the Recommended Clause is suitable for the applicable transaction but also that the use of the clause is consistent with the agency's internal policies and best practices. While these clauses are recommended clauses, agency legal counsel should carefully review and determine whether to omit them from its procurement templates.

The following terms in the Recommended Clauses should be revised by the agency as appropriate for conformity with the applicable solicitation and contract documents: **Agency**, **Respondent**, **Response**, and **Solicitation**. Examples of conforming terms include, but are not limited to, the following:

- “**Agency**” to agency name, Customer, or Client
- “**Respondent**” to Bidder, Proposer, Applicant, Contractor, or Vendor
- “**Response**” to Bid, Proposal, Offer, or Application
- “**Solicitation**” to Invitation for Bids, Request for Proposals, Request for Offers, Request for Applications, Pricing Request, or Request for Qualifications

**Note:** This list does not include “sample” text for terms that by their nature are highly negotiable, unique to a particular type of transaction, or descriptive of an individual agency's business practice e.g., confidentiality and data protection safeguards, warranties, software licensing, terms of use, and service levels. Public procurement professionals are advised to seek assistance from their agency legal counsel to ensure that solicitations and contracts include transaction-specific terms that protect the interests of the State.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
<b>Abortion Provider and Affiliate Transactions Prohibited</b>	<b>Respondent</b> represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by <b>Agency</b> to <b>Respondent</b> and <b>Respondent's</b> receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
<b>Agency's Right to Audit</b>	<b>Respondent</b> will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by <b>Respondent</b> pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by <b>Agency</b> and the State of Texas.
<b>Americans With Disabilities Act</b>	<b>Respondent</b> represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
<b>Assignment (for Goods)</b>	<b>Respondent</b> shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the <b>Agency</b> . Any attempted assignment in violation of this Section is void and without effect.  Or  Neither Party may assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the other Party, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. Notwithstanding the foregoing, upon prior written notification to the other Party, either Party may assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without such prior written consent to: (1) a successor in interest (for <b>Agency</b> , another state agency as designated by the Texas Legislature) or (2) a subsidiary, parent company, or other entity in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

Recommended Clause	Sample Text  (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
<b>Binding Effect</b>	<p>The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.</p> <p>Or</p> <p>The contract shall be binding upon and shall inure to the benefit of <b>Agency</b> and <b>Respondent</b> and to their representatives, successors and assigns.</p>
<b>Change in Law and Compliance with Laws</b>	<p>Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.</p> <p>Or</p> <p><b>Respondent</b> shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the contract. <b>Agency</b> reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the contract to incorporate any modifications necessary for <b>Agency</b>'s compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.</p>
<b>Contract Term</b>	<p>The initial term of the contract shall be for one (1) year from [Insert Date] to [Insert Date]. <b>Agency</b> may, in its sole discretion, exercise the option to extend the contract for up to three (3) additional one (1) year periods. To exercise the option to extend the term, <b>Agency</b> will notify <b>Respondent</b>; such notice may be by Purchase Order issuance.</p>
<b>Critical Infrastructure Subcontracts</b>	<p>For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, <b>Respondent</b> shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. <b>Respondent</b> will notify the <b>Agency</b> before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business &amp; Commerce Code, in this state.</p>
<b>Damage to Government Property</b>	<p><b>Respondent</b> shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the <b>Respondent</b> and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. <b>Respondent</b> shall notify the <b>Agency</b> in writing of any such damage within one (1) calendar day. <b>Respondent</b> is responsible for the removal of all debris resulting from work performed under the contract.</p> <p>Or</p> <p>In the event of loss, destruction or damage to any <b>Agency</b> or State of Texas property by <b>Respondent</b> or <b>Respondent</b>'s employees, agents, subcontractors, and suppliers, <b>Respondent</b> shall be liable to <b>Agency</b> and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. <b>Respondent</b> will reimburse <b>Agency</b> and the State of Texas for such property damage within ten (10) calendar days after <b>Respondent</b>'s receipt of <b>Agency</b>'s notice of amount due.</p>
<b>Disclosure of Interested Parties</b>	<p><b>Respondent</b> represents and warrants that if selected for award of a contract as a result of the <b>Solicitation</b>, <b>Respondent</b> will submit to <b>Agency</b> a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.</p>
<b>Discounts</b>	<p>If <b>Respondent</b> at any time during the term of the contract provides a discount on the final contract costs, <b>Respondent</b> will notify <b>Agency</b> in writing ten (10) calendar days prior to effective date of discount. <b>Agency</b> will generate a Purchase Order Change Notice and send a revised Purchase Order to <b>Respondent</b>.</p> <p>Or</p> <p>Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by <b>Respondent</b> to <b>Agency</b> herein are at least as favorable as the benefits, pricing and hourly rates granted by <b>Respondent</b> to any previous client of <b>Respondent</b> for services and/or products similar to those provided hereunder. If <b>Respondent</b> enters into any subsequent agreement with any other client during the term of this contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this contract, <b>Respondent</b> shall notify <b>Agency</b> promptly of the existence of such more favorable benefits, pricing and/or hourly rates and <b>Agency</b> shall have the right to receive the more favorable contractual terms immediately. If requested in writing by <b>Agency</b>, <b>Respondent</b> hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.</p>
<b>Drug-Free Workplace</b>	<p><b>Respondent</b> represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 <i>et seq.</i>) and maintain a drug-free work environment.</p>
<b>Electrical Items</b>	<p>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).</p>
<b>Equal Employment Opportunity</b>	<p><b>Respondent</b> represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.</p>

Recommended Clause	Sample Text  (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Federal Occupational Safety and Health Law	<b>Respondent</b> represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).
Force Majeure	Neither <b>Respondent</b> nor <b>Agency</b> shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
Immigration	<b>Respondent</b> represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 <i>et seq.</i> ) and all subsequent immigration laws and amendments.
Independent Contractor	<b>Respondent</b> acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that <b>Respondent</b> and its personnel are not employees of the <b>Agency</b> or the State of Texas.  Or
Legal and Regulatory Actions	<b>Respondent</b> and <b>Respondent's</b> employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither <b>Respondent</b> nor <b>Agency</b> is an agent of the other and neither may make any commitments on the other party's behalf. Should <b>Respondent</b> subcontract any of the services required in the contract, <b>Respondent</b> expressly understands and acknowledges that in entering into such subcontract(s), <b>Agency</b> is in no manner liable to any subcontractor(s) of <b>Respondent</b> . In no event shall this provision relieve <b>Respondent</b> of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. <b>Respondent</b> shall have no claim against <b>Agency</b> for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between <b>Respondent</b> and <b>Agency</b> .  <b>Respondent</b> represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against <b>Respondent</b> or any of the individuals or entities included in the <b>Response</b> within the five (5) calendar years immediately preceding the submission of the <b>Response</b> that would or could impair <b>Respondent's</b> performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to <b>Agency's</b> consideration of the <b>Response</b> . If <b>Respondent</b> is unable to make the preceding representation and warranty, then <b>Respondent</b> instead represents and warrants that it has included as a detailed attachment in its <b>Response</b> a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair <b>Respondent's</b> performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to <b>Agency's</b> consideration of the <b>Response</b> . In addition, <b>Respondent</b> represents and warrants that it shall notify <b>Agency</b> in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update <b>Agency</b> shall constitute breach of contract and may result in immediate termination of the contract.
License Grant (Simple)	<b>Respondent</b> hereby grants to <b>Agency</b> a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to <b>Respondent</b> ; and (b) to sublicense any or all such rights to third parties.
Limitation on Authority	<b>Respondent</b> shall have no authority to act for or on behalf of <b>Agency</b> or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. <b>Respondent</b> may not incur any debt, obligation, expense or liability of any kind on behalf of <b>Agency</b> or the State of Texas.
Lobbying Prohibition	<b>Respondent</b> represents and warrants that <b>Agency's</b> payments to <b>Respondent</b> and <b>Respondent's</b> receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
Media Releases	<b>Respondent</b> shall not use <b>Agency's</b> name, logo, or other likeness in any press release, marketing material, or other announcement without <b>Agency's</b> prior written approval. <b>Agency</b> does not endorse any vendor, commodity, or service. <b>Respondent</b> is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the <b>Response</b> or the services to which they relate without <b>Agency's</b> prior written consent, and then only in accordance with explicit written instructions from <b>Agency</b> .
No Felony Criminal Convictions	<b>Respondent</b> represents that neither <b>Respondent</b> nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred <b>Respondent</b> has fully advised <b>Agency</b> in writing of the facts and circumstances surrounding the convictions.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
<b>No Implied Waiver</b>	<p>The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.</p> <p>Or</p> <p>Failure of a Party to require performance by another Party under the contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the contract will not be construed as a waiver of any continuing or successive breach.</p> <p>Or</p> <p>No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to <b>Agency</b> as an agency of the State of Texas or otherwise available to <b>Agency</b>. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to <b>Agency</b> by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.</p>
<b>No Quantity Guarantees</b>	<p><b>Agency</b> makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.</p> <p>Or</p> <p>The contract is not exclusive to the <b>Respondent</b>. <b>Agency</b> may obtain products and related services from other sources during the term of the contract. <b>Agency</b> makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the contract.</p>
<b>No Third-Party Beneficiaries</b>	<p>The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.</p> <p>Or</p> <p>Nothing contained in the contract, either expressed or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, transferees or delegates, any interests, rights, remedies, obligations or liabilities pursuant to, or by reason of, this contract.</p>
<b>Permits, Certifications, and Licenses</b>	<p><b>Respondent</b> represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.</p>
<b>Prompt Payment</b>	<p>Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.</p> <p>Or</p> <p>All payments to <b>Respondent</b> by <b>Agency</b>, any payments by <b>Respondent</b> to any subcontractor, and any payments by a subcontractor to any other person or entity that provides goods or services under this contract shall be made in compliance with Chapter 2251 of the Texas Government Code and 34 Texas Administrative Code § 20.487.</p>

Recommended Clause	Sample Text  (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Property Rights	<p>For purposes of the contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. <b>Agency</b> and <b>Respondent</b> intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by <b>Respondent</b> to be a work made for hire. <b>Respondent</b> and <b>Respondent's</b> employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of <b>Agency</b>. <b>Respondent</b> acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of <b>Agency</b>. If for any reason the Work would not be considered a work-for-hire under applicable law, <b>Respondent</b> does hereby sell, assign, and transfer to <b>Agency</b>, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. <b>Respondent</b> agrees to execute all papers and to perform such other property rights, as <b>Agency</b> may deem necessary to secure for <b>Agency</b> or its designee the rights herein assigned. In the event that <b>Respondent</b> has any rights in and to the Work that cannot be assigned to <b>Agency</b>, <b>Respondent</b> hereby grants to <b>Agency</b> an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon <b>Agency's</b> request, <b>Respondent</b> shall deliver to <b>Agency</b> all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. <b>Respondent</b> will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of <b>Agency</b>.</p> <p style="text-align: center;">Or</p> <p>For purposes of the contract, the term "Work Product" is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property and/or results of the services that are developed, produced, generated or provided to <b>Agency</b> in connection with, or as a result of, the services provided under the contract. <b>Agency</b> and <b>Respondent</b> intend this agreement to be a contract for the services and each considers and expressly intends and agrees that the Work Product to be rendered by <b>Respondent</b> shall be a work-made-for-hire. <b>Respondent</b> and <b>Respondent's</b> employees will have no rights in or ownership of the Work Product or any other property of <b>Agency</b>. <b>Respondent</b> acknowledges and agrees that the Work Product (and all rights therein, including without limitation all intellectual property rights) belongs to and shall be the sole and exclusive property of <b>Agency</b>. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, <b>Respondent</b> does hereby irrevocably sell, assign, and transfer to <b>Agency</b>, its successors and assigns, the entire right, title and interest in and to the Work Product and any and all intellectual property rights embedded therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. <b>Respondent</b> agrees to execute all papers and to perform such other property rights, as <b>Agency</b> may deem necessary to secure for <b>Agency</b> or its designee the rights herein assigned. In the event that <b>Respondent</b> has any rights in and to the Work Product that cannot be assigned to <b>Agency</b>, <b>Respondent</b> hereby grants to <b>Agency</b> an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon <b>Agency's</b> request, <b>Respondent</b> shall deliver to <b>Agency</b> all completed, or partially completed, Work Product and any and all versions thereof. Failure to timely deliver such Work Product will be considered a material breach of the contract. <b>Respondent</b> will not make or retain any copies of the Work Product or any and all documentation or other products and results of the services without the prior written consent of <b>Agency</b>.</p>
Property Rights <i>(continued)</i>	<p><b>Respondent</b> shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by <b>Respondent</b> 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.</p> <p><b>Respondent</b> will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by <b>Agency</b> which are not expressly authorized under the contract.</p>
Records Retention	
Refund	
Restricted Employment for Certain State Personnel	<p>Pursuant to Section 572.069 of the Texas Government Code, <b>Respondent</b> certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for <b>Agency</b> involving <b>Respondent</b> within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.</p>
Secure Erasure of Hard Disk Capability	<p>All equipment provided to <b>Agency</b> by <b>Respondent</b> that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.</p>

Recommended Clause	Sample Text  (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
<b>Severability</b>	<p>If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.</p> <p>Or</p> <p>If any provision of the contract is construed to be illegal, invalid or unenforceable, such construction will not affect the legality, validity or enforceability of any of its other provisions. It is the intent and agreement of the parties to this contract that that this contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this contract will continue in full force and effect.</p>
<b>Sovereign Immunity</b>	<p>The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the <b>Agency</b> or the State of Texas of any immunities from suit or from liability that the <b>Agency</b> or the State of Texas may have by operation of law.</p> <p>Or</p> <p>Nothing in the contract shall be construed as a waiver of the <b>Agency's</b> 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 <b>Agency</b> 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 <b>Agency</b> or the State of Texas under the 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. <b>Agency</b> does not waive any privileges, rights, defenses, or immunities available to <b>Agency</b> by entering into the contract or by its conduct prior to or subsequent to entering into the contract.</p>
<b>Subcontractors</b>	<p><b>Respondent</b> may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the <b>Agency</b>. Subcontracts, if any, entered into by the <b>Respondent</b> shall be in writing and be subject to the requirements of the contract. Should <b>Respondent</b> subcontract any of the services required in the contract, <b>Respondent</b> expressly understands and acknowledges that in entering into such subcontract(s), <b>Agency</b> is in no manner liable to any subcontractor(s) of <b>Respondent</b>. In no event shall this provision relieve <b>Respondent</b> of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.</p>
<b>Survival</b>	<p>Expiration or termination of the contract for any reason does not release <b>Respondent</b> 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.</p>
<b>Taxes</b>	<p>Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. <b>Agency</b> will furnish Tax Exemption Certificates upon request. <b>Respondent</b> represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of <b>Respondent</b> or its employees. <b>Agency</b> shall not be liable for any taxes resulting from the contract.</p>
<b>Termination for Convenience</b>	<p><b>Agency</b> reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if <b>Agency</b> determines that such termination is in the best interest of the state. In the event of such a termination, <b>Respondent</b> must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. <b>Agency</b> shall be liable for payments limited only to the portion of work <b>Agency</b> authorized in writing and which <b>Respondent</b> has completed, delivered to <b>Agency</b>, and which has been accepted by <b>Agency</b>. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. <b>Agency</b> shall have no other liability, including no liability for any costs associated with the termination.</p> <p>Or</p> <p><b>Agency</b> may terminate the contract for convenience on thirty (30) calendar days' written notice. There is no buy out or other amounts due if <b>Agency</b> terminates early. Upon termination under this provision, <b>Respondent</b> shall refund to <b>Agency</b> any amounts attributable to the terminated months within thirty (30) days of the termination.</p>

Recommended Clause	Sample Text  (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
<p><b>Trademark License</b></p>	<p><b>Agency</b> hereby grants to <b>Respondent</b>, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce <b>Agency</b>'s trademarks (as depicted in Exhibit ___) on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following:</p> <ol style="list-style-type: none"> <li>(1) <b>Respondent</b> is in compliance with all provisions of the contract;</li> <li>(2) <b>Respondent</b>'s use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit __ or as otherwise communicated by <b>Agency</b>;</li> <li>(3) <b>Respondent</b> takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose <b>Agency</b>'s right, title and interest in the trademarks or their validity;</li> <li>(4) <b>Respondent</b> makes no attempt to sublicense any rights under this trademark license; and</li> <li>(5) <b>Respondent</b> complies with any marking requests <b>Agency</b> may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the symbol "™", the registered trademark symbol "®", and/or any equivalent thereof.</li> </ol>
<p><b>Trademark Ownership</b></p>	<p><b>Respondent</b> hereby acknowledges and agrees that the trademarks remain the exclusive property of <b>Agency</b>, that all right, title and interest in and to the trademarks is exclusively held by <b>Agency</b>, and all goodwill associated with such trademarks inures solely to <b>Agency</b>.</p>
<p><b>Unfair Business Practices</b></p>	<p><b>Respondent</b> represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that <b>Respondent</b> has not been found to be liable for such practices in such proceedings. <b>Respondent</b> certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.</p>
<p><b>Use of State Property</b></p>	<p><b>Respondent</b> is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, <b>Agency</b>'s office space, identification badges, <b>Agency</b> information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any <b>Agency</b>-issued software, and the <b>Agency</b> Virtual Private Network (VPN client)), and any other resources of <b>Agency</b>. <b>Respondent</b> shall not remove State Property from the continental United States. In addition, <b>Respondent</b> may not use any computing device to access <b>Agency</b>'s network or e-mail while outside of the continental United States. <b>Respondent</b> shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of <b>Respondent</b>, <b>Respondent</b> shall be responsible for (i) all repair and replacement charges incurred by <b>Agency</b> that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to <b>Respondent</b>'s use of State Property that exceeds the contract scope. <b>Respondent</b> shall fully reimburse such charges to <b>Agency</b> within ten (10) calendar days of <b>Respondent</b>'s receipt of <b>Agency</b>'s notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to <b>Agency</b> under contract, at law, or in equity.</p>