

APPENDIX 22

Texas Required Contract Clauses

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In accordance with Section 2262.051(d)(1) of the Texas Government Code, this document identifies the model contract clauses for the essential provisions that an agency must include in a contract to protect the interests of the State. Except as otherwise specifically noted as an “EXCEPTION” in this document, the Texas Required Contract Clauses are required to be included in both solicitations and contracts.

The wording of the Texas Required Contract Clauses must substantially conform to the Standard Text or Alternate Text. For instance, it is an acceptable practice to remove the reference to the solicitation for the clause appearing in a contract. Also, the following terms may 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

General guidance is provided along with examples of supplemental text that routinely accompany the required clause. Any additional text included by the agency must not conflict with or weaken a Texas Required Contract Clause. It is recommended that public procurement professionals seek assistance from agency legal counsel prior to modifying the Standard Text or Alternate Text as slight variations may result in the agency’s non-compliance with applicable statutes and rules.

Note: The Essential Provisions which must be included in every contract are comprised of (1) the terms necessary for the formation of a legally binding contract and (2) the Texas Required Contract Terms. For a discussion of the terms necessary for the formation of a legally binding contract, refer to the *Texas Procurement and Contract Management Guide*.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Antitrust Affirmation	The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response , neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response , neither I nor any representative of the Respondent have violated any federal antitrust law; and (3) neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent .	Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent , or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent .	TEX. GOVT. CODE § 2155.005	As directed by Section 2155.005(b) of the Texas Government Code, the OAG prepared the Antitrust Certification which is published at www.oag.texas.gov . The OAG is charged with investigating and prosecuting violations of the Texas Free Enterprise & Antitrust Act and the federal antitrust statutes which prohibit anti-competitive conduct. Supplemental text to the required clause may include the following: Respondent assigns to the Agency all of Respondent ’s rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with this Solicitation or any resulting contract.

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<p>Buy Texas Affirmation</p>	<p>In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.</p>	<p>Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, relating to use of service contracts and the purchase of products and materials produced in the State of Texas.</p> <p>Or</p> <p>Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.</p>	<p>TEX GOVT CODE § 2155.4441</p>	<p>EXCEPTION: On a case-by-case basis, and with the advice of legal counsel, the preface "to the extent applicable" may be added to the clause in contracts when circumstances indicate that Section 2155.4441 of the Texas Government Code does not apply to the transaction, for example to contracts that are solely for goods</p>
<p>Child Support Obligation Affirmation</p>	<p>Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate..</p>	<p>Under Section 231.006(d) of the Texas Family Code, regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code, must include in the Response the names and social security numbers of each person with at least 25% ownership of the business entity submitting the Response.</p> <p>Or</p> <p>Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.</p>	<p>TEX FAM CODE §§ 231.006, 231.302</p>	<p>Section 231.006(d) of the Texas Family Code mandates the use of statutorily specified text.</p> <p>Section 231.006(a) of the Texas Family Code provides that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to: (1) receive payments from state funds under a contract to provide property, materials, or services; or (2) receive a state-funded grant or loan.</p> <p>In situations where Responses are submitted to the agency via unencrypted email, Responses should only contain last four digits of the SSN in order to comply with the sensitive personal information acquisition requirements of Section 2054.1125 of the Texas Government Code. If the event a Respondent is subject to Section 231.006 of the Texas Family Code, the agency in accordance with its information security protocol should request the Respondent to submit the complete social security number via separate, secure transmission prior to conducting the evaluation.</p> <p>Supplemental text to the required clause may include the following: FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The Social Security number will be used to</p>

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				<p>identify persons that may owe child support and will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code.</p>
<p>Computer Equipment Recycling Program</p>	<p>Respondent certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.</p>	<p>If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.</p>	<p>TEX HEALTH & SAFETY CODE § 361.965(c) 1 TAC §217.10 30 TAC §§328.131-155</p>	<p>EXCEPTION: Clause only applies to solicitations and contracts for the purchase or lease of computer equipment, which is defined in Section 361.962(2) of the Texas Health and Safety Code as “a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.”</p> <p>Section 361.965(c) of the Texas Health and Safety Code states the following: (c) A state agency that purchases or leases computer equipment shall require each prospective bidder to certify the bidder's compliance with this subchapter. Failure to provide that certification renders the prospective bidder ineligible to participate in the bidding.</p>
<p>Dealings with Public Servants Affirmation</p>	<p>Respondent 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 Response.</p>	<p>Pursuant to Section 2155.003 of the Texas Government Code, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.</p>	<p>TEX GOVT CODE §§ 572.051(a)(1), 2155.003 34 TAC § 20.157</p>	<p>Employees of agencies that perform purchasing functions under the delegated authority of SPD shall adhere to the same ethical standards as CPA employees, and shall avoid all conflicts of interest in their purchasing activities. The Texas Ethics Commission administrators and enforces Section 2155.003 of the Texas Government Code and has adopted rules at 1 TAC §§ 45.1, 45.3, 45.7.</p>
<p>Debts and Delinquencies Affirmation</p>	<p>Respondent agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.</p>	<p>Respondent agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support. Or Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the contract may be applied toward any debt Respondent</p>	<p>TEX GOVT CODE § 2252.903</p>	

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Disaster Recovery Plan	<p>In accordance with 13 TAC § 6.94(a)(9), Respondent shall provide to Agency the descriptions of its business continuity and disaster recovery plans.</p>	<p>owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency.</p> <p>Upon request of Agency, Respondent shall provide the descriptions of its business continuity and disaster recovery plans.</p> <p>Or</p> <p>Upon request of Agency, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.</p>	<p>TEX GOVT CODE § 441.190</p> <p>13 TAC § 6.94(a)(9)</p>	<p>EXCEPTION: Clause is recommended for all contracts but is an Essential Clause for solicitations and contracts with vendors that have custody of vital state records.</p> <p>13 TAC § 6.94(a)(9) states that each state agency must require all third-party custodians of records to provide the state agency with descriptions of their business continuity and/or disaster recovery plans as regards to the protection of the state agency's vital state records.</p> <p>The term "vital state record" is defined in Section 441.180(13) of the Texas Government Code to mean any state record necessary to:</p> <p>(A) the resumption or continuation of state agency operations in an emergency or disaster;</p> <p>(B) the re-creation of the legal and financial status of the agency; or</p> <p>(C) the protection and fulfillment of obligations to the people of the state.</p> <p>Supplemental text to the required clause may provide additional details regarding the required business continuity and disaster recovery plans (e.g., title and date of plan).</p>
Disclosure of Prior State Employment	<p>In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.</p>		<p>TEX GOVT CODE § 2254.033</p>	<p>EXCEPTION: Clause only applies to solicitations and contracts for consulting services under Chapter 2254 of the Texas Government Code.</p> <p>Section 2254.034 of the Texas Government Code states the following:</p> <p>(a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.</p> <p>(b) A contract entered into with a private consultant who did not comply with Section 2254.033 is void.</p> <p>(c) If a contract is void under this section:</p> <p>(1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and</p>

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<p>Dispute Resolution (General)</p>	<p>The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.</p>	<p>Disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.</p> <p style="text-align: center;">Or</p> <p>The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract. If the Contractor's claim for breach of Contract cannot be resolved informally with the Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.</p> <p>The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the OAG if the parties are unable to resolve their disputes as described above.</p> <p>Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the Agency, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.</p>	<p>TEX GOVT CODE § 2260.004</p>	<p>(2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.</p> <p>(d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.</p> <p>EXCEPTION: See "Dispute Resolution (Engineering, Architectural, or Construction Services)"</p> <p>Section 2260.004 of the Texas Government Code states the following:</p> <p>(a) Each unit of state government that enters into a contract to which this chapter applies shall include as a term of the contract a provision stating that the dispute resolution process used by the unit of state government under this chapter must be used to attempt to resolve a dispute arising under the contract.</p> <p>(b) The attorney general shall provide assistance to a unit of state government in developing the contract provision required by this section.</p> <p>Supplemental text to the required clause may include specific details of the agency's dispute resolution process adopted by rule.</p>

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<p>Dispute Resolution (Engineering, Architectural, or Construction Services)</p>	<p>Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).</p> <p>(a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Respondent's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Respondent may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against the Respondent as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Respondent must provide written notice to Agency of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Respondent seeks as damages; and (3) the legal theory of recovery.</p> <p>(b) The chief administrative officer, or if designated in the contract, another officer of the Agency, shall examine the claim and any counterclaim and negotiate with the Respondent in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.</p> <p>(c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this contract as to the parts of the claim that are not resolved.</p>		<p>TEX. CIV. PRAC. & REM. CODE CH 144</p>	<p>EXCEPTION: Clause only applies to solicitations and contracts for engineering, architectural, or construction services.</p> <p>Under Chapter 114 of the Texas Civil Practices and Remedies Code, a claim for breach of a contract for engineering, architectural, or construction services or for materials related to those services, in which the amount of controversy is not less than \$250,000 can be brought directly in district court without exhausting the administrative requirements of Chapter 2260 of the Texas Government Code. Consult with legal counsel regarding applicability of this clause.</p>

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<p>(d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with Agency, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Agency if the parties are unable to resolve their disputes as described in this section.</p> <p>(e) Nothing in the contract shall be construed as a waiver of the state's or the Agency'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 State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to 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. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into this contract or by its conduct, or by the conduct of any representative of Agency, prior to or subsequent to entering into this contract.</p> <p>(f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Respondent:</p> <ol style="list-style-type: none"> (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Govt. Code. 	<p>In accordance with Section 2270.002 of the Texas Government Code, Respondent hereby represents and warrants that it does not, and shall not for the duration of the contract, boycott Israel as the term is defined by 808.001(1) of the Texas Government Code.</p>	<p>TEX GOVT CODE § 2270.002</p>	<p>Section 2270.002 of the Texas Government Code states the following: A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and</p>	
<p>Entities that Boycott Israel</p>	<p>Respondent represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Respondent does not boycott Israel and will not boycott Israel during the term of the contract.</p>			

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<p>E-Verify Program</p>	<p>Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:</p> <ol style="list-style-type: none"> all persons employed by Respondent to perform duties within Texas; and all persons, including subcontractors, assigned by Respondent to perform work pursuant the contract within the United States of America. 	<p>Respondent, certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:</p> <ol style="list-style-type: none"> all persons employed to perform duties within Texas, during the term of the contract; and all persons, including subcontractors, assigned by Respondent to perform work pursuant the contract within the United States of America. 	<p>Executive Order No. RP-80 Tex. Att'y Gen. Op. No. KP-70 (2016)</p>	<p>(2) will not boycott Israel during the term of the contract.</p> <p>EXCEPTION: Clause only applies to solicitations and contracts for services from agencies that are under the direction of the Governor.</p> <p>EXCEPTION: On a case-by-case basis, and in consultation with legal counsel, the preface "to the extent not prohibited by federal law or regulation" may be added to the clause in contracts when circumstances indicate that strict compliance with the required clause is inconsistent with current federal law or regulation.</p> <p>Supplemental text to the required clause may include the following:</p> <p>If it is determined that Respondent has violated the certifications set forth in this Section, then (1) Respondent shall be in breach of contract, (2) Agency shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to Agency under the contract, Respondent shall be responsible for all costs incurred by Agency to obtain substitute services to replace the terminated contract.</p>
<p>Excess Obligations Prohibited</p>	<p>The contract is subject to termination or cancellation, without penalty to Agency, either in whole or in part, subject to the availability of state funds.</p>	<p>Any contract resulting from this Solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.</p> <p>Or</p> <p>Respondent understands that all obligations of Agency under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by Agency.</p> <p>Or</p> <p>The contract shall not be construed as creating a debt on behalf of Agency in violation of Article III, Section 49a of the Texas Constitution. Respondent understands that all obligations of Agency under the contract are subject to the availability of state funds.</p> <p>Or</p> <p>The contract is subject to termination or cancellation, without penalty to Agency, either in whole or in part, subject to the availability of state funds. Agency is a state</p>	<p>TEX CONST Art III § 49a</p> <p>TEX CONST Art VIII § 6</p> <p>General Appropriations Act, Art IX, § 6.03 (2017-2018 Biennium)</p>	<p>EXCEPTION: Clause is recommended for every contract but constitutes an Essential Clause for any contract with a term that crosses the biennium.</p> <p>The Texas Constitution and the General Appropriations Act prohibit an agency from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. Therefore, any installment purchase, lease, or any other type of purchase which incurs an obligation beyond the current appropriations is strictly prohibited, unless such obligation is expressly conditioned upon continued legislative appropriation. For information regarding the one exception to the prohibition against incurring excess obligations, refer to the "Termination for Non-Appropriations, Excess Obligations Prohibited" Section of the Guide.</p>

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		<p>agency whose authority and appropriations are subject to actions of the Texas Legislature. If Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either Agency's or Respondent's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, Agency will not be liable to Respondent for any damages, that are caused or associated with such termination, or cancellation, and Agency will not be required to give prior notice.</p>		<p>Penalty for Requisitioning Officer or Employee. If General Appropriations Act, Article IX, Section 6.03 (2017-2018 Biennium) is violated, the State Auditor shall certify the fact of the violation and the amount of the over-obligation to CPA, and CPA shall deduct an amount equivalent to the over-obligation from the salary or other compensation due to the responsible disbursing or requisitioning officer or employee, and apply the amount to the payment obligation.</p> <p>Supplemental text to the required clause may include the following to clarify the effect of the termination in advance payment situations such as software procurements:</p> <p>Termination under this Section shall not affect Agency's right to use previously paid licensed software through the term of each such license, or any maintenance or support paid prior to such termination.</p>
Excluded Parties	<p>Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.</p>	<p>Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.</p>	<p>Executive Order No. 13224</p>	<p>EXCEPTION: Clause applies as long as Executive Order No. 13224 is in effect.</p> <p>Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), was issued by President George W. Bush on September 23, 2001, as a response to the attacks on September 11, 2001.</p>
Executive Head of a State Agency Affirmation	<p>Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the Agency. Respondent must provide the following information in the Response:</p> <p>Name of Former Executive: _____</p> <p>Name of State Agency: _____</p> <p>Date of Separation from State Agency: _____</p> <p>Position with Respondent: _____</p> <p>Date of Employment with Respondent: _____</p>	<p>In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.</p> <p>Or</p> <p>Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Respondent represents that no person who served as an executive of Agency in the past four (4) years, was involved with, or has any interest in the</p>	<p>TEX GOVT CODE § 669.003</p>	<p>Section 669.003 of the Texas Government Code states the following:</p> <p>A state agency may not enter into a contract with the executive head of the state agency, with a person who at any time during the four years before the date of the contract was the executive head of the state agency, or with a person who employs a current or former executive head of a state agency affected by this section, unless the governing body:</p> <p>(1) votes, in an open meeting, to approve the contract; and</p> <p>(2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote,</p>

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		<p>contract. If Respondent employs or has used the services of a former executive of Agency, then Respondent shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent.</p>		<p>of the terms of the proposed contract.</p>
<p>False Statements</p>	<p>Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.</p>	<p>If Respondent signs the Response with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Response, Respondent will be in default under the contract and Agency may terminate or void the contract.</p> <p>Or</p> <p>The undersigned certifies that the information contained in this Response is accurate and complete.</p> <p>Or</p> <p><i>Other text that specifies that the Response was reviewed for accuracy and completeness by Respondent prior to submission to the Agency.</i></p>	<p>TEX GOVT CODE § 2155.077(a)(2)</p>	<p>EXCEPTION: Clause is recommended for every contract but constitutes an Essential Clause for solicitations.</p> <p>Under SPD's debarment rules at 34 TAC § 20.585, the director of SPD may debar a contractor for a period of no more than five years upon a finding that the contractor committed fraud in the procurement or performance of the contract, including the submission of falsified documents by the contractor or any person under the direction or control of the contractor.</p>
<p>Financial Participation Prohibited Affirmation</p>	<p>Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.</p>	<p>Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from Agency to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.</p>	<p>TEX GOVT CODE § 2155.004</p>	<p>Section 2155.004(b) of the Texas Government Code mandates the use of statutorily specified text.</p> <p>Supplemental text to the required clause may include the following:</p> <p>This Section does not prohibit a Respondent or contract participant from providing free technical assistance.</p>
<p>Foreign Terrorist Organizations</p>	<p>Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.</p>	<p>Section 2252.152 of the Texas Government Code prohibits Agency from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Respondent certifies that it not ineligible to receive the contract.</p> <p>Or</p> <p>In accordance with Texas Government Code, Chapter 2252, Subchapter F, Respondent hereby represents and warrants that it is not a company identified on the lists prepared and maintained under Texas Government</p>	<p>TEX GOVT CODE § 2252.152</p>	<p>Section 2252.152 (Contracts With Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization Prohibited) of the Texas Government Code states the following:</p> <p>A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.</p> <p>In accordance with Section 2252.153 of the Texas Government Code, CPA has posted on its website a list of companies known to have contracts with or</p>

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
		<p>Code §§ 806.051 (companies with business operations in Sudan), 807.051 (companies with business operations in Iran), or 2252.153 (companies known to have contracts with or provide supplies or services to a foreign terrorist organization). Notwithstanding the foregoing, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or to a foreign terrorist organization, is not subject to contract prohibition under this clause. A company claiming such exemption must submit the official copy of the declaration.</p>		<p>provide supplies or services to a foreign terrorist organization.</p>
<p>Former Agency Employees</p>	<p>Respondent 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 the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.</p>	<p>In accordance with Section 2252.901 of the Texas Government Code, Respondent 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 the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.</p> <p style="text-align: center;">Or</p> <p style="text-align: center;"><i>For professional services procurements</i></p> <p>In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that for professional services contracts as described by Chapter 2254 of the Texas Government Code, if a former employee of the Agency was employed by Respondent within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Respondent that the employee worked on while employed by the Agency.</p>	<p>TEX GOVT CODE § 2252.901</p>	<p>EXCEPTION: Clause only applies to solicitations and contracts that are employment contracts or professional services and consulting services contracts under Chapter 2254 of the Texas Government Code, if appropriated money will be used to make payments under the contract. Section 2252.901(a) of the Texas Government Code provides narrow exception to the prohibition with regards to the professional services contracts.</p> <p>Section 2252.901(a) of the Texas Government Code states the following: A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.</p>
<p>Governing Law and</p>	<p>The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of</p>		<p>TEX GOVT CODE § 2155.077</p>	

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Venue	<p>any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.</p>			
Indemnification (General)	<p>RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT 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 RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.</p>		<p>TEX CONST Art VIII § 6</p> <p>TEX GOVT CODE § 2254.0031</p>	<p>EXCEPTION: See "Indemnification (Engineering or Architectural Services)"</p> <p>NOTE: Depending on the transaction, the parties may also negotiate an additional indemnification clause to specifically address intellectual property. See "Indemnification (IP)."</p> <p>Vendor created liability under a contract may pose a financial risk to the State in violation of the prohibition against Excess Obligations.</p> <p>Legal counsel should be sought prior to the agency agreeing to a mutual indemnification or indemnification of another entity as such an obligation may constitute a "debt" in violation of law. <i>See</i> Tex. Atty Gen. Op. No. MW-475 (1982).</p> <p>A statute may expressly authorize the state's indemnification of another entity. <i>See</i> TEX GOVT CODE § 808.003.</p> <p>Supplemental text to the required clause may include the following: THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE RESPONDENT TO INDEMNIFY OR HOLD HARMLESS THE STATE OR AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENCE ACTS OR OMISSIONS OF AGENCY OR ITS EMPLOYEES.</p> <p>For the avoidance of doubt, Agency shall not indemnify Respondent or any other entity under the contract.</p>
Indemnification (Engineering or Architectural Services)	<p>RESPONDENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS,</p>		<p>TEX GOVT CODE § 2254.0031</p> <p>TEX LOCAL GOVT CODE § 271.904(a)-(e) and (g).</p>	<p>EXCEPTION: Clause only applies to solicitations and contracts involving architectural or engineering services.</p> <p>Section 2254.0031 of the Texas Government Code states the following: (a) A state governmental entity may require a contractor selected under this subchapter to</p>

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
	<p>ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO RESPONDENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO RESPONDENT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM</p>			<p>indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify, hold harmless, or defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.</p> <p>(b) Notwithstanding any other provision of law, Sections 271.904(a)-(e) and (g), Local Government Code, apply to a contract for architectural or engineering services between an architect or engineer selected under this subchapter and a state agency as defined by Section 2052.101.</p> <p>Sections (a)-(e) and (g) of the Texas Local Government Code states, among other things, that indemnifications provisions in contracts for architectural or engineering services are void and unenforceable unless limited to specific acts provided for within the statute.</p>
Indemnification (IP)	<p>RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) AGENCY'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF</p>		TEX CONST Art VIII § 6	<p>EXCEPTION: Clause only applies to solicitations and contracts involving intellectual property matters. The IP Indemnification clause is used in addition to a general indemnification clause. Legal counsel should be consulted regarding use of an IP Indemnification clause.</p>

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
	<p>ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY RESPONDENT OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.</p>			
No Conflicts of Interest	<p>Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.</p>	<p>Respondent has disclosed in writing to Agency all existing or potential conflicts of interest relative to the performance of the contract.</p>	<p>TEX GOVT CODE §§ 2252.908, 2254.032, 2261.252(b)</p>	<p>Guidance relating to a former state employee's provision of subcontracting services is discussed in Ethics Advisory Opinion No. 545 (2017). Information obtained from the following sources may indicate an actual or potential conflict of interest:</p> <ul style="list-style-type: none"> • Certificate of Interested Parties required by Section 2252.908 of the Texas Government Code. • Employee disclosure statement required by Section 2254.032 of the Texas Government Code.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
				<ul style="list-style-type: none"> Employee disclosure statement required by Section 2261.252 of the Texas Government Code. Purchasing personnel disclosure statement required by 2262.004 of the Texas Government Code. <p>Supplemental text to the required clause may include the following: If circumstances change during the course of the contract, Respondent shall promptly notify Agency.</p>
Prior Disaster Relief Contract Violation	<p>Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response 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.</p>	<p>Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response 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.</p>	<p>TEX GOVT CODE §§ 2155.006, 2261.053</p>	<p>Sections 2155.006 and 2261.053 of the Texas Government Code mandate the use of statutorily specified text.</p>
Public Information Act	<p>Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.</p>	<p>Respondent understands that Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.</p>	<p>TEX GOVT CODE Chapter 552 TEX GOVT CODE § 2252.907</p>	<p>Supplemental text to the required clause may include the following: Specific formats acceptable to the Agency include Word, Excel, and pdf. Supplemental text to the required clause may include details of the agency's protocol for labeling confidential information and procedures for receipt and handling of public information requests.</p>

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Signature Authority	By submitting the Response , Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response .	The undersigned certifies that I am duly authorized to submit this Response and execute a contract on my own behalf or on behalf of the Respondent listed below. Or <i>Other text that specifies that the Respondent signatory is authorized to act on behalf of the Respondent in submitting the Response or executing the contract.</i>	TEX GOVT CODE § 2155.0012	This clause ensures only individuals that are legally empowered to contractually bind the Respondent execute the contract and related documents on behalf of the Respondent.
Standard of Care for Architectural and Engineering Contractors	Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Respondent shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.		TEX GOVT CODE § 2254.0031 TEX LOCAL GOVT CODE § 271.904(a)-(e) and (g)	EXCEPTION: Clause only applies to solicitations and contracts involving architectural or engineering services. Section 2254.0031 of the Texas Government Code incorporates Sections 271.904(e)-(g) of the Texas Local Government Code for all contracts for architectural/engineering services. Section 271.904(d) of the Texas Local Government Code states the following: A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services: (1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Likewise, Section 271.904 of the Texas Local Government Code states that a provision establishing a different standard of care than a standard described by Subsection (d) is void and unenforceable.
State Auditor's Right to Audit	The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the	Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Respondent or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative	TEX GOVT CODE § 2262.154	Supplemental text to the required clause may include the following: The contract may be amended unilaterally by Agency to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
	<p>legislative audit committee, an entity that is the 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.</p>	<p>audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the 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. Respondent shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.</p>		
<p>Suspension and Debarment</p>	<p>Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the <i>State of Texas Debarred Vendor List</i> maintained by the Texas Comptroller of Public Accounts and the <i>System for Award Management (SAM)</i> maintained by the General Services Administration.</p>	<p>Respondent certifies that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity. Entities ineligible for federal procurement are listed at http://www.sam.gov.</p> <p>Or</p> <p>Respondent certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the contract by any state or federal agency.</p>	<p>TEX GOVT CODE § 2155.077</p>	
<p>Technology Access Clause</p>	<p>Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to Agency that the technology provided to Agency for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:</p> <ul style="list-style-type: none"> • providing equivalent access for effective use by both visual and non-visual means; • presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and • being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. <p>For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology</p>		<p>TEX GOVT CODE § 2157.005</p>	<p>EXCEPTION: This clause only applies to contracts for Automated Information Systems entered into before September 1, 2006.</p> <p>In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.</p> <p>This clause would be applicable to current agreements involving long term software licenses (e.g., perpetual term) and equipment leases that were effective prior to September 1, 2006.</p>

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
	<p>or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.</p> <p>In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.</p>			
Television Equipment Recycling Program	<p>Respondent certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.</p>	<p>If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.</p>	<p>TEX HEALTH & SAFETY CODE § 361.991(c)</p>	<p>EXCEPTION: Clause only applies to solicitations and contracts for the purchase or lease of covered television equipment as defined by Section 361.91(3) of the Texas Health and Safety Code.</p> <p>Section 361.991(c) of the Texas Health and Safety Code states the following:</p> <p>(c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid.</p> <p>Section 361.91(3) of the Texas Health and Safety Code defines "covered television equipment" to mean the following equipment marketed to and intended for consumers:</p> <p>(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or</p> <p>(B) a display device that is peripheral to a computer that contains a television tuner.</p>

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
<p>Terms and Conditions Attached to Response</p>	<p>Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.</p>		<p>TEX GOVT CODE § 2155.0012</p>	<p>EXCEPTION: Clause does not apply to contracts but is an Essential Clause for solicitations.</p> <p>This clause ensures that Responses received by the agency are complete prior to the closing date of the solicitation.</p>
<p>Texas Bidder Affirmation</p>	<p>Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.</p>		<p>TEX GOVT CODE § 2155.444(c)</p>	<p>EXCEPTION: Clause does not apply to contracts but is an Essential Clause for solicitations.</p> <p>As defined by TEX GOVT CODE § 2155.444(c), the term "Texas bidder" means a business: (1) incorporated in this state; (2) that has its principal place of business in this state; or (3) that has an established physical presence in this state.</p>

APPENDIX 23

Recommended Contract Clauses

APPENDIX 23

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 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
Agency’s Right to Audit	(It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Americans With Disabilities Act	Respondent 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 Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.
Assignment	Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended. Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.
Or	

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.)
Binding Effect	<p>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 Agency, 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.</p> <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>
Change in Law and Compliance with Laws	<p style="text-align: center;">Or</p> <p>The contract shall be binding upon and shall inure to the benefit of Agency and Respondent and to their representatives, successors and assigns.</p> <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 style="text-align: center;">Or</p> <p>Respondent 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. Agency 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 Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.</p>
Contract Term	<p>The initial term of the contract shall be for one (1) year from [Insert Date] to [Insert Date]. Agency 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, Agency will notify Respondent; such notice may be by Purchase Order issuance.</p>
Damage to Government Property	<p>Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the Agency in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.</p> <p style="text-align: center;">Or</p> <p>In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of Agency's notice of amount due.</p>
Disclosure of Interested Parties	<p>Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to Agency a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.</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.)
Discounts	<p>If Respondent at any time during the term of the contract provides a discount on the final contract costs, Respondent will notify Agency in writing ten (10) calendar days prior to effective date of discount. Agency will generate a Purchase Order Change Notice and send a revised Purchase Order to Respondent.</p> <p>Or</p> <p>Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Respondent to Agency herein are at least as favorable as the benefits, pricing and hourly rates granted by Respondent to any previous client of Respondent for services and/or products similar to those provided hereunder. If Respondent 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, Respondent shall notify Agency promptly of the existence of such more favorable benefits, pricing and/or hourly rates and Agency shall have the right to receive the more favorable contractual terms immediately. If requested in writing by Agency, Respondent hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.</p>
Drug-Free Workplace	<p>Respondent 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>
Electrical Items	<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>
Equal Employment Opportunity	<p>Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.</p>
Federal Occupational Safety and Health Law	<p>Respondent 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).</p>
Force Majeure	<p>Neither Respondent nor Agency 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.</p>
Immigration	<p>Respondent 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.</p>
Independent Contractor	<p>Respondent acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Respondent and its personnel are not employees of the Agency or the State of Texas.</p> <p>Or</p> <p>Respondent and Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Respondent nor Agency is an agent of the other and neither may make</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.)
Legal and Regulatory Actions	<p>any commitments on the other party's behalf. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Respondent shall have no claim against Agency 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 Respondent and Agency.</p> <p>Respondent 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 Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Agency 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 Agency shall constitute breach of contract and may result in immediate termination of the contract.</p>
License Grant (Simple)	<p>Respondent hereby grants to Agency 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 Respondent; and (b) to sublicense any or all such rights to third parties.</p>
Limitation on Authority	<p>Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expenses, or liability of any kind on behalf of Agency or the State of Texas.</p>
Lobbying Prohibition	<p>Respondent represents and warrants that Agency's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.</p>
Media Releases	<p>Respondent shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.</p>
No Felony Criminal Convictions	<p>Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency of the facts and circumstances surrounding the convictions.</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.)
No Implied Waiver	<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 Agency as an agency of the State of Texas or otherwise available to Agency. 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 Agency by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.</p>
No Quantity Guarantees	<p>Agency 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 Respondent. Agency may obtain products and related services from other sources during the term of the contract. Agency 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>
No Third-Party Beneficiaries	<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>
Permits, Certifications, and Licenses	<p>Respondent 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>
Prompt Payment	<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 Respondent by Agency, any payments by Respondent 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
<p>Property Rights</p>	<p>(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> <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. Agency and Respondent 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 Respondent to be a work made for hire. Respondent and Respondent’s 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 Agency. Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Agency. If for any reason the Work would not be considered a work-for-hire under applicable law, Respondent does hereby sell, assign, and transfer to Agency, 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. Respondent agrees to execute all papers and to perform such other property rights, as Agency may deem necessary to secure for Agency or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work that cannot be assigned to Agency, Respondent hereby grants to Agency 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 Agency’s request, Respondent shall deliver to Agency 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. Respondent 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 Agency.</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 Agency in connection with, or as a result of, the services provided under the contract. Agency and Respondent 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 Respondent shall be a work-made-for-hire. Respondent and Respondent’s employees will have no rights in or ownership of the Work Product or any other property of Agency. Respondent 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 Agency. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, Respondent does hereby irrevocably sell, assign, and transfer to Agency, 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. Respondent agrees to execute all papers and to perform such other property rights, as Agency may deem necessary to secure for Agency or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work Product that cannot be assigned to Agency, Respondent hereby grants to Agency an exclusive,</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>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 Agency's request, Respondent shall deliver to Agency 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. Respondent 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 Agency.</p>
Records Retention	<p>Respondent 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 Respondent 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>
Refund	<p>Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.</p>
Restricted Employment for Certain State Personnel	<p>Pursuant to Section 572.069 of the Texas Government Code, Respondent 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 Agency involving Respondent 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 Agency by Respondent 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>
Severability	<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 style="text-align: center;">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>
Sovereign Immunity	<p>The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law.</p> <p style="text-align: center;">Or</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>Nothing in the contract shall be construed as a waiver of the Agency'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 Agency 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 Agency 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. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into the contract or by its conduct prior to or subsequent to entering into the contract.</p>
Subcontractors	<p>Respondent may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Respondent shall be in writing and be subject to the requirements of the contract. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.</p>
Survival	<p>Expiration or termination of the contract for any reason does not release Respondent 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>
Taxes	<p>Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Respondent 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 Respondent or its employees. Agency shall not be liable for any taxes resulting from the contract.</p>
Termination for Convenience	<p>Agency 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 Agency determines that such termination is in the best interest of the state. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall be liable for payments limited only to the portion of work Agency authorized in writing and which Respondent has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination.</p> <p style="text-align: center;">Or</p> <p>Agency may terminate the contract for convenience on thirty (30) calendar days' written notice. There is no buy out or other amounts due if Agency terminates early. Upon termination under this provision, Respondent shall refund to Agency any amounts attributable to the terminated months within thirty (30) days of the termination.</p>
Trademark License	<p>Agency hereby grants to Respondent, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce Agency'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> <p>(1) Respondent is in compliance with all provisions of the contract;</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>(2) Respondent'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 Agency;</p> <p>(3) Respondent 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 Agency's right, title and interest in the trademarks or their validity;</p> <p>(4) Respondent makes no attempt to sublicense any rights under this trademark license; and</p> <p>(5) Respondent complies with any marking requests Agency 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.</p>
<p>Trademark Ownership</p> <p>Unfair Business Practices</p>	<p>Respondent hereby acknowledges and agrees that the trademarks remain the exclusive property of Agency, that all right, title and interest in and to the trademarks is exclusively held by Agency, and all goodwill associated with such trademarks inures solely to Agency.</p> <p>Respondent 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 Respondent has not been found to be liable for such practices in such proceedings. Respondent 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>Use of State Property</p>	<p>Respondent 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, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access Agency's network or e-mail while outside of the continental United States. Respondent 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 Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent's use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to Agency within ten (10) calendar days of Respondent's receipt of Agency'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 Agency under contract, at law, or in equity.</p>
<p>Waiver of Consequential Damages</p>	<p>NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.</p>