

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



**STATEWIDE PROCUREMENT DIVISION**

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**TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)  
TERMS AND CONDITIONS**

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SAMPLE

**STATE OF TEXAS  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) CONTRACT**

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SAMPLE

## 1. BACKGROUND

Contractor has entered into a contract with a governmental entity, which was awarded using a competitive process (the “Base Contract”). This Contract modifies the Base Contract to comply with state and federal law and incorporates it into CPA’s schedule of multiple award contracts (“TXMAS”), as authorized by Texas Government Code Chapter 2155, Subchapter I. The purpose of this Contract is to make items and pricing in the Base Contract available to customers authorized to purchase from CPA statewide contracts, including CPA.

## 2. CONTRACT DOCUMENTS

- (a) List of Documents. This Contract consists of: (1) this TXMAS Terms and Conditions document, (2) the Base Contract, (3) the latest TXMAS Offer Packet Application Checklist submitted by Contractor, (4) the Texas SmartBuy Catalog approved by CPA, and (5) the Notice of Award executed by CPA.
- (b) Base Contract. This Contract incorporates the entire Base Contract, including all documents incorporated by reference into the Base Contract. Such documents may include the solicitation, the Contractor’s response, catalogs, and price lists.
- (c) Base Contract Modifications. Modifications of the Base Contract are not automatically incorporated into this Contract. CPA may adopt such modifications in its sole discretion, and shall notify the Contractor of any modification it adopts.
- (d) Entire Agreement. This Contract is intended as a final, complete, and exclusive expression of the agreement between CPA and Contractor about the subjects it contains. There are no restrictions, promises, warranties or undertakings related to this agreement, other than those stated or referred to in this Contract.
- (e) Amendments. This Contract may be amended only by written agreement between CPA and Contractor.

## 3. INTERPRETATION OF BASE CONTRACT

- (a) Order of Precedence. To the extent there are conflicts between the Base Contract and other Contract documents, the Base Contract is superseded by the other documents.
- (b) All rights and obligations of Contractor to the awarding governmental entity under the Base Contract are obligations are owed by the Contractor to CPA under this Contract. All rights and obligations of Contractor to an entity receiving goods and services under the Base Contract are owed by the Contractor to the state of Texas, CPA, and Customers under this Contract.
- (c) If the Base Contract requires Contractor to notify the awarding governmental entity of information affecting the Base Contract, Contractor shall provide the same notices to CPA.
- (d) If the Base Contract is modified or terminated, Contractor shall notify CPA within 30 days.

## 4. CUSTOMERS

- (a) In this Contract, “Customer” is defined as any entity authorized by law or by CPA to purchase goods

and services under this Contract, or an entity that is purchasing or has purchased goods or services under this Contract.

- (b) Customers have the same rights and remedies of the state of Texas and CPA under this Contract including indemnification, as to their own purchase orders under this Contract.
- (c) Customers may not modify or waive any provision of this Contract.

## **5. TEXAS SMARTBUY CATALOG**

- (a) Contractor's Catalog. Contractor shall submit a Texas SmartBuy Catalog (the "Catalog") to CPA for upload to the Texas SmartBuy online ordering system. Contractor shall not include in the Catalog any goods or services that are not included in the Base Contract. All goods and services included in the Catalog must be verifiable using the Base Contract or Contractor's website. At its sole discretion, CPA may exclude goods and services on the Base Contract from the Catalog. CPA will provide the final Texas SmartBuy catalog upon award.
- (b) Base Price Changes. Contractor shall notify CPA of any decrease in prices offered under the Base Contract within 30 working days and offer such pricing under this Contract. If Contractor fails to notify CPA of a Base Contract price decrease, Contractor shall refund any overpayment to Customers. Contractor shall not to seek a price increase during the Contract term.
- (c) Price Negotiation. Catalog Prices are the maximum prices allowed under this Contract. A Customer may negotiate a lower price for goods and services with the Contractor.
- (d) Pricing and related information not confidential or proprietary. CPA intends to publish pricing and related information Texas SmartBuy. Contractor agrees that the information it has submitted to CPA is not confidential or proprietary. Contractor consents to the publication of Contractor's pricing and related information on Texas SmartBuy or in any other format.

## **6. PURCHASE ORDERS**

- (a) Effect. A purchase order constitutes an agreement between Contractor and a Customer. Contractor will look solely to the Customer for performance, including but not limited to, payment, and will hold CPA harmless with regard to such orders.
- (b) Customer-specified Terms and Conditions. Customers other than CPA do not have the authority to modify this Contract; however, Customers may add terms and conditions that do not conflict with this Contract and are acceptable to Contractor in a purchase order. In the event of a conflict between a purchase order and this Contract, this Contract controls. If Contractor cannot honor terms specified on a purchase order, it shall notify the Customer without delay.
- (c) Off-contract Items. Other than incidental items expressly allowed under this Contract, Contractor may not sell and Customers may not purchase goods or services under this Contract that are not included in the TXMAS Catalog for this Contract. Therefore, to the extent the Base Contract contains terms which allow additional items to be purchased such as blanket purchase agreements and contractor team arrangements, those terms are excluded from to this Contract.
- (d) Incidental Items. A Customer may purchase incidental items that are not included in the TXMAS Catalog for this Contract if they are necessary for product integration or project completeness, subject

to the following conditions. The Customer must determine that the quoted price is determined to be fair and reasonable, and the purchase represents best value to the state. The purchase must not conflict with applicable laws, rules, and regulations. Only products or services listed in the Base Contract may be purchased from this Contract. Incidental items must be clearly labeled as "Incidental." These incidental items may not exceed the lesser of \$5,000, or 50% of the total purchase order value. CPA may review incidental purchases, and may decide whether to allow them to proceed through Texas SmartBuy. If incidental purchases do not meet these requirements, the purchase order may be void.

- (i) **Online ordering.** The Texas SmartBuy system allows Customers to search for goods and services, compare prices, and place orders online. Contractor will receive SmartBuy POs at the email address it has specified. If Contractor observes any apparent irregularities or suspicious content in emails from the SmartBuy system, it shall notify CPA without delay.
- (ii) **Offline sales prohibited.** Contractor may only accept orders for items on this Contract through Texas SmartBuy. Contractor shall not accept offline orders, defined as orders placed outside the Texas SmartBuy system, from any Customer for any goods or services available on this Contract.

## 7. TEXAS SMARTBUY ADMINISTRATIVE FEE AND TXMAS SALES REBATE

- (a) Texas SmartBuy Administrative Fee. Contractor shall pay a 1.5% administrative fee to CPA on all Contract sales. If Contractor wishes to recover this fee from Customers, Contractor may charge up to 1.5228% more for goods and services under the Contract than it does under the Base Contract. Contractor must make any price adjustment permitted by this section before submitting the Texas SmartBuy Catalog to CPA.
  - (i) CPA will invoice Contractor each month for the prior month's sales. Payment is due upon receipt of the invoice.
  - (ii) The administrative fee payment should be identified as "Texas SmartBuy Admin Fee" and made payable to "**Texas Comptroller of Public Accounts.**" Contractor may remit payment by check to: Texas Comptroller of Public Accounts, Attn: Texas SmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.
  - (iii) The Texas SmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the Texas SmartBuy administrative fee.
  - (iv) TXMAS Sales rebate. Contractor shall pay a rebate of 0.73875% of sales under the Contract. CPA will invoice Contractor each calendar quarter for the previous quarter's sales. Payment is due upon receipt of the invoice. The sales rebate payment should be identified as "TXMAS Sales Rebate" and made payable to "**Texas Comptroller of Public Accounts.**" Contractor may mail its check payment to: Texas Comptroller of Public Accounts, TXMAS Sales Rebate, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.
- (b) Warrant hold for unpaid fees or rebates. Texas Government Code § 403.055 generally prohibits the state treasury from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor's debt.

## 8. MISCELLANEOUS TXMAS PROGRAM REQUIREMENTS

- (a) New Items. Contractor shall only supply new (unused) goods and replacement parts.
- (b) Statewide Coverage. Contractor shall serve all Customers and all locations throughout the state of Texas.
- (c) Warranty. Contractor shall provide a warranty for goods sold under the Contract. At a minimum, the warranty period will begin on the date the equipment is accepted by the Customer, and will continue in effect for a continuous period of (i) one year from that date, or (ii) the duration of the manufacturer's standard warranty, whichever is longer. If no time or specific protocol for acceptance is specified elsewhere in the Contract or the Customer purchase order, items are presumed accepted ten working days after receipt. The warranty will apply to any warranty service or repair requested by Customer during the warranty period by contacting the Contractor's authorized warranty service provider with such request, regardless of the amount of time required to complete the requested warranty service or repair. Contractor's warranty obligations will survive the termination of this Contract.
- (d) Warranty Shipment. Contractor shall pay for shipment of goods under warranty. Contractor may not require a Customer to pay for shipping in order to obtain warranty repairs or replacement.
- (e) Risk of Loss. Contractor shall bear the risk of loss or damage of goods during shipment. Any attempt by Contractor to shift this risk without the express approval of CPA will have no effect.
- (f) Contractor Addresses. The ordering and payment addresses under this Contract are those stated in the TXMAS Offer Packet Application.
- (g) Time Zone. All references to time of day are Central Time, including times in the Base Contract that designate another time zone.
- (h) Travel. Any travel required by Contractor to perform its obligations under this Contract will be at Contractor's expense. Any additional travel shall not exceed limitations applicable to Texas employees.
- (i) Independent Contractor. In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the state of Texas, CPA, or Customers.
- (j) Subcontracts. If Contractor subcontracts any part of the performance of this Contract, the state of Texas, CPA, and Customers will have no obligation to any subcontractor. Contractor shall ensure that subcontracts are performed in compliance with this Contract.
- (k) Professional Services. This Contract specifically excludes professional services as defined by Government Code, Chapter 2254, Subchapter A. Contractor may not sell any professional services under this this Contract.
- (l) Consulting Services. This Contract specifically excludes consulting services as defined by Government Code, Chapter 2254, Subchapter B. Contractor may not sell any consulting services under this Contract.
- (m) Information Technology. CPA will work with the Texas Department of Information Resources and

Contractor to identify information technology commodity items as defined in Section 2157.068 of the Texas Government Code and exclude them from the Texas SmartBuy Catalog for this Contract. CPA lacks authority to include these items in TXMAS, and any purchases of these items through this Contract may be void.

- (n) Intellectual Property. "Work Product" 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 to be provided by Contractor. In the event that this Contract or the Base Contract is terminated for any reason, or upon the expiration of either this Contract or the Base Contract, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Base Contract through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers 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.

## 9. DEALERS

- (a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must submit the Letter of Authorization in the format provided by CPA. Contractor shall submit a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be on Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the CPA Statewide Procurement Division Director. The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and agrees to the following:
  - (i) The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract, and such agreement specifies that it is for the benefit of the state of Texas, CPA, and Customers, as well as Contractor.
  - (ii) Contractor agrees to be liable for any breach of this Contract by the dealer. Contractor shall pay all fees and rebates to CPA for sales by the dealer.
  - (iii) Customers will pay the dealer for goods and services ordered from the dealer. Customers will have no obligation to pay the Contractor for goods and services ordered from the dealer.
  - (iv) Contractor's Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that it is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer's official letterhead, signed by an authorized representative of the dealer, in a format provided by CPA, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Base Contract, it agrees to be bound by the terms and conditions of this Contract and



the Base Contract, as both may be amended from time to time, and such agreement specifically provides that it is for the benefit of the state of Texas, CPA, and Customers, as well as Contractor.

- (d) CPA may reject a Letter of Authorization that does not comply with this Contract, or that CPA chooses in its sole discretion not to approve.

## **10. UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)**

In accordance with Chapter 2161 of the Texas Government Code and 34 Texas Administrative Code (TAC) §§20.281 *et seq.*, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services and commodities contracts. Contractors are urged to utilize HUBs as defined in 2161.001 of the Texas Government Code Section or small businesses as defined in Section 2155.505(a) Texas Government Code Section to sell or provide services under the TXMAS Contract. A Contractor's failure to make a good faith effort to use HUBs and small businesses may result in exclusion of Contractor from participation in TXMAS. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

## **11. INVOICE REQUIREMENTS**

- (a) In order to request payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. The invoice must include the following:
  - (i) Name and address of Contractor as designated in this Contract.
  - (ii) Contractor's Federal Employer Identification Number (FEIN).
  - (iii) Contractor's payment address as designated in this Contract.
  - (iv) The purchase order number.
  - (v) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the goods and services.
  - (vi) If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.
- (c) If an invoice does not meet this section's requirements, Customer will send Contractor written notice to the Contractor. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.
- (d) Customer may, in its sole discretion, request additional documentation to support payment. Contractor shall respond to any such requests within five calendar days of receipt. Customer is required to make payments only upon receipt of a correct invoice, including all of the required supporting documentation.

## **12. AUDIT REQUIREMENTS**

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 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. Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

### **13. PUBLIC INFORMATION**

Information, documentation, and other material in connection with this 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, Contractor is required to make any information created or exchanged with the State pursuant to this 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.

### **14. CONFIDENTIALITY AND SECURITY**

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations. The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

### **15. RECORDS RETENTION**

Contractor 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 years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

### **16. DISCLOSURE OF INTERESTED PARTIES**

If CPA determines that Texas Government Code § 2252.908 may apply to this Contract, CPA will advise Contractor of its obligation to disclose interested parties to the Texas Ethics Commission (TEC) and CPA as specified in the statute.

Upon receiving instruction from CPA, Contractor shall submit the required disclosures to TEC by completing TEC Form 1295, Certificate of Interested Parties.

TEC Form 1295 is an online form available at TEC's website:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

Contractor shall submit the completed form online to TEC and then print the completed form that includes the Certificate Number automatically assigned by TEC. Contractor's authorized agent must sign the printed form and submit it to CPA.

### **17. INSURANCE**

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor represents and warrants that all of the required coverage will be obtained from companies that are licensed in the state of Texas, have an "A-" rating from AM Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request to a Customer or CPA.

Contractor shall insure all motor vehicles used to fulfill its duties under the Contract. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract.

If performing work in a Customer facility, Contractor shall maintain commercial general liability of at least \$1,000,000 per occurrence, employer's liability of at least \$1,000,000 per accident, and umbrella liability of at least \$1,000,000 per occurrence.

If Contractor takes possession of Customer personal property, Contractor shall maintain insurance in types and amounts sufficient to replace such property if it is destroyed.

If it has employees in the state of Texas, Contractor shall obtain worker's compensation insurance in Texas.

## **18. TAXES**

Customers may be exempt from certain taxes. Customers will furnish proof of tax exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Base Contract. Customers will not reimburse Contractor's tax liability related to this Contract.

## **19. TERM AND TERMINATION**

This Contract shall become effective when it has been signed by all parties. This Contract will expire on the later of (1) five years from the effective date, and (2) the expiration of the Base Contract. Purchase orders issued during the term of this Contract shall survive cancellation or termination of this Contract.

- (a) Termination for Convenience. CPA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice. CPA may terminate the Contract for convenience if it has low sales over time, for example.
- (b) Termination for Cause.
  - (i) If Contractor fails to perform under this Contract, or fails to comply with any of the terms or conditions of this Contract, or its conduct reflects a lack of business integrity, CPA may issue a written notice of default to Contractor and immediately terminate all or any part of this Contract. For example, sale of non-contract items, other than authorized incidental items, may be cause for termination.
  - (ii) CPA may exercise any other remedy which may be available to it under law, including seeking damages. The exercise of any remedies will not constitute a termination of this Contract. Contractor shall remain liable for all covenants and indemnities under this Contract and the Base Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by CPA to enforce any contractual remedy.
- (c) Change in Federal or State Requirements. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either CPA or Contractor cannot reasonably fulfill this Contract the parties may agree to an amendment that would allow for continuation of this

Contract. Otherwise, CPA may terminate the Contract by issuing a notice invoking this clause.

(d) Non-appropriation of Funds.

(i) CPA and Customer Obligations Contingent. All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract. Contractor acknowledges that the ability of Customers to make payments under this Contract is contingent upon the continued availability of funds. CPA and the Customers will use reasonable efforts to ensure that such funds are available.

(ii) Termination due to Non-appropriation. In the event of a reduction in funding, CPA may terminate this Contract, either in whole or in part, and a Customer may terminate a pending purchase order under this Contract, either in whole or in part.

(e) No Liability Upon Termination. If this Contract is terminated for any reason, the State of Texas, CPA, and Customers shall not be liable to Contractor for any damages arising from or related to the termination. The sole and maximum obligation of the State of Texas, CPA, and Customers shall be to pay for goods and services ordered under the Contract, performed in accordance with all requirements of this Contract and delivered and accepted prior to termination.

(f) Survival of Terms. Termination of this Contract or the Base Contract for any reason shall not release Contractor from any liability or obligation set forth in this Contract or the Base Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

(g) Lack of Contract Sales. If the Contract has a limited amount of sales over a period of 12 consecutive months, the Contract may be subject to termination in CPA's sole discretion. CPA may, upon written notice to Contractor, immediately terminate the Contract. Contractor may not submit a new TXMAS Offer Packet within 12 months from the effective date of the termination.

## **20. FORCE MAJEURE**

CPA, a Customer, or Contractor will not be responsible for failure or delays in performance under the Contract due to an act of war, order of legal authority, act of God, disaster, or other unavoidable cause not attributable to its own the fault or negligence. A party may be excused from performance for as long as such circumstances prevail and it continues to use commercially reasonable efforts to perform. Each party shall immediately notify other affected parties by telephone and confirm in writing within five calendar days that it is invoking this provision and its reasons for doing so.

## **21. VENDOR PERFORMANCE**

CPA may use vendor performance to analyze whether a vendor is eligible for a TXMAS contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract and during the entire term of the TXMAS contract. Under Section 2155.089 of the Texas Government Code, CPA or state agency Customers may review Contractor's performance under this Contract. These reviews and any resulting classification grades may be posted online.

## **22. DELIVERIES**

All deliveries for orders placed under this Contract shall be F.O.B. Destination. If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

### **23. EQUAL EMPLOYMENT OPPORTUNITY**

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

### **24. DRUG-FREE WORKPLACE ACT**

Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act.

### **25. AMERICANS WITH DISABILITIES ACT**

Contractor shall comply with the requirements of the Americans with Disabilities Act (ADA).

### **26. CIVIL RIGHTS**

Contractor shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

### **27. IMMIGRATION**

Contractor shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.).

### **28. INDEMNIFICATION**

#### **(a) ACTS OR OMISSIONS**

**CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, 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 CONTRACTOR 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 CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### **(b) Infringements**

- (i) **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
- (ii) **CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) CUSTOMER'S USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY CONTRACTOR PURSUANT TO CUSTOMER'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO CUSTOMER, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY CUSTOMER THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**
- (iii) **IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR CUSTOMER PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST CUSTOMER, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT CUSTOMER'S USE IS NON-INFRINGEMENT.**
- (c) **Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**
- (i) **CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE**

**EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.**

- (ii) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**29. REPRESENTATIONS AND CERTIFICATIONS**

- (a) Base Contract Documents. Contractor represents and certifies that the Base Contract documents submitted to CPA are genuine and complete.
- (b) Base Contract Representations and Certifications. Contractor represents and certifies that the representations and certifications it made in the Base Contract are true.
- (c) Gifts to a public servant. Contractor certifies 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 this Contract or the Base Contract.
- (d) Antitrust. Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business during the procurement process. Contractor hereby assigns to the State of Texas all of Contractor's rights, title and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.
- (e) Deceptive Trade Practices; Unfair Business Practices. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice 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. Contractor represents and warrants that it has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and further certifies that such officers have not been found to be liable for any such practices in such proceedings.
- (f) Suspension and Debarment. State of Texas Contractor certifies that it and its principals are eligible to participate in this solicitation and have not been subjected to suspension, debarment or excluded from

federal contracts for any reason by any federal, state or local government entity and the Contractor is in compliance with the state of Texas statutes and rules relating to procurement and that the Contractor does not have a designated exclusion on SAM which can be accessed at: <https://www.sam.gov/>. Contractor 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.

- (g) Child Support Obligations. Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to Section 231.006 of the Texas Government Code, must provide names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the application for inclusion in the TXMAS program. This information must be provided to CPA in writing signed by Contractor's duly authorized representative prior to execution of this Contract. By submission of this Contract signed by Contractor without submission of required identity disclosures pursuant to § 231.006(d), Texas Family Code, constitutes a certification by Contractor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Contractor.
- (h) Ineligibility due to preparation of specifications. Pursuant to Section 2155.004(a) of the Texas Government Code, Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under Section 2155.004 of Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, payment withheld, or both if this certification is inaccurate.
- (i) Debts and delinquent taxes. CPA is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, CPA will apply any payments or other amounts Contractor is otherwise owed under this Contract or related to any order resulting from this Contract toward any debt Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor must comply with all applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (j) Contracting with executive head of a state agency. In accordance with Texas Government Code Section 669.003 (relating to contracting with executive head of a state agency), by signature hereon, Contractor certifies that it (1) is not the executive head of CPA; (2) was not at any time during the past four years the executive head of CPA; and (3) does not employ a current or former executive head of a state agency. Contractor acknowledges that this Contract may be terminated at any time, and payments withheld, if this information is false.
- (k) Buy Texas. To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor 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.



- (l) Conflicts of interest. Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (m) Receipt of appropriated funds not prohibited. Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005 or 556.008, Texas Government Code.
- (n) Disaster Relief Violation. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (o) Competitively awarded contract. Contractor certifies that the Base Contract was awarded using a competitive process by a governmental entity in compliance with Section 2155.502 of the Texas Government Code.
- (p) Franchise tax. Contractor certifies that it is exempt or not delinquent in the payment of franchise taxes to the State of Texas.
- (q) Certifications apply to Customer purchase orders. Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that the all affirmations and certifications are true and correct.
- (r) Entities that Boycott Israel. If Contractor is required to make a certification pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the Contract. If Contractor does not make that certification, Contractor must inform CPA and state why the certification is not required.
- (s) Human Trafficking Prohibition. Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (t) Abortion Funding Limitation. Under Section 2155.0061 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.
- (u) Foreign Terrorist Organizations. 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.

### **30. NO DEBT AGAINST THE STATE**

This Contract does not create any debt by or on behalf of the State of Texas.

### **31. COMPLIANCE WITH LAWS**

Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to a Contractor providing goods and services to the State of Texas as these laws, regulations, requirements, and guidelines currently exist and as they are amended throughout the term of this Contract.

### **32. CYBERSECURITY TRAINING**

Contractor shall comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

### **33. COOPERATION**

Contractor shall cooperate with CPA and Customers for purposes relating to the administration of this Contract. Contractor shall cooperate with CPA's contractors, subcontractors, and third party representatives as requested by CPA.

### **34. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES**

Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from CPA.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

### **35. PUBLICITY**

Contractor shall not issue news releases, advertisements, or any other public statement about this Contract without CPA's written consent. Contractor may not send unsolicited electronic mail or facsimile transmissions to CPA or Customers for any reason.

### **36. COMMUNICATION**

Unless otherwise specified, Contractor, CPA, and Customers may communicate, send notices, or transmit documents by email to an address associated with the party and its staff identified with this Contract, or by mail or messenger to the addresses below.

(a) The mailing address for Contractor will be the address specified on Contractor's offer packet.

(b) The address for CPA is:

*for Overnight or Express Mail:*  
Texas Comptroller of Public Accounts

Statewide Procurement Division  
Attn: Statewide Contract Management  
1711 San Jacinto Blvd.  
Room 174-A (CPA mailroom, N.E. Back Door)  
Austin, TX 78701

*For Other U.S. Mail:*  
Texas Comptroller of Public Accounts  
Statewide Procurement Division  
Attn: Statewide Contract Management  
P.O. Box 13186  
Austin, TX 78711-3186

Either party may change its mailing address by written notification to the other party.

### **37. DISPUTE RESOLUTION**

Disputes under this Contract are subject to Chapter 2260 of the Texas Government Code.

The dispute resolution process provided for in Chapter 2260 and applicable CPA rules shall be used by CPA and Contractor to resolve any dispute arising under this Contract. To initiate the process, Contractor shall submit written notice to the Deputy Comptroller or their designee, and to the Director of the Statewide Procurement Division.

CPA and Contractor shall first attempt to resolve any contract dispute outside the scope of Chapter 2260 through the procedure for negotiation and mediation of contract disputes specified in CPA rules. Those rules are incorporated into this Contract.

Contractor shall continue to perform its Contract obligations during the dispute resolution process.

### **38. SOVEREIGN IMMUNITY**

CPA and Contractor expressly agree that no provision of the contract is in any way intended to constitute a waiver by CPA 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.

### **39. LIMITATION OF AUTHORITY**

Contractor shall have no authority to act for or on behalf of the State of Texas, CPA, or Customers except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas, CPA, or Customers.

### **40. LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

#### **41. HEADINGS**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

#### **42. GOVERNING LAW AND VENUE**

State of Texas 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 any suit arising under the Contract is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a state statute which directly names or otherwise identifies its applicability to CPA.

#### **43. SEVERABILITY**

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.

SAMPLE