

Attachment 1

Texas Workforce Commission (TWC) – VR Terms & Conditions (01/2024)

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

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

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

The applicability of a number of the terms and conditions below are contingent on the services and products being considered in the solicitation, contract, PO, SA, or procurement. Those terms and conditions will be noted "(As applicable to the services/products)".

1. SOLICITATION RESPONSE REQUIREMENTS (AS APPLICABLE TO THE SERVICES/PRODUCTS.)

1.1 Written Specifications: TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the solicitation.

1.2 Incomplete Responses: Late, illegible, incomplete and/or unsigned responses may be deemed non-responsive and may not be considered.

1.3 Freight: Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.

1.4 Firm Pricing: Prices submitted are expected to be firm for TWC acceptance for one hundred eighty (180) days from the solicitation deadline. "Discount from list" offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the low offer. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the term of the PO/contract.

The default Firm Pricing timeframe in this section may be superseded by specific Firm Pricing timeframes in the solicitation or in other parts of the contract.

1.5 Ties: In the case of tie bids, the award will be made pursuant to the preferences listed under 34 Texas Administrative Code (TAC) §20.306.

1.6 Preferences: In making an award, TWC shall apply the preferences listed at 34 TAC §20.306. For purchase or lease of computer equipment TWC shall apply a preference for manufacturers that have a computer recycling program as described in 1 TAC §217.11.

1.7 Bid Alteration/Withdrawal: A submitted response to a solicitation cannot be altered or amended after the solicitation deadline, except by formal negotiation via the RFO/RFP processes. Any alteration made before the solicitation deadline is to be initialed by Vendor or the Vendor's authorized agent. Vendors are not allowed to withdraw their submitted response after the solicitation deadline without approval by TWC.

1.8 Rejection of Bids: Under Texas Government Code §2156.008, TWC may reject a bid in which there is a material failure to comply with specification requirements. TWC may reject all bids or parts of bids if the rejection serves the State's best interest.

1.9 Tax Exempt: State use purchases are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.

1.10 Identify All Parties: TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the contract.

1.11 No Travel: TWC will not reimburse a Vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.

2. GENERAL CONDITIONS

2.1 Damage to Grounds and Buildings (As applicable to the

services/products): Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.

2.2 Texas Public Information Act:

2.2.1 Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (Public Information Act).

2.2.2 All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the Vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by the Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.

2.2.3 All information, documentation, and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention

Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the Vendor who submitted it during the retention period.

2.2.4 Under Texas Government Code § 2252.907, Vendor is required to make any public information created or exchanged with the State pursuant to any contract with TWC, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TWC.

2.3 Award of Contract (As applicable to the services/products):

2.3.1 Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted, an award is made by TWC Procurement and HUB-Services, and a PO or a fully executed contract is issued to the Vendor.

2.3.2 TWC may negotiate price and terms with any and all Vendors, to accept or reject all or any part of a Vendor's response, waive minor technicalities, to request Best and Final Offers from all or any Vendors, and make an award that represents Best Value to the agency or the State.

2.3.3 Subsequent to award, TWC may, at its sole option, request the Vendor to negotiate contract amendments or renewals as is determined to be in the best interest of the agency or the State.

2.3.4 Either party may provide written notice to the other party

of a change of address of the party or to change the contact name and information. Amendments shall be in writing and signed by both parties.

2.3.5 If the solicitation leading to a contract allows non-competitive renewal, such renewal will be based on TWC's determination that the Vendor is in compliance with all terms of the contract, TWC's continuing need for the services, and available funding.

2.3.6 TWC may use a third party to negotiate price related to any Information Technology solicitation or contract.

2.3.7 TWC may make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.

2.4 Changes in Ownership: During the term of the contract or any extension or renewal thereof, the Vendor shall notify TWC in writing of any substantial change in the ownership or control of the Vendor as soon as possible, but no later than thirty (60) days before its occurrence.

2.5 Vendor Assignments: No assignment is permitted by the Vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code §2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment. Contracted Vendors under a TWC Vocational Rehabilitation

contract will notify TWC at least sixty (60) days before the intended effective date of any change in legal entity status, such as a change in ownership or control, name, legal status with the Texas Secretary of State, or Texas Identification Number issued by the Texas Comptroller of Public Accounts.

2.6 INDEMNIFICATION:

2.6.1 ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, 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 THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. IF CONTRACTOR IS A PHYSICIAN OR PSYCHIATRIST, THE STATE OF TEXAS SHALL INDEMNIFY CONTRACTOR PURSUANT TO TEX. CIV. PRACT. & REM. CODE, CHAPTER 104.

2.6.2 VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TWC 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 VENDOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) TWC'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TWC BY VENDOR OR OTHERWISE TO WHICH TWC HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL(OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, VENDOR WILL REIMBURSE TWC 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 TWC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TWC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TWC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TWC'S COUNSEL.

2.6.2.1 VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (1) USE OF THE PRODUCT OR SERVICE BY TWC FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED OR LICENSED, (2) ANY MODIFICATION MADE BY TWC TO THE PRODUCT WITHOUT VENDOR'S WRITTEN APPROVAL, OR (3) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TWC,.

2.6.2.2 IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TWC PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, TWC MAY REQUIRE VENDOR AT VENDOR'S EXPENSE TO; (1) PROCURE FOR TWC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALITY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TWC'S USE IS NON-INFRINGEMENT, OR (3) ACCEPT RETURN OF THE INFRINGING PRODUCT OR TERMINATION OF THE SERVICE AND REFUND ANY AMOUNTS PAID BY TWC WITH RESPECT TO THE INFRINGING PRODUCT OR SERVICE.

2.6.3 TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY:

2.6.3.1 VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THE CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL

LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TWC SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

2.7 Vendor Performance: Under Texas Government Code §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.

2.8 Force Majeure: TWC may grant relief from performance of an

awarded contract or PO, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.

Vendor must provide TWC with proof of Force Majeure within ten (10) business days of Vendor's failure to perform pursuant to the contract or otherwise waive Vendor's right to a Force Majeure defense.

2.9 Dispute Resolution Procedures:

2.9.1 Procurement Disputes: Pursuant to Texas Government Code, § 2155.076, TWC has adopted rules for resolving vendor protests relating to the solicitation, evaluation or award of a contract for goods and/or services. See 40 TAC, Chapter 800, subchapter H. Such protests must be made via email to twcvendor@twc.texas.gov and/or mail and received in the Director of Business Operations' office within ten (10) business days from the date the protestant knew or should have known of the occurrence of the action that is protested, but not later than ten (10) business days of the date of the announcement of the award. The protest must be in writing and contain:(1) the identifying name and number of the Solicitation being protested; (2) identification of the specific statute or regulation that the Protestant alleges has been violated; (3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in (2) above; (4) a precise statement of the relevant facts including: (A) sufficient

documentation to establish that the protest has been timely filed; and (B) a description of the resulting adverse impact to the Protestant; (5) a statement of the argument and authorities that the Protestant offers in support of the protest; (6) an explanation of the action the Protestant is requesting from the Agency; (7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant; and (8) the protest must be signed by an authorized representative for the Protestant and the signature notarized. TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law.

TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The Director will issue the final written decision to the protestor. TWC may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.

2.9.2 Contract Disputes: Disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided in Texas Government Code Chapter 2260.

2.10 Debt to the State: Vendor agrees that any payments due under the contract will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.

2.11 Hold-Over Contract Extension: In the event contract renewal negotiations are not completed prior to the contract expiration date, both parties agree that services shall be provided by the Vendor and accepted by TWC, subject to all original terms and conditions of the contract, for a

period not to exceed ninety (90) days following the original contract expiration date. During the hold over extension period, service costs shall be provided at the pro-rated rates, as applicable, in effect immediately prior to expiration of the original contract period and all other terms and conditions shall remain in effect. TWC may terminate such hold over extension period by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.

2.12 Records Retention: Vendor and any subcontractor shall maintain and retain all records relating to contract performance including supporting fiscal documents that show that any payments under the contract were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to the contract and the State's property for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor shall provide, at no cost to TWC, all contracting information related to the contract that is in the custody or possession of Vendor or any of its subcontractors.

2.13 Agency's Right to Audit: Vendor and any subcontractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and any subcontractors shall provide TWC with any information that TWC deems relevant to any investigation or audit. Vendor must retain all work and other supporting

documents pertaining to this contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC. For the purpose of this section, TWC's right to audit extends to any agency of the Federal government or State of Texas authorized by law or TWC, including an investigation or audit by the State Auditor or the Comptroller General of the United States. (See Section 14 for additional TWC Monitoring terms and conditions.)

2.14 State Auditor: Pursuant to Texas Government Code §2262.154, 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.

Vendor and any subcontractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all requested information and materials. Vendor's failure to comply with this Section shall constitute a material breach of contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure.

Vendor shall ensure that this provision concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

2.15 Limitation on TWC's Liability: TWC will not be liable for any incidental, indirect, special, or consequential damages under contract, Tort, (including negligence), or other legal theory. TWC's liability to Vendor under the contract will not exceed the total charges to be paid by TWC to Vendor under the contract.

2.16 State Ownership: The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, source and object code and documentation developed by the Vendor in connection with the contract.

2.16.1 All work products including deliverables, source and object code and documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.

2.16.2 To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.

2.16.3 Vendor will assist TWC or its nominees (including, but not limited to, the State of Texas) to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign

country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables.

Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.

2.16.4 Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by Vendor on such copies, in whole or in part, or on any form of the work products or deliverables.

2.17 License: Pursuant to 2 C.F.R. §200.315, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including, but not limited to, those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system.

2.18 Most Favored Customer: If during the term of the contract, the Vendor enters into another contract with any customer for substantially similar services at prices more favorable than those provided to TWC, the contract may be amended at TWC's direction to provide the more favorable prices to TWC.

2.19 Governing Law and Venue: The contract shall be governed, construed, and interpreted under Texas law, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.

2.20 Survival: Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, transition, records, audit, property rights, dispute resolution, invoice, fees verification, confidentiality, and rights and remedies upon termination.

2.21 Severability: If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.

2.22 Block Terrorism: TWC and the Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including, but not limited to, the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>.

2.23 No Waiver: Nothing in the contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. The contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any

privileges, rights, defenses, remedies, or immunities available to TWC or the State of Texas under 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. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into the contract or by its conduct prior to or subsequent to entering into the contract.

2.24 Redacted Electronic Copy: Pursuant to Texas Government Code §322.020, no later than two (2) business days after Vendor's receipt of notice from TWC, the Vendor must deliver to TWC an electronic copy of its complete proposal. Vendor shall deliver this electronic copy to TWC via email in compliance with the following requirements:

2.24.1 An email containing a copy of Vendor's response to solicitation, in searchable Portable Document Format (PDF) format, which has excised, blacked out, or otherwise redacted information from its solicitation response that Vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Texas Government Code Chapter 552 (this should be a de minimis portion, if any, of Vendor's solicitation response, such as social security numbers). The email shall also contain an Appendix for Vendor's solicitation response which provides a cross reference for the location of all information redacted by Vendor and a general description of the redacted information. The PDF should be entitled "For Public Release: Redacted Version of [Name of Vendor]'s Proposal and Exhibits. Texas Workforce Commission's RFP/RFO/IFB solicitation No.____."

2.24.2 Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major

contracts database. TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than thirty (30) days after date of contract award. By submitting a response to this solicitation, Vendors acknowledge that they understand and accept this requirement. See the LBB website at <http://www.lbb.state.tx.us/>.

2.25 American Recovery and Reinvestment Act (ARRA or the Recovery Act) (As applicable to the services/products):

2.25.1 Buy American Requirements for Construction Material prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

2.26 Build America, Buy America Act (BABAA) (As applicable to the services/products):

2.26.1 Vendor acknowledges that it understands and agrees that the infrastructure goods it is providing or acquiring under this Agreement are supported with Federal funds subject to the Build America, Buy America Act (BABAA). See Section 70912, the Build America, Buy America Act, the "Infrastructure Investment and Jobs Act" (IIJA; P.L. 117-58). Under that provision, BABAA applies where Federal funding supports an infrastructure project as defined in Section 70912 of BABAA. BABAA requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured

products, and construction materials provided by Vendor pursuant to this Agreement. Vendor hereby represents and warrants to TWC (a) Vendor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) Vendor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by TWC. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by Vendor shall permit TWC to recover as damages against Vendor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from TWC or any damages owed to TWC).

2.26.2 Waiver: The Secretary of Education or designee may issue a waiver to the Buy America requirements in limited circumstances including (i) compliant iron, steel, manufactured products, and or construction materials are not available; (ii) utilizing compliant iron, steel, manufactured products, and or construction materials will increase the cost of the overall project by more than 25 percent; (iii) for a reason determined to be in the public interest based on criteria established by the DOE; or (iv) to address exigent circumstances.

Vendors seeking to request a waiver from the BABAA Buy America

preference must submit a waiver request and written justification to TWC. Waivers requested will be considered on a case-by-case basis. TWC will also inform the Vendor if there is an existing Waiver in effect covering Vendor's Waiver request along with the existing Waiver's parameters. If TWC agrees with the waiver request, TWC will submit the request to the responsible federal agency. Upon receiving the federal agency response, TWC will inform the Vendor whether the request was rejected or granted in whole or part.

2.26.3 Certification: Vendor certifies that it will comply with the provisions of BABAA (Public Law 117-58, §§ 70901-70952) for Infrastructure Projects.

2.26.4 Pass-Through Requirement: Vendor must pass BABAA compliance obligations to any subcontractors for Infrastructure projects paid for with federal funds. Vendor shall require the subcontractor to certify compliance as a condition of any applicable subcontract.

2.27 Whistleblower Protection: Pursuant to 41 U.S.C. § 4712, Vendors may not discharge, demote, or discriminate against employees for reporting information that employee reasonably believes is evidence of gross mismanagement of a federal grant or contract, gross waste of federal funds, abuse of authority relating to a federal grant or contract, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation relating to a federal contract or grant. Employees subject to adverse action in violation of this section may file a complaint with the Office of the Inspector General no later than three years from the date of the adverse action. Vendors must provide written notification of these whistleblower protections to employees performing on covered contracts.

2.28 Privacy: Vendor who has access to sensitive personally identifiable information (“Sensitive PII”), including anyone who views contracts, collects, uses, maintains, stores or destroys Sensitive PII of TWC employees, job seekers, employers, customers or partners (including any employees of the State of Texas), must safeguard that information.

2.28.1 Sensitive PII is anything that alone or in combination with available information can identify an individual, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience or unfairness to an individual.

2.28.2 Awarded Vendor must have a Non-Disclosure Agreement (NDA) on file with TWC prior to handling Sensitive PII.

2.28.3 In order to safeguard Sensitive PII, Awarded Vendor must:

2.28.3.1. Collect Sensitive PII only as authorized.

2.28.3.2. Limit the use of Sensitive PII.

2.28.3.3. Minimize the proliferation of Sensitive PII.

2.28.3.4. Secure Sensitive PII both physically and in electronic form.

2.28.3.5. Report suspected privacy incidents within twenty-four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at CISO@twc.texas.gov.

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

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

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

2.29 Change in Law: Any alterations, additions, or deletions to the terms of the contract which 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.

2.30 Davis-Bacon Act: Vendors on all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.")

2.31 Anti-Kickback: Vendor will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) and "Regulations Governing Contractors and Subcontractors" (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).

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

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

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

2.35 Disaster Recovery Plan (As applicable to the services/products): Pursuant to 13 TAC §6.94(a)(9), Vendor shall provide to TWC the description of its business continuity and disaster recovery plans.

2.36 Media Releases: Vendor shall not use TWC's name, logo, or

other likeness in any press release, marketing material, or other announcement without TWC's or the relevant state agency's prior written approval. TWC does not endorse any vendor, commodity, or service. Vendor shall not make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response or the services to which they relate without the prior written consent of the relevant state agency, and then only in accordance with explicit written instruction from the relevant state agency. Vendors must obtain written approval from the TWC Contract Manager not more than fifteen (15) business days and not less than five (5) business days prior to any media release related to the contract.

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

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

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

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

2.38 Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business: The parties and their employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned

vehicle during official contract business, or from using government supplied electronic equipment to text message or email when driving. The parties must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

2.39 All work performed and Services provided under the contract shall be performed in the United States.

2.40 Key Personnel Background Check: Upon request by TWC, Vendors must submit criminal background checks on all key personnel assigned to the services related to this solicitation, as authorized by Texas law, and at Vendor expense. Key personnel are defined as personnel whose oversight and guidance are essential to the subject services. TWC may provide any finalist for a contract position a Contractor Criminal History Report Investigation Request form P33 which Vendor must complete and submit back to TWC as required on the form. To obtain a facility access badge, Vendor must provide TWC with either a completed form P-33 or a recent criminal background check within fifteen (15) days of contract award. If requested, TWC will not issue a Purchase Order until the criminal background check has been completed and passed.

3. REQUIRED CERTIFICATIONS

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

3.1 Vendor certifies that all statements and information prepared and submitted in this Proposal are current, complete, true and accurate. Submitting a Proposal with a false statement or material misrepresentations made during the performance of a contract is a

material breach of contract and may void the submitted Proposal and any resulting contract.

3.2 All Terms and Conditions Met: Vendor certifies that all terms and conditions listed in the solicitation will be met.

3.3 Signatory Authority: By submitting the Proposal, Vendor certifies that the individual submitting this document and the documents made part of this Proposal is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract that may result from the submission of this Proposal.

3.4 U.S. Department of Homeland Security's E-Verify System: By entering into the contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of the contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of:

3.4.1 All persons employed to perform duties within Texas, during the term of the contract; and

3.4.2 All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the contract, within the United States of America.

3.4.3 The Vendor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.

3.4.4 If this certification is falsely made, the contract may be

immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated contract.

3.5 Inducements/Dealings with Public Servants: Pursuant to Texas Government Code § 2155.003, Vendor affirms 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 submitted solicitation response.

3.6 Lobbying: that the Vendor will not and has not used any federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. Vendor certifies that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. Further, Vendor certifies that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.

3.7 Not Ineligible: that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in the contract by any state or federal agency.

3.8 Non-Discrimination (see Section 12 for additional applicable provisions): The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under the contract. The Vendor certifies compliance with the Housing and Urban Development Act §3, 12 USC §1701u, relating to economic opportunities for low and very low-income persons; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000d, §2000e); the Rehabilitation Act of 1973 (29 U.S.C. §794, 794d); Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor."; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.

3.9 Drug-Free Workplace: The Vendor shall provide a drug-free workplace in compliance with the Drug- Free Workplace Act of 1988 (41 U.S.C. Chapter 81, Subtitle IV).

3.10 Franchise Tax: The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.

3.11 Child Support: The Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code §231.006 (relating to child support) and acknowledges that the contract may be terminated, and payment may be withheld if certification is inaccurate.

Pursuant to Texas Family Code §231.006(c), Vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.

3.12 Certain Bids and Contracts Prohibited: Under Texas Government Code §2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.

3.13 Fair Business Practices: The Vendor has not been found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The Vendor further affirms that no officer of the Vendor has served as an officer of any company found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year.

3.14 Antitrust Affirmation: Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;(2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership, or individual engaged in the same line of business as the Vendor.

3.15 No Compensation: The Vendor has not received compensation

for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.

3.16 Conflict of Interest: Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.

3.17 Prior Disaster Relief Contract Violation: Under Texas Government Code §2155.006 and §2261.053, the Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.

3.18 Independent Contractor: Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and Vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC or the State of Texas. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC or the State of Texas are in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.

3.19 Insurance Requirements: (The default insurance requirements in this section may be superseded by specific insurance requirements in the solicitation or in other parts of the contract.) Vendor must maintain

insurance coverage in the following amounts.

Workers Compensation: Workers' Compensation insurance coverage in accordance with statutory limits.

Employers Liability: Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

Commercial General Liability:

Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000

Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

Personal Injury and Advertising Liability: \$1,000,000

Products/Completed Operations Aggregate Limit: \$2,000,000

Damage to Premises Rented to You: \$50,000

NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.

3.20 Felony Criminal Convictions: Vendor certifies that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.

3.21 Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069: Vendor certifies that it has not employed and will not employ a former TWC or state officer or employee who participated in a procurement or contract

negotiations for TWC or the State of Texas involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

3.22 Vendor certifies that both of the following statements are true and correct, and that the Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:

3.22.1 Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.

3.22.2 Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.

3.23 Entities that Boycott Israel: In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code §808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor certifies that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.

3.24 Prohibition on Contracts with Companies Boycotting Certain Energy Companies, Texas Government Code Chapter 2274: In contracts worth \$100,000 or more in value, if Vendor is a Company with 10 or more full-time employees, Vendor verifies that it does not boycott energy companies as defined in Texas Government Code, § 2274.001(1) and will not boycott energy companies during the term of

the contract.

3.25 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries, Texas

Government Code, Chapter 2274: In contracts worth \$100,000 or more in value, if Vendor is a company with 10 or more full-time employees, Vendor verifies, that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and Vendor will not discriminate against a firearm entity or firearm trade association during the term of the contract.

3.26 Prohibition on Contracts or Other Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure in this State, Texas Government Code, Chapter

2274: If the contract involves Vendor accessing critical infrastructure as defined in Texas Government Code, § 2274.0101, Vendor certifies that Vendor is not:

- (1)** owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - (a)** individuals who are citizens of China, Iran, North Korea, Russia or a designated country as defined in § 2274.0101(4); or
 - (b)** a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or other designated country as defined in § 2274.0101(4); or
- (2)** headquartered in China, Iran, North Korea, Russia or other

designated country as defined in § 2274.0101(4).

- (3)** This provision applies regardless of whether the Vendor's or its parent company's securities are publicly traded, or the Vendor or its parent company is listed on a public stock exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

3.27 Foreign Terrorist Organizations: Vendor certifies that it is not engaged in business with Iran, Sudan or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

3.28 COVID-19 Vaccine Passport Prohibition: Under Texas Health and Safety Code § 161.0085, Vendor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract.

3.29 Executive: Vendor certifies it is in compliance with Texas Government Code §669.003, relating to contracting with the executive head of a State agency. If applicable, Vendor will complete the following for TWC evaluation:

Former Executive Name: _____

State Agency Name: _____

Date Separated from Agency: _____

Position with Vendor: _____

Date employed with Vendor: _____

3.30 Buy Texas: Vendor shall comply with Texas Government Code

§2155.4441, pertaining to purchasing products and materials produced in the State of Texas.

3.31 Texas Bidder Affirmation: Vendor certifies that if a Texas address is shown as the address of the Vendor on this solicitation response, Vendor qualifies as a Texas Bidder as defined in Texas Government Code § 2155.444(c).

3.32 Human Trafficking: Under Texas Government Code §2155.0061, Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the contract, TWC may immediately terminate the contract without further obligation to Vendor.

3.33 Trafficking in Persons: The parties acknowledge the requirements of 2 C.F.R. Part 175, including the U.S. Department of Education's modifications to these requirements, and agree to comply with the requirements regarding trafficking in persons.

3.34 Disclosure of Prior State Employment: Pursuant to Texas Government Code § 2254.033, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the previous employment with TWC or the other agency; (b) the date

employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.

3.35 Former Agency Employees: Pursuant to Texas Government Code § 2252.901, Vendor certifies that none of its employees, including, but not limited to, those authorized to provide services under the contract, were former employees of TWC during the twelve (12) month period immediately prior to the date of execution of the contract.

If the contract is for professional services as described by Texas Government Code Chapter 2254, Vendor certifies that former TWC employees employed by Vendor within one year of the employee leaving TWC will not perform services on projects with Vendor that the employee worked on while employed by the TWC.

3.36 Disclosure of Interested Parties: Vendor certifies that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Texas Government Code § 2252.908.

3.37 Cybersecurity Training: Vendor certifies that it will comply with the requirement of Texas Government Code § 2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee of subcontractor employee has access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code § 2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of

contact.

3.38 Computer Equipment Recycling Program (As applicable to services/products):

Vendor certifies its compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act located in Texas Health and Safety Code Chapter 361, Subchapter Y and accompanying Texas Commission on Environmental Quality rules at, 30 TAC, Chapter 328. TWC shall reject and not evaluate Vendor's bid if Vendor fails to provide this certification.

3.39 Television Equipment Recycling Program (As applicable to services/Products):

Vendor certifies its compliance with Texas Health and Safety Code Chapter 361, Subchapter Z, related to the Television Equipment Recycling Program.

3.40 Changes to Financial Condition:

Vendor warrants it will notify TWC in writing of a change in financial condition during the Contract term and any renewal thereof at the time the change occurs or is identified. For the purposes of this section, examples of a substantial change in financial condition are events such as insolvency, bankruptcy, or receivership.

3.41 Prohibited Technologies:

Vendor represents and warrants that neither Vendor, Vendor's employees, nor Vendor's contractors will use any device to conduct state business that contains, accesses, or consists of any prohibited technologies. Vendor represents and warrants that it will implement a written policy to prohibit its employees or contract workers from using any device to conduct state business that contains, accesses, or consists of any prohibited technologies. Vendor represents and warrants that no device that contains, accesses, or consists of any

prohibited technologies will be in the vicinity of a device conducting state business on behalf of the Vendor.

3.41.1 For the purpose of this section, state business includes accessing any state-owned data, applications, email accounts, non-public facing communications, VoIP, SMS, video conferencing, CAPPs, Texas.gov, and any other state databases or applications. Prohibited Technology means the software and hardware products listed on the Department of Information Resources (DIR) webpage located at: <https://dir.texas.gov/information-security/prohibited-technologies>. Vendor is responsible for periodically checking this list and remaining in compliance with additions.

3.42 Prohibition on Products from Gaza Strip: Pursuant to Governor Abbott's Executive Order No. GA-43, Vendor represents and warrants that it does not, will not, nor intends to purchase goods produced in or exported from the Gaza strip and is not engaged in business with any organization or state actor with ties to Hamas.

4. SPECIFICATIONS

4.1 Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive) and is used to indicate type and quality desired. Submitted responses containing other brands that are functionally equivalent will be considered unless TWC has advertised the solicitation as proprietary under Texas Government Code §2155.067. If Vendor takes an exception to the solicitation's specifications and Vendor's response contains equivalent product, Vendor is required to include additional information such as manufacturer, brand or trade name, illustrations, and specifications for the equivalent product as part of their response to the solicitation. If Vendor takes no exception

to the specifications, the Vendor must furnish the item(s) as specified in the solicitation.

4.2 Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.

4.3 No Substitutions: Vendor will not make any substitution to the specifications of any solicitation or PO, unless the substitution is (1) proposed to TWC in writing by the Vendor, and (2) supported by the expressed written prior approval of TWC.

4.4 Replacement Parts Available: The Vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.

4.5 All electrical items must meet all applicable standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

4.6 Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.

4.7 Projects Using Iron or Steel Products: (As applicable to the

services/products) Pursuant to Texas Government Code §2252.202, iron or steel products produced through a manufacturing process and used in the project must be produced in the United States.

5. DELIVERY (AS APPLICABLE TO THE SERVICES/PRODUCTS)

5.1 Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.

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

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

6. VALIDATION, INSPECTION & TESTS

6.1 Vendor shall provide TWC with information necessary to validate any statements made in the Vendor's solicitation response, if requested by TWC. This may include, but is not limited to, allowing access for on-site observation, granting permission for TWC to verify information with third parties, allowing inspection of Vendor's records, and allowing inspection of plans for compliance.

6.2 All goods will be subject to inspection and test by TWC to the extent practicable at all times and places. Tests may be performed on samples called for, or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used, and the cost of the testing shall be borne by the supplier. Goods that have been delivered and rejected in whole, or in part may, at TWC's option, be returned to the Vendor or held for disposition at Vendor's risk and expense. Latent defects may result in revocation of acceptance.

7. INVOICING INSTRUCTION FOR VOCATIONAL REHABILITATION SERVICES/PRODUCTS: VR SERVICES AND PRODUCTS INVOICES ARE SUBJECT TO [VOCATIONAL REHABILITATION SERVICES MANUAL D-200 \(D-208: INVOICES\)](#) AND [VR-STANDARDS FOR PROVIDERS MANUAL, CHAPTER 3.2.12: PURCHASING GOODS AND SERVICES](#)

7.1 TWC is not liable for any payments due under this Contract which have not been invoiced to TWC within ninety (90) days following the service date or expiration of the State Fiscal Year in which goods or services were rendered, whichever is later.

8. PAYMENT FOR VOCATION REHABILITATION SERVICES/PRODUCTS: VENDOR PAYMENT INSTRUCTIONS STATED IN THE [VOCATIONAL REHABILITATION SERVICES MANUAL D-200: SEE SUBSECTIONS D-211: SETTING UP AND PAYING PROVIDERS, D-212: CREATING THE SERVICE AUTHORIZATION, AND D-213: OTHER TYPES OF PAYMENTS AND PURCHASES](#) FOR INSTRUCTION.

9. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

9.1 Vendor represents that it has determined what licenses, patents and permits are required under the contract and has acquired all such licenses, patents and permits.

9.2 Vendor agrees that for the exclusive use by TWC or the State of Texas for State business, TWC and the State of Texas are free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

10. TERMINATION PROVISIONS (SEE SECTION 12.5, 12.6, AND 12.7 FOR ADDITIONAL RELATED PROVISIONS)

10.1 The contract shall not be construed as creating a debt on behalf of TWC in violation of Texas Constitution Article III, § 49a. Vendor understands that all obligations of TWC under the contract are subject to the availability of state funds.

10.2 Termination for Cause: TWC may immediately terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty, for breach of contract by the Vendor.

10.3 Termination for Convenience: TWC may terminate any PO or contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) days' advance written notice, if TWC determines that such termination is in the best interest of the state.

10.4 In the event of such termination under 10.2 or 10.3, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC and the State of Texas shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered

to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC and the State of Texas shall have no other liability, including no liability for any costs associated with the termination.

10.5 TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Vendor. (See Section 12.6 and 12.7 for additional related provisions).

10.6 TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the Vendor shall transfer title and deliver to the TWC any partially completed work products, deliverables, source and object code, or documentation that the Vendor has produced or acquired in the performance of the contract.

11. INFORMATION TECHNOLOGY (IT) PURCHASES (AS APPLICABLE TO SERVICES/PRODUCTS)

11.1 During the term of the contract, the Vendor must notify TWC whenever an engineering change is made that may affect TWC's use of the product. It will be the sole option of TWC to accept the change.

11.2 Vendor represents that the product and all its elements, including, but not limited to, documentation and source code, meet the standards issued by the American National Standards Institute.

11.3 Vendor agrees that TWC owns the source code to any jointly-

developed application(s) resulting from the contract.

11.4 As required by 1 TAC, Chapters 206 and 213:

11.4.1 Effective September 1, 2006, state agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

11.4.2 Vendor shall provide TWC with the URL to its completed Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act of 1973, as amended (29 USC § 794d)). Vendors not supplying a URL to its completed VPAT must provide TWC with a report that addresses the same accessibility criteria in substantively the same format. Additional information on obtaining a copy of the VPAT is located at <https://www.itic.org/policy/accessibility/vpat>.

11.4.3 TWC will use the completed VPAT to assess the degree of accessibility of a proposed product when making the procurement decision.

11.5 Vendor shall follow Web Content Accessibility Guidelines (WCAG). Vendor shall follow the most recent official W3C Recommendation for WCAG in effect at the time of publication of the RFP. The current version of the WCAG guidelines is available on the W3C Accessibility Standards website (<https://www.w3.org/WAI/standards-guidelines>).

11.6 Vendor agrees that all products and/or services equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to sanitize data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC, Chapter 202 or NIST 800-88.

11.7 Pursuant to Texas Government Code § 2054.138, and to the extent that the Vendor is authorized to access, transmit, use, or store data for the agency, Vendor shall meet the security controls put in place by the Agency to protect Agency data. The Vendor shall provide the Agency evidence that the Vendor meets the security controls required by the contract annually or more often as requested by the Agency.

11.8 Cloud Computing State Risk and Authorization

Management Program (TX-RAMP): Pursuant to Texas Government Code § 2054.0593(d)-(f), relating to cloud computing state risk and authorization management program, Vendor certifies that it complies with the requirements of the state risk and authorization management program and Vendor shall maintain its certifications and comply with the program requirements in the performance of the contract throughout the term of the contract.

12. ADDITIONAL TERMS FOR VOCATIONAL REHABILITATION CONTRACTED SERVICES

12.1 Privacy, Security, and Breach Notification

12.1.1 "TWC Confidential Information" means any communication or record (whether oral, written, electronically stored, or transmitted,

or in any other form) provided to or made available to the Vendor electronically or through any other means that consists of or includes any or all of the following:

12.1.1.1. Customer Information;

12.1.1.2. Protected Health Information in any form including, without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;

12.1.1.3. Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521.002;

12.1.1.4. Federal Tax Information;

12.1.1.5. Personally Identifiable Information defined by 2 CFR 200.1;

12.1.1.6. Social Security Administration Data including, without limitation, Medicaid information;

12.1.1.7. Information deemed confidential under The Rehabilitation Act of 1973, 29 U.S.C. Chapter 16, as amended, and implementing regulations 34 C.F.R. Parts 361 through 396;

12.1.1.8. All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

12.1.2 Any TWC Confidential Information received by the Vendor under the contract may be disclosed only pursuant to applicable law. Any electronically transmitted communication or record containing TWC Confidential Information must be sent in a FIPS 140-2

compliant encrypted format. By signing the contract, the Vendor certifies that the Vendor is, and intends to remain for the term of the contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including, without limitation, the following:

- 12.1.2.1.** The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;
- 12.1.2.2.** 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164;
- 12.1.2.3.** The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
- 12.1.2.4.** The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
- 12.1.2.5.** Internal Revenue Code, 26 U.S.C Sections 6103 and 6105, including IRS Publication 1075;
- 12.1.2.6.** OMB Memorandum 07-16;
- 12.1.2.7.** Texas Business and Commerce Code Chapter 521;
- 12.1.2.8.** Texas Health and Safety Code, § 81.046 and Chapters 181 and 611;
- 12.1.2.9.** Texas Human Resources Code § 12.003;
- 12.1.2.10.** Title 3 of the Texas Occupations Code, as applicable;
- 12.1.2.11.** Constitutional and Common Law Privacy;

12.1.2.12. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. Part 99); and,

12.1.2.13. Any other applicable law controlling the release of information created or obtained in the course of providing the services described in the contract. The Vendor further certifies that the Vendor will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

12.1.3. Vendor will ensure that any subcontractor of the Vendor who has access to TWC Confidential Information will sign an agreement with Vendor that includes a requirement that the subcontractor shall comply with the terms of this section to protect TWC Confidential Information, and Vendor will submit a copy of that subcontractor agreement to TWC upon request.

12.1.4. In the event of a breach or suspected breach of TWC confidential information, Vendor will notify the TWC Chief Information Security Officer (CISO) within 24 hours of discovery.

12.1.4.1. Notification must be made via email to ciso@twc.texas.gov.

12.1.4.2. Vendor will provide regular updates on the progress of incident response efforts and root cause analysis reports to the TWC CSIO.

12.1.4.3. Vendor will restore TWC services after having remediated the root cause of the security breach.

12.2 Federal and State Requirements

12.2.1 The Vendor will comply with all applicable state and federal

laws, rules and regulations governing the provision of services under the contract and state policies and procedures issued by TWC, including, but not limited to, requirements specifically stated in the contract.

12.2.1.1. The Vendor shall comply with state and federal nondiscrimination laws, including, without limitation:

12.2.1.1.1. The non-discrimination laws enumerated in Section 3.8 of these Terms and Conditions;

12.2.1.1.2. Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107;

12.2.1.1.3. Title IX, Education Amendments of 1972, 20 U.S.C. §§ 1681-1688;

12.2.1.1.4. Food and Nutrition Act of 2008, 7 U.S.C. §§ 2011-2036; and

12.2.1.1.5. The TAC applicable to this contract.

12.2.1.2. The Vendor shall comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service, or other benefits provided by federal or state funding, or otherwise be subjected to discrimination.

12.2.1.3. The Vendor shall comply with Title VI of the Civil Rights Act of 1964 and its implementing regulations at 45 C.F.R.

Part 80 and 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The Vendor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

12.2.1.4. The Vendor shall comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the U. S. Department of Agriculture or the U. S. Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

12.2.1.5. Upon request, the Vendor will provide the TWC Civil Rights Division with copies of all of the Vendor's civil rights policies and procedures.

12.2.1.6. The Vendor must notify TWC Civil Rights Division about any civil rights complaints received relating to its performance under this contract. The notice must be delivered no more than ten (10) calendar days after the Vendor receives the

complaint. Notice provided pursuant to this section must be directed to:

Texas Workforce Commission Civil Rights Division

101 East 15th Street, Guadalupe/CRD

Austin, Texas 78778-0001

Phone Toll Free: (888) 452-4778

Phone: (512) 463-2642

TTY Toll Free: (800) 735-2989

Fax: (512) 463-2643

12.2.2. Federal Grant Requirements: If applicable, the Vendor will comply with:

12.2.2.1. 34 C.F.R. Part 76, State-Administered Programs;

12.2.2.2. The Office of Management and Budget's (OMB) circulars and/or 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

12.2.2.3. The Texas Grant Management Standards (TxGMS) issued by the State of Texas; and

12.2.2.4. Contract Cost Principles and Procedures 48 C.F.R. Part 31.

12.2.3. Reporting of Abuse, Neglect, or Exploitation: The Vendor will comply with Chapter 48, Human Resources Code, regarding reporting of abuse, exploitation, or neglect of persons with disabilities or persons who are age 65 or older.

12.2.4. If applicable, the Vendor will comply with:

12.2.4.1. Health and Safety Code § 85.113 (workplace and confidentiality guidelines regarding AIDS and HIV);

12.2.4.2. All state and federal licensing and certification requirements and regulations prescribed by the U.S. Department of Health and Human Services, and TWC;

12.2.4.3. All of the mandatory standards and policies relating to energy efficiency contained in the state's energy conservation plan, Executive Order RP-49, and are related to the Energy Policy and Conservation Act;

12.2.4.4. The Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, regarding minimum wages, overtime pay, recordkeeping, and child labor;

12.2.4.5. 42 U.S.C. §675(4), which requires that Foster care maintenance payments must be expended for items that are provided by foster parents and facilities; and

12.2.4.6. Referral of Debt to IRS for Tax Refund Offset 45 C.F.R. Part 31.

12.3 Vendor Notification: The Vendor will notify TWC within two (2) business days if at any time the Vendor is not in compliance with the provisions of the contract. A false statement regarding the Vendor's compliance with the terms of the contract may be treated as a material breach of the contract and may be grounds for TWC to terminate the Contract.

12.4 Termination Provisions: The contract may be terminated by

mutual consent of the parties. In the event of a Termination by Mutual Agreement, TWC "Notice of Termination" will be delivered to the Vendor, specifying the extent to which performance of work under the contract is terminated and the date upon which the termination becomes effective. TWC will determine the effective termination date; however, in all cases, TWC will need at least thirty (30) days' written notice of the request to terminate prior to the effective termination date. TWC shall not be liable to the Vendor for any work done or materials purchased after termination or for lost profits or other damages. This right to terminate is in addition to and not in lieu of the rights provided to TWC by the contract or under Section 10 of the Terms and Conditions.

12.5 Failure to Perform: If the Vendor fails to perform in accordance with the provisions of the contract, TWC may upon written notice to the Vendor, take adverse action against the Vendor, up to and including terminating the contract in whole or in part. If notice of termination is given, all work by the Vendor shall cease on the effective date of the termination, and TWC will not pay for work performed on or after the effective date of termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided by law or under the contract. Adverse action, including termination, may result from, but is not limited to:

- 1.** Violation of the terms of the contract;
- 2.** Any evidence of abuse, neglect, or exploitation of TWC Vocational Rehabilitation (TWC VR) customers receiving services from the Vendor as substantiated by an investigation conducted by the Vendor, an external regulatory or law enforcement agency, or TWC;

3. Any information giving TWC reason to believe that the health or safety of TWC VR customers is compromised;
4. Any change in ownership or change in control that TWC believes would adversely affect the delivery of services;
 - 4A. Bringing any individual who is debarred by TWC into the contract in any financial or legal way (such unacceptable arrangements to include, without limitation, any employment, consulting, contracting, subcontracting, partnership, sale, merger, successor, association or joint venture with a debarred individual);
5. Any real or apparent conflict of interest giving TWC reason to believe that continuation of the Contract is not in the best interest of TWC, the state, or TWC VR customers; or
6. Any violation of state or federal law.

12.6 Remedies: The Vendor and any of its subcontractors associated with the contract will remedy in a timely manner, any weaknesses, deficiencies, or program noncompliance found as a result of a review, audit or investigation, and any performance or fiscal exceptions found by TWC, the SAO, the federal funding agency, their successor agencies, or any of their duly authorized representatives. TWC may withhold or recoup payments due or paid under the contract, in whole or in part, in the event of the Vendor's noncompliance with any term or provision of the contract, any federal or state law or regulation, or any TWC rules or standards, including, but not limited to, the requirements specifically stated in the contract, relating to the Vendor's performance under the contract, as pursuant to Title 40 TAC § 858.9 or any other appropriate remedies deemed necessary by TWC.

12.7 TWC Regulations: The Vendor and any subcontractors are aware of the TWC regulations, and the Vendor and any subcontractors acknowledge those legal obligations and agree to follow and comply with those obligations. The regulations are codified at 40 TAC, Chapter 858.

12.8 TWC Manual: The Vendor and any subcontractors acknowledge that TWC issues manuals that stipulate standards for VR providers, and that those manuals, as amended, apply to and control the contract as applicable. The Vendor and any subcontractors agree to follow the standards set forth in TWC's provider manuals as applicable.

13. ADDITIONAL TERMS

13.1 Abortion Provider and Affiliate Transactions Prohibited:

Respondent certifies that the contract is not a taxpayer resource transaction prohibited by Texas Government Code § 2272.003 and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by General Appropriations Act Article IX, § 6.24.

13.2 Binding Effect: 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.

13.3 Federal Occupational Safety and Health Law: 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).

13.4 Immigration: Respondent certifies that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et

seq.) and all subsequent immigration laws and amendments.

13.5 Legal and Regulatory Actions: Respondent certifies 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 certification, then Respondent instead certifies 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 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.

13.6 Limitation on Authority: 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, expense or liability of any kind on behalf of Agency or the State of Texas.

13.7 No Third-Party Beneficiaries: 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.

13.8 Use of State Property: 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, keyboards, headsets, 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 within the borders of 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 borders 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 (liquid damage, vermin infestations, etc.) (ii) all charges attributable to Respondent's use of State Property that exceeds the contract scope including staff time to reconfigure for reuse and (iii) all costs to TWC to take the necessary steps to secure the State Property and get it ready for reuse. Respondent shall fully reimburse such charges to Agency within ten (10) 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.

13.9 Refund: Vendor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by TWC which are not expressly authorized under the contract.

13.10 Subcontractors: Vendor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the TWC. Subcontracts, if any, entered into by the Vendor shall be in writing and be subject to the requirements of the contract. Should Vendor subcontract any of the services required in the contract, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

14. CONTRACT MANAGEMENT, OVERSIGHT, AND REVIEW

14.1 Vendor Obligations: The Vendor acknowledges their ongoing obligation to participate in the administration of the contract. The Vendor shall promptly and completely respond to any request from a VR counselor, contract management, contract monitoring, investigator, or other TWC staff.

14.2 Method and Location: TWC, in its sole discretion, will determine whether to conduct a desk review of documents, speak to the Vendor's staff (by phone or video conference) or meet in-person and, if in-person, whether it will occur at the Vendor's place of business, at a Workforce Solutions office location, or at some other physical location.

14.3 Items to be Reviewed: The Vendor will provide all relevant records, whether on paper, electronic, video or audio files, or in whatever form. TWC may also need to observe one or more aspects of Vendor's operations.

14.4 Subject Matters to be Examined: Vendor agrees TWC has the right to access all relevant materials, including, but not limited to, relevant financial documents, databases and management control systems, communications with VR customers, internal company records showing the handling and documentation of service to VR customers, any VR customer complaints, any discipline or training of employees due to performance connected to a VR customer, any written Vendor policies, any communications with TWC, all criminal background check files, all files of self-reporting issues to TWC, and all files relating to subcontractors, if any.

14.5 Notice and Deadlines: In most cases TWC will give reasonable notice of its plan to review Vendor's operations and records and will give a reasonable amount of time for the Vendor to respond before any deadline. However, if TWC has credible information of an immediate threat, TWC may take necessary action with minimal or no notice.

14.6 Subcontractors: All provisions in this section apply equally to any subcontractor, and this term will be included in any subcontract.

15. BACKGROUND CHECKS

15.1 Background checks by Vendor of all personnel who interact with VR customers: Vendors, that will provide goods or services directly to VR customers, must run a criminal background check on each of its employees who will interact with any VR customer in accordance with the minimum requirements for conducting background

checks contained in Chapter 3, Basic Standards of the VR-Standard for Providers Manual. In this context, “interact” means any communication or other contact whether in person, on paper, by voice, by sign language, electronically or any other method. All provider staff must have a background check. The only exception is for staff who never communicate with or are physically present with a VR customer. Background checks must be completed by the Vendor before the employee interacts with any VR customer. An employee who fails the criminal background check must never interact with any VR customer. If a provider chooses not to do a background check on a staff member, then the provider must demonstrate that the staff member has never interacted with any VR customer in any way on any subject.

15.2 No de minimus exception: Vendor employees are covered by this requirement regardless of how short or rare the interaction may be, and regardless of the subject matter or context of the interaction. Vendors who comply with this requirement will never have any employee interact with any VR customer unless and until the employee passes a criminal background check.

15.3 Credentialing, documenting, and renewing: For purposes of complying with this section, an employee’s criminal background check expires after 3 years. The Vendor must run a new check before the 3 years expires or must remove the employee from interacting with VR customers on and after the date the background check expires. An employee whose criminal background check has expired must not interact with VR customers. The Vendor will maintain records of all criminal background checks showing that the checks have been completed and that the employees have not failed the criminal background check. For the purpose of this section, documentation means a completed

Background Check Attestation and Release Form for each applicable individual showing the name of the individual checked, dates of background checks, whether the individual passed the background check, and any other information required in the procedures contained in the VR-Standards for Providers Manual, Chapter 3, Basic Standards.

Documentation of a current and passing criminal background check is both a "qualification" and a "credential" within the meaning of 40 TAC § 858.3(a)(1) and any successor regulation.

15.4 Employee self-reporting: In addition to the background check, the Vendor will require all of its employees to self-report to the Vendor the employee's conviction, incarceration, criminal fine, probation, community service, or deferred adjudication.

15.5 Record keeping and access to records: For each covered employee the Vendor must maintain documentation of the passing background checks for a minimum of 6 years. Vendors must maintain the Background Check Attestation and Release Form ("log") showing the name of the individual checked, dates of background checks, whether the individual passed the background check, and any other information required in the procedures contained in the VR-Standard for Providers Manual, Chapter 3, Basic Standards. Vendors must maintain a record of the payment for the background check, as applicable. Upon written request, the Vendor must provide access to, or copies of all background check logs, payment records, and other required documentation to any VR counselor, contract management staff, contract monitoring staff, or other TWC staff.

15.6 Subcontractors: All provisions in this section apply equally to any subcontractor, and this term will be included in any subcontract.

15.7 Standards for passing the background check; exceptions:

TWC has adopted a list of criminal offenses which disqualify Vendor employees from interacting with VR customers. The list is posted on the [VR Providers' Resources Page](#). TWC will consider exceptions in some cases to offenses included under subsections (b) and (c) of the list. Vendors are responsible for seeking an exception.

15.8 Guidance or Exceptions: If a Vendor is unclear on the process to conduct a background check, or unclear about how to interpret the results, the Vendor shall ask VRD for technical assistance. TWC may grant exceptions to (i) remove the exclusion of an employee who failed a background check based on offenses contained in subsection (b) of the disqualifying offenses list or (ii) grant blanket exceptions to the requirement to conduct background checks on certain types of entities, procurements, services, or goods. Any exception granted by TWC must be supported by (a) a determination by TWC that the need for the exception outweighs the likely risk, and (b) written, dated documentation that TWC agreed to the exception. TWC retains the right to place time limits or other restrictions on any granted exceptions.