TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

STATEWIDE PROCUREMENT DIVISION

TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) TERMS AND CONDITIONS

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

Table of Contents

1. BACKGROUND 4
2. CONTRACT DOCUMENTS 4
3. INTERPRETATION OF BASE CONTRACT 4
4. CUSTOMERS 4
5. TEXAS SMARTBUY CATALOG 5
6. PURCHASE ORDERS 5
7. TEXAS SMARTBUY ADMINISTRATIVE FEE AND TXMAS SALES REBATE 6
8. MISCELLANEOUS TXMAS PROGRAM REQUIREMENTS 7
9. DEALERS 8
10. UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES 9
11. INVOICE REQUIREMENTS 9
12. REPORTING REQUIREMENTS (OFFLINE SALES) 10
13. AUDIT REQUIREMENTS 10
14. PUBLIC INFORMATION 10
15. CONFIDENTIALITY AND SECURITY 11
16. RECORDS RETENTION 11
17. DISCLOSURE OF INTERESTED PARTIES 11
18. INSURANCE 11
19. TAXES 12
20. TERM AND TERMINATION 12
21. FORCE MAJEURE 14
22. DISASTER RECOVERY 14
23. VENDOR PERFORMANCE 14
24. DELIVERIES 14
25. EQUAL EMPLOYMENT OPPORTUNITY 14
26. AMERICANS WITH DISABILITIES ACT 14
27. CIVIL RIGHTS 15
28. IMMIGRATION 15
29. INDEMNIFICATION 15
30. REPRESENTATIONS AND CERTIFICATIONS 17
31. NO DEBT AGAINST THE STATE 21
32. COMPLIANCE WITH LAWS 21

33. CYBERSECURITY TRAINING 21
34. COOPERATION 21
35. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES 21
36. PUBLICITY 22
37. COMMUNICATION 22
38. DISPUTE RESOLUTION 22
39. SOVEREIGN IMMUNITY 24
40. LIMITATION OF AUTHORITY 24
41. LIMITATION OF LIABILITY 24
42. HEADINGS 24
43. GOVERNING LAW AND VENUE 24
44. SEVERABILITY 24

1. BACKGROUND

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

2. CONTRACT DOCUMENTS

(a) **List of Documents and Order of Precedence**. This Contract consists of: (1) the Notice of Award executed by CPA; (2) this TXMAS Terms and Conditions; (3) TXMAS Offer Packet Application; (4) Texas SmartBuy Catalog approved by CPA; and (5) the Base Contract. In the event of a conflict between any of these documents, the Notice of Award and these TXMAS Terms and Conditions shall prevail.

(b) **Base Contract.** This Contract incorporates the entire Base Contract except as specifically identified in the Notice of Award and these TXMAS Terms and Conditions, including all documents incorporated by reference into the Base Contract. Such documents may include the solicitation, the Contractor's response, catalogs, and price lists.

(c) **Base Contract Modifications.** Any modification of the Base Contract is considered material and will not automatically be incorporated into this Contract, regardless of how a modification is regulated under the Base Contract. CPA may adopt such modifications in its sole discretion and shall notify the Contractor of any modification it adopts.

(d) **Entire Agreement.** This Contract is intended as a final, complete, and exclusive expression of the agreement between CPA and Contractor about the subjects it contains. There are no restrictions, promises, warranties or undertakings related to this agreement, other than those stated or referred to in this Contract.

(e) **Amendments.** This Contract may be amended only by written agreement between CPA and Contractor.

3. INTERPRETATION OF BASE CONTRACT

(a) All rights and obligations of Contractor to the awarding governmental entity under the Base Contract are obligations owed by the Contractor to CPA under this Contract. All rights and obligations of Contractor to an entity receiving goods and services under the Base Contract are owed by the Contractor to the State of Texas, CPA, and Customers under this Contract.

(b) If the Base Contract requires Contractor to notify the awarding governmental entity of information affecting the Base Contract, Contractor shall provide the same notices to CPA.

(c) If the Base Contract is modified or terminated, Contractor shall notify CPA within 30 days. Unless CPA expressly adopts a modification, it will be unenforceable under this Contract.

4. CUSTOMERS

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

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

(b) Customers have the same rights and remedies of the State of Texas and CPA under this Contract including indemnification, as to their own purchase orders under this Contract.

(c) Customers may not modify or waive any provision of this Contract.

5. TEXAS SMARTBUY CATALOG

(a) **Contractor's Catalog.** Contractor shall submit a Texas SmartBuy Catalog (the "Catalog") to CPA for upload to the Texas SmartBuy online ordering system. Contractor shall not include in the Catalog any goods or services that are not included in the Base Contract. All goods and services included in the Catalog must be verifiable using the Base Contract or Contractor's website. At its sole discretion, CPA may exclude goods and services on the Base Contract from the Catalog. CPA will provide the final Texas SmartBuy Catalog upon award.

(b) **Base Price Changes.** Contractor shall notify CPA of any decrease in prices offered under the Base Contract within 30 working days and offer such pricing under this Contract. If Contractor fails to notify CPA of a Base Contract price decrease, Contractor shall refund any overpayment to Customers.

(c) **Price Negotiation.** Catalog Prices are the maximum prices allowed under this Contract. A Customer may negotiate a lower price for goods and services with the Contractor.

(d) Pricing and related information are not confidential or proprietary. CPA intends to publish pricing and related information on Texas SmartBuy. Contractor agrees that the information it has submitted to CPA is not confidential or proprietary. Contractor consents to the publication of Contractor's pricing and related information on Texas SmartBuy or in any other format.

6. PURCHASE ORDERS

(a) **Effect.** A purchase order ("PO") constitutes an agreement between Contractor and Customer. Contractor will look solely to the Customer for performance, including but not limited to, payment, and will hold CPA harmless with regard to such orders.

(b) **Customer-Specified Terms and Conditions.** Customers other than CPA do not have the authority to modify this Contract; however, Customers may add terms and conditions that do not conflict with this Contract and are acceptable to Contractor in a PO. In the event of a conflict between a PO and this Contract, this Contract controls. If Contractor cannot honor terms specified on a PO, it shall notify the Customer without delay.

(c) **Off-Contract Items.** Other than incidental items expressly allowed under this Contract, Contractor may not sell and Customers may not purchase goods or services under this Contract that are not included in the TXMAS Catalog for this Contract. Therefore, to the extent the Base Contract contains terms which allow additional items to be purchased or reimbursed such as blanket purchase agreements, contractor team arrangements, and indirect costs, those terms are excluded from this Contract.

(d) **Incidental Items.** A Customer may purchase incidental items that are not included in the TXMAS Catalog for this Contract if they are necessary for product integration or project completeness, subject to the following conditions. The Customer must determine that the quoted price is fair and reasonable, and the purchase represents best value to the State. The purchase must not conflict with applicable laws,

rules, and regulations. Only products or services listed in the Base Contract may be purchased from this Contract. Incidental items must be clearly labeled as "Incidental." These incidental items may not exceed the lesser of $5,000, or 50% of the total PO value. CPA may review incidental purchases and may decide whether to allow them to proceed through Texas SmartBuy. Any goods and services acquired in direct support of a Customer's PO for which a specific scope or price is not established in Texas SmartBuy Catalog will be considered an incidental item. If incidental purchases do not meet these requirements, the PO may be void.

(e) **Online Ordering.** The Texas SmartBuy system allows Customers to search for goods and services, compare prices, and place orders online. CPA does not guarantee a specific volume to be purchased throughout the term of the Contract. No minimum compensation to the Contractor is guaranteed. Contractor will receive Texas SmartBuy POs at the email address it has specified. If Contractor observes any apparent irregularities or suspicious content in emails from the Texas SmartBuy system, it shall notify CPA without delay.

(f) **Offline Ordering.** To utilize the Contract pricing, Customers will issue an internal PO referencing the number for the TXMAS Contract and current item descriptions and pricing. CPA does not guarantee a specific volume to be purchased throughout the term of the Contract. No minimum compensation to the Contractor is guaranteed. Contractor agrees not to deliver goods or provide services awarded under this Contract until receipt of a PO from Customer.

7. TEXAS SMARTBUY ADMINISTRATIVE FEE AND TXMAS SALES REBATE

(a) **Texas SmartBuy Administrative Fee.** Contractor shall pay a 1.5% administrative fee to CPA on all Contract sales. If Contractor wishes to recover this fee from Customers, Contractor may charge up to 1.5228% more for goods and services under the Contract than it does under the Base Contract. Contractor must make any price adjustment permitted by this section before submitting the Texas SmartBuy Catalog to CPA.

(i) CPA will invoice Contractor the 1.5% administrative fee on the first day of the month following the After Receipt of Order date identified for each item. Payment is due on date indicated on the invoice.

(ii) The administrative fee payment should be identified as "Texas SmartBuy Administrative Fee" and made payable to **"Texas Comptroller of Public Accounts**." Contractor may remit payment by check to Texas Comptroller of Public Accounts, Attn: Texas SmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.

(iii) The Texas SmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the Texas SmartBuy administrative fee.

(iv) TXMAS Sales rebate. Contractor shall pay a rebate of 0.73875% of sales under the Contract. CPA will invoice Contractor each calendar quarter for the previous quarter's sales. Payment is due on date indicated on the invoice. The sales rebate payment should be identified as "TXMAS Sales Rebate" and made payable to **"Texas Comptroller of Public Accounts**." Contractor may mail its check payment to Texas Comptroller of Public Accounts, TXMAS Sales Rebate, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.

(b) Warrant hold for unpaid fees or rebates. Section 403.055 of the Texas Government Code generally prohibits the state treasury from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor's debt.

8. MISCELLANEOUS TXMAS PROGRAM REQUIREMENTS

(a) **New Items.** Contractor shall only supply new (unused) goods and replacement parts.

(b) **Statewide Coverage.** Contractor shall serve all Customers and all locations throughout the State of Texas.

(c) **Warranty.** Contractor shall provide a warranty for goods and services sold under the Contract. Any language in the Base Contract that (a) limits CPA's or Customers' remedies; or (b) limits Contractor's liability; is void and unenforceable under this Contract. At a minimum, the warranty period will begin on the date the equipment is accepted by the Customer and will continue in effect for a continuous period of (i) one year from that date, or (ii) the duration of the manufacturer's standard warranty, whichever is longer. If no time or specific protocol for acceptance is specified elsewhere in the Contract or the Customer PO, items are presumed accepted ten working days after receipt. The warranty will apply to any warranty service or repair requested by Customer during the warranty period by contacting the Contractor's authorized warranty service provider with such request, regardless of the amount of time required to complete the requested warranty service or repair. Contractor's warranty obligations will survive the termination of this Contract.

(d) **Warranty Shipment.** Contractor shall pay for shipment of goods under warranty. Contractor may not require a Customer to pay for shipping in order to obtain warranty repairs or replacement.

(e) **Risk of Loss.** Notwithstanding any provision in the Base Contract, all deliveries for this Contract shall be free on board ("FOB") Destination. Contractor shall bear the risk of loss or damage of goods during shipment. Any attempt by Contractor to shift this risk without the express approval of CPA will have no effect.

(f) **Contractor Addresses.** The ordering and payment addresses under this Contract are those stated in the TXMAS Offer Packet Application.

(g) **Time Zone.** All references to time of day are Central Time, including times in the Base Contract that designate another time zone.

(h) **Travel.** Any travel required by Contractor to perform its obligations under this Contract will be at Contractor's expense. If the Customer orders the Contractor to travel beyond what is required by Contractor to perform its obligations under this Contract, the Customer shall reimburse the Contractor in an amount that does not exceed limitations applicable to Texas employees for equivalent travel. Any provision in the Base Contract that requires payment for travel in excess of what is allowed by this subsection is void and unenforceable under this Contract.

(i) **Independent Contractor.** In performing this Contract, Contractor and Contractor's employees, representatives, agents, and any subcontractors are not employees of the State of Texas, CPA, or Customers.

(j) **Subcontracts.** If Contractor subcontracts any part of the performance of this Contract, the State of Texas, CPA, and Customers will have no obligation to any subcontractor. Contractor shall ensure that subcontracts are performed in compliance with this Contract.

(k) **Professional Services.** This Contract specifically excludes professional services as defined by Subchapter A, Chapter 2254 of the Texas Government Code. Contractor may not sell any professional services under this this Contract.

(l) **Consulting Services.** This Contract specifically excludes consulting services as defined by Subchapter B, Chapter 2254 of the Texas Government Code. Contractor may not sell any consulting services under this Contract.

(m) **Information Technology.** CPA will work with the Texas Department of Information Resources and Contractor to identify information technology commodity items as defined in Section 2157.068 of the Texas Government Code and exclude them from the Texas SmartBuy Catalog for this Contract. CPA lacks authority to include these items in TXMAS, and any purchases of these items through this Contract may be void.

(n) **Intellectual Property.** Notwithstanding any language to the contrary in the Base Contract, "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. In the event that this Contract or the Base Contract is terminated for any reason, or upon the expiration of either this Contract or the Base Contract, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Base Contract through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. Any provision in the Base Contract limiting Customers' intellectual property rights is void and unenforceable under this Contract.

9. DEALERS

(a) Upon CPA approval, Contractor may designate one or more dealers to provide goods and services under this Contract on behalf of Contractor. To designate a dealer, Contractor must submit the Letter of Authorization in the format provided by CPA. Contractor shall submit a separate Letter of Authorization for each designated dealer.

(b) The Letter of Authorization must be signed by an authorized representative and addressed to the attention of the CPA Statewide Procurement Division Director. The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and agrees to the following:

i. The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract, and such agreement specifies that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor.

ii. Contractor agrees to be liable for any breach of this Contract by the dealer. Contractor shall pay all fees and rebates to CPA for sales by the dealer.

iii. Customers will pay the dealer for goods and services ordered from the dealer. Customers will

have no obligation to pay the Contractor for goods and services ordered from the dealer.

iv. Contractor's Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that it is withdrawn.

(c) The Letter of Acceptance must be submitted in the format provided by CPA, signed by an authorized representative of the dealer, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Base Contract, it agrees to be bound by the terms and conditions of this Contract and the Base Contract, as both may be amended from time to time, and such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor.

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

10. UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES

In accordance with Chapter 2161 of the Texas Government Code and 34 Texas Administrative Code ("TAC") §§20.281-20.298, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses ("HUB") in contracts for construction, services, and commodities. Contractors are urged to utilize HUB as defined in Section 2161.001 of the Texas Government Code or small businesses as defined in Section 2155.505(a) of the Texas Government Code to sell or provide services under the TXMAS Contract. A Contractor's failure to make a good faith effort to use HUB and small businesses may result in exclusion of Contractor from participation in TXMAS. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

11. INVOICE REQUIREMENTS

(a) In order to request payment, Contractor must submit an original invoice to the office designated in the PO as the "Bill To" address. The invoice must include the following:

(i) Name and address of Contractor as designated in this Contract.

(ii) Contractor's Federal Employer Identification Number.

(iii) Contractor's payments address as designated in this Contract.

(iv) The PO number.

(v) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the goods and services.

(vi) If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).

(b) If an authorized dealer has fulfilled the PO, then the dealer's information should be supplied in lieu of Contractor's information.

(c) If an invoice does not meet this section's requirements, Customer will send Contractor written notice. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.

(d) Customer may, in its sole discretion, request additional documentation to support payment. Contractor shall respond to any such requests within five calendar days of receipt. Customer is required to make payments only upon receipt of a correct invoice, including all required supporting documentation.

(e) Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Any provisions of the Base Contract providing for financing, installment payments, advance payment, or other payment arrangements, are void and unenforceable under this Contract.

(f) In the event of a disputed invoice, a Customer may withhold from its payment no more than 110% of the disputed amount.

12. REPORTING REQUIREMENTS (OFFLINE SALES)

By the 10th day of every calendar month, Contractor must report to CPA the past month's sales of goods and services to Customers under the Contract. The dollar value of the sale must be the price paid by the Customer for the goods and services under the Contract. If no sales occur, Contractor must report no sales in a manner prescribed by CPA.

Contractor must submit Monthly Sales Report electronically to Texas SmartBuy Offline Sales at tsb.offline.sales@cpa.texas.gov in the format prescribed by CPA. CPA reserves the right to modify contract reporting requirements at its sole discretion to meet the evolving needs of CPA and its Customers. If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, CPA may terminate the Contract pursuant to Section 20 (Term and Termination).

13. AUDIT REQUIREMENTS

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit without limitations. Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the PO for that particular order. Any provision in the Base Contract limiting these audit rights is void and unenforceable under this Contract.

14. PUBLIC INFORMATION

Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Contractor further represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provide by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and Contractor agrees that the Contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

15. CONFIDENTIALITY AND SECURITY

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

16. RECORDS RETENTION

Contractor shall maintain and retain all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven years after the contract expiration date which includes all renewals or until all audit, claim, and litigation matters are resolved, whichever is later. Any provision of the Base Contract prescribing a shorter period is void and unenforceable under this Contract.

17. DISCLOSURE OF INTERESTED PARTIES

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

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

TEC Form 1295 is an online form available at TEC's website:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

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

18. INSURANCE

If performing work in a Customer facility, Contractor must provide a statement (Insurance Statement of Intent) that it intends to obtain and maintain the minimum insurance coverage specified below for the term of this Contract to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor represents and warrants that all of the required coverage will be obtained from companies that are licensed in the State of Texas, have an "A-" or better rating and a Financial Size Category of VIII or larger from AM Best, and are authorized to provide the coverage. Contractor shall insure all motor vehicles used to fulfill its duties under the Contract. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract. Contractor shall furnish proof of insurance upon request to a Customer or CPA.

If performing work in a Customer facility, the following requirements apply:

(a) Contractor shall maintain for the term of the Contract the following insurance coverage:

(i) Worker's Compensation Insurance (if Contractor has employees in the state of Texas).

(ii) Employer's Liability Insurance with an aggregate policy limit of at least $1,000,000, including coverage for bodily injury of $500,000 per accident and disease of $500,000 per employee.

(iii) Commercial Automobile Liability Insurance for owned, hired, and non-owned vehicles of at least $1,000,000 combined single limit for each accident.

(iv) Commercial General Liability Insurance of at least (1) $2,000,000 per occurrence if the policy is issued for bodily injury and property damage combined, or (2) $1,000,000 per occurrence for bodily injury and $1,000,000 per occurrence for property damage.

(v) Excess Liability or Umbrella Insurance for all required liability policies (excluding Worker's Compensation Insurance, which is not liability insurance) of at least $1,000,000 in the aggregate.

(b) All policies of insurance shall include the following provisions:

(i) The state of Texas and its officers and employees are named as additional insureds on the Commercial Automobile Liability, Commercial General Liability, Umbrella, and Excess Liability policies.

(ii) Waiver of subrogation in favor of the state of Texas, its officers and employees for bodily injury (including death), property damage or any other loss arising from this Contract or any PO.

(iii) The Contractor's insurance is primary insurance with respect to the state of Texas and its officers and employees.

(c) Contractor will ensure all subcontractors maintain adequate insurance in types and amounts appropriate for the work to be performed under the Contract.

TXMAS Customers may further add to POs mutually-acceptable insurance provisions that do not conflict with the Contract, as set out in Section 6(b), Customer-Specified Terms and Conditions.

19. TAXES

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

20. TERM AND TERMINATION

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

(a) **Termination for Convenience.** CPA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice. CPA may terminate the

Contract for convenience if it has low sales over time, for example. Notwithstanding anything to the contrary in the Base Contract, Contractor does not have any right to terminate the Contract for convenience.

(b) **Termination for Cause.**

(i) If Contractor fails to perform under this Contract, or fails to comply with any of the terms or conditions of this Contract, or its conduct reflects a lack of business integrity, CPA may issue a written notice of default to Contractor and immediately terminate all or any part of this Contract. For example, sale of non-contract items, other than authorized incidental items, may be cause for termination.

(ii) CPA may exercise any other remedy which may be available to it under law, including seeking damages. The exercise of any remedies will not constitute a termination of this Contract. Contractor shall remain liable for all covenants and indemnities under this Contract and the Base Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by CPA to enforce any contractual remedy.

(c) **Change in Federal or State Requirements.** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either CPA or Contractor cannot reasonably fulfill this Contract the parties may agree to an amendment that would allow for continuation of this Contract. Otherwise, CPA may terminate the Contract by issuing a notice invoking this clause.

(d) **Non-Appropriation of Funds.**

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

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

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

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

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

21. FORCE MAJEURE

CPA, a Customer, or Contractor will not be responsible for failure or delays in performance under the Contract due to an act of war, order of legal authority, act of God, disaster, or other unavoidable and unpredictable cause not attributable to its own fault or negligence. A party may be excused from performance for as long as such circumstances prevail, and it continues to use commercially reasonable efforts to perform. Each party shall immediately notify other affected parties by telephone and confirm in writing within five calendar days that it is invoking this provision and its reasons for doing so. This provision shall not be interpreted to allow Contractor to claim force majeure when nonperformance is caused by a predictable cause even if not attributable to Contractor's own fault and Contractor could implement reasonable measures to perform under the Contract. Any provision of the Base Contract that expands the circumstances in which a party may be excused from performance is void and unenforceable under this Contract.

22. DISASTER RECOVERY

Upon request of CPA, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.

23. VENDOR PERFORMANCE

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

24. DELIVERIES

Regardless of the delivery method established in the Base Contract, Contractor agrees that all deliveries for orders placed under this Contract shall be considered FOB destination. Deliveries shall reach destination within the number of calendar days after of receipt of order as specified in Contractor's Texas SmartBuy Catalog, and Contractor retains the risk of loss until the goods reach the Customer. If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

25. EQUAL EMPLOYMENT OPPORTUNITY

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

26. AMERICANS WITH DISABILITIES ACT

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

27. CIVIL RIGHTS

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

28. IMMIGRATION

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

29. INDEMNIFICATION

(a) Acts or Omissions

(i) **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

(b) Infringements

(i) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, AND THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

(ii) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE

ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) CUSTOMER'S USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY CONTRACTOR PURSUANT TO CUSTOMER'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO CUSTOMER, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY CUSTOMER THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

(iii) IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR CUSTOMER PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST CUSTOMER, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT CUSTOMER'S USE IS NON-INFRINGING.

(c) Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

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

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

30. REPRESENTATIONS AND CERTIFICATIONS

Contractor certifies each of the following statements, except to the extent that its TXMAS Offer Packet Application specifically identifies one or more of the statements and describes every fact and circumstance that prevents it from making the certification. Contractor further promises to promptly notify CPA if any of these certifications is no longer true.

(a) **Base Contract Documents.** Contractor represents and certifies that the Base Contract documents submitted to CPA are genuine and complete.

(b) **Base Contract Representations and Certifications.** Contractor represents and certifies that the representations and certifications it made in the Base Contract are true.

(c) **Anti-Fraud Policy of CPA**. Contractor represents and warrants that it has read and understood and will comply with Comptroller's Anti-Fraud Policy as such Policy currently reads and as it is amended throughout the term of the Contract. The policy can be found at https://www.comptroller.texas.gov/about/policies/ethics.php

(d) **Antitrust.** The Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of the TXMAS Offer Packet Application to any competitor or any other person engaged in the same line of business as Contractor.

(e) **Buy Texas Affirmation.** To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

(f) **Child Support Obligations.** Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to Section 231.006 of the Texas Family Code must provide in its TXMAS Offer Packet Application the names and social security numbers of each person with at least 25% ownership of the business entity submitting the Offer Packet. This information must be provided to CPA in writing signed by Contractor's duly authorized representative prior to any award. Submission of an Offer Packet without the required identity disclosures pursuant to Section 231.006(d) of the Texas Family Code constitutes a certification by Contractor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Contractor.

(g) **Dealings with Public Servants Affirmation.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or the Base Contract.

(h) **Financial Participation Prohibited Certification.** Pursuant to Section 2155.004(a) of the Texas Government Code, Contractor certifies that neither Contractor nor any person or entity represented by Contractor has received compensation for participation in the preparation of specifications for this

Contract. Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

(i) **Former or Retired CPA Employees.** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the CPA during the twelve (12) month period immediately prior to the date of execution of the contract.

(j) **Certain Employment for Former State Officer or Employee Restricted.** Contractor must disclose any of its personnel who are current or former officers or employees of the CPA or who are related, within the third degree by consanguinity as defined by Texas Government Code Section 573.023 or within the second degree by affinity as defined by Texas Government Code Section 573.025, to any current or former officers or employees of the CPA.

Contractors must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Contractor, by signing the TXMAS Offer Packet Application, certifies that it has complied with all applicable laws and regulations regarding former state employees.

(k) **Executive Head of a State Agency Affirmation.** Pursuant to Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of CPA, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of CPA, then Contractor shall provide the following information to be considered for award: name of the former executive, name of the state agency, date of separation from the stage agency, position held with Contractor, and date of employment with Contractor.

(l) **COVID-19 Vaccine Passport Prohibition.** Contractor 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 Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

(m) **Energy Company Boycotts.** If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Contractor does not make that verification, Contractor must so indicate in its offer and state why the verification is not required.

(n) **Foreign Terrorist Organizations.** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

(o) **Entities that Boycott Israel.** If Contractor is required to make a certification pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the Contract. If Contractor does not make that certification, Contractor must inform CPA and state why the certification is not required.

(p) **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102 of the Texas Government Code,

Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of the Texas Government Code, or (2) headquartered in any of those countries.

(q) **Legal and Regulatory Actions.** Contractor represents and warrants that it is not aware of and has not received notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the TXMAS Offer Packet Application within the five (5) calendar years immediately preceding the submission of the Offer Packet Application that would or could impair Contractor's performance under the Contract.

If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its TXMAS Offer Packet Application a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of the TXMAS Offer Packet Application.

In addition, Contractor represents and warrants that it shall notify CPA 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 CPA shall constitute breach of contract and may result in immediate termination of the Contract.

(r) **No Felony Criminal Convictions.** Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised CPA of the facts and circumstances surrounding the convictions.

Contractor has a continuing duty to amend, supplement, or correct this representation and warranty not later than ten days after discovering additional information relating to felony criminal convictions of Contractor or any of its employees. Contractor will not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from CPA.

(s) **Prior Disaster Relief Contract Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract that involves financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

(t) **Firearm Entities and Trade Associations Discrimination.** If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If Contractor does not make that verification, Contractor must so indicate in its TXMAS Offer Packet Application and state why the verification is not required.

(u) **Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, Contractor certifies that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

(v) **Abortion Funding Limitation.** Contractor represents and warrants that this Contract is not a taxpayer resource transaction prohibited by Section 2273.003 of the Texas Government Code, and that payments made by CPA to Contractor and Contractor's receipt of appropriated funds under the Contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

(w) **Professional Sports Teams – National Anthem Verification.** If the Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State. CPA or the Attorney General may strictly enforce this provision.

(x) **Prohibition on Lobbying.** Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005 or 556.008 of the Texas Government Code.

(y) **Deceptive Trade Practices; Unfair Business Practices**. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for any such practices in such proceedings.

(z) **Debts and Delinquencies Affirmations.** Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

(aa) **Suspension and Debarment.** Contractor certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, state or local governmental entity. Contractor further certifies Contractor is in compliance with the state of Texas statutes and rules relating to procurement and that Contractor does not have a designated exclusion on SAM, which can be accessed at: https://www.sam.gov/.

(bb) **Excluded Parties.** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

(cc) **Terminated Contracts.** Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency. If the Contractor does have such a terminated contract, Contractor must identify each and provide an explanation for the termination.

(dd) **Conflicts of Interest.** Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.

(ee) **Competitively-Awarded Contract.** Contractor certifies that the Base Contract was awarded using a competitive process by a governmental entity in compliance with Section 2155.502 of the Texas Government Code.

(ff) **Certifications Apply to Customer POs**. Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that all affirmations and certifications are true and correct.

31. NO DEBT AGAINST THE STATE

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

32. COMPLIANCE WITH LAWS

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

33. CYBERSECURITY TRAINING

Contractor shall comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program when Contractor or a subcontractor, officer, or employee of Contractor has access to a state computer system or database. When required, the cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Contractor shall verify to the Customer completion of the program by each such officer, employee, or subcontractor.

34. COOPERATION

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

35. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES

Contractor shall not assign any of its rights under this Contract or delegate the performance of any of its duties under this Contract without prior written approval from CPA. Any attempted assignment in violation of this provision is void and without effect, including assignment of claims or payments, even if authorized under the Base Contract.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities

of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

36. PUBLICITY

Contractor shall not issue news releases, advertisements, or any other public statement about this Contract without CPA's written consent.

37. COMMUNICATION

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

(a) The mailing address for Contractor will be the address specified on Contractor's TXMAS Offer Packet Application.

(b) The address for CPA is:

For Overnight or Express Mail:
Texas Comptroller of Public Accounts
Statewide Procurement Division
Attn: Statewide Contract Management
1711 San Jacinto Blvd.
Room 174-A (CPA mailroom, N.E. Back Door)
Austin, TX 78701

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

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

38. DISPUTE RESOLUTION

Notwithstanding provisions of the Base Contract establishing a procedure or for the resolution of disputes, any dispute arising under this Contract shall be resolved pursuant to one of the following two procedures.

(a) Unless Contractor provides construction services under this Contract, disputes are subject to Chapter 2260 of the Texas Government Code. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code and applicable CPA rules shall be used by CPA and Contractor to resolve any such disputes arising under this Contract. To initiate the process, Contractor shall submit written notice to the Deputy Comptroller or their designee, and to the Director of the Statewide Procurement Division. CPA and Contractor shall first attempt to resolve any contract dispute outside the scope of

Chapter 2260 of the Texas Government Code through the procedure for negotiation and mediation of contract disputes specified in CPA rules. Those rules are incorporated into this Contract. Contractor shall continue to perform its Contract obligations during the dispute resolution process.

(b) If Contractor performs construction services under this Contract, and subject to Section 2260.002 of the Texas Government Code, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set out below in subsections (i)-(iv) shall be used by the parties to attempt to resolve all disputes arising under this Contract. In accordance with Section 114.005 of the Texas Civil Practice and Remedies Code, the parties agree claims encompassed by Section 2260.002(3) of the Texas Government Code and Section 114.002 of the Texas Civil Practice and Remedies Code shall be governed by the dispute resolution process set out below in subsections (i)-(iv).

(i) Notwithstanding Section 2260.002(3) of the Texas Government Code and Section 114.012 of the Texas Civil Practice and Remedies Code and any other statute or applicable law, if Contractor's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Contractor may make a claim against CPA for breach of contract and CPA may assert a counterclaim against Contractor as is contemplated by Subchapter B, Chapter 2260 of the Texas Government Code. In such event, Contractor must provide written notice to CPA of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity (1) the nature of the alleged breach, (2) the amount Contractor seeks as damages and (3) the legal theory of recovery.

(ii) The Deputy Comptroller, Director of the Statewide Procurement Division or other designated officer of CPA shall examine the claim and any counterclaim and negotiate with Contractor in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Section 2260.052 of the Texas Government Code.

(iii) If the negotiation under paragraph (ii) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Contract as to the parts of the claim that are not resolved.

(iv) If a claim is not entirely resolved under paragraph (ii) above by or before the 270th day after the date the claim is filed with CPA, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim under this dispute resolution procedure. This dispute resolution procedure is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of the Contract by CPA if the parties are unable to resolve their disputes as described in this section.

(v) Nothing in this Contract shall be construed as a waiver of the State's or CPA's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. CPA does not waive any privileges, rights, defenses, or immunities available to CPA by entering into this Contract or by its conduct, or by the conduct of any representative of CPA, prior to or subsequent to entering into this Contract.

(vi) Compliance with the dispute resolution process provided for in Subchapter B, Chapter 2260 of the Texas Government Code and incorporated by reference in subsections (i)-(iv) above is a condition precedent to the Contractor's (1) filing suit pursuant to Chapter 114 of the Texas Civil Practice and Remedies Code or (2) initiating a contested case hearing pursuant to Subchapter C, Chapter 2260 of the Texas Government Code.

39. SOVEREIGN IMMUNITY

CPA and Contractor expressly agree that no provision of the contract is in any way intended to constitute a waiver by CPA or the State of Texas of any immunities from suit or from liability that CPA or the State of Texas may have by operation of law.

40. LIMITATION OF AUTHORITY

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

41. LIMITATION OF LIABILITY

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

ANY LANGUAGE IN THE BASE CONTRACT LIMITING CONTRACTOR'S LIABILITY IN ANY WAY OR LIMITING THE INDEMNIFICATION PROVIDED IN SECTION 29 THIS CONTRACT IS VOID AND UNENFORCEABLE UNDER THIS CONTRACT.

42. HEADINGS

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

43. GOVERNING LAW AND VENUE

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a state statute which directly names or otherwise identifies its applicability to CPA.

44. SEVERABILITY

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.