

GENERAL TERMS AND CONDITIONS

UPDATED 03/28/2025

The following terms, conditions, provisions and representations apply to the Contract between the Contractor and the Texas Historical Commission (THC). The term Party or collectively Parties as used in this Contract refer to the Contractor and THC. Additionally, THC may also be referred to as Agency.

1. TERMINATION and SURVIVAL**1.1. Termination for Convenience.**

THC reserves the right, in its sole discretion, to terminate the Contract, in whole or in part, without penalty, by providing written notice to the Contractor prior to the effective date of termination, and such date shall be specified by THC in the termination notice. THC will deliver the written notice in the form and manner specified for notices elsewhere in the Contract (Notices).

In the event of such termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of the termination. THC shall be liable only for payments for any goods or services rendered by the Contractor prior to the effective date of the termination. THC may request in writing that the Contractor perform work that is necessary to wind-up, in a cost-effective manner, all services formerly being provided under the Contract and, if THC chooses to request such wind-up services, then THC will be liable for payment(s) directly related to the Contractor's provision of such agreed upon services. THC's termination rights in this Section are in addition to any termination made necessary due to lack of available funding as detailed elsewhere in the Contract (Funding Availability).

1.2. Termination for Cause/Default/Ineligibility.

If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, or it is discovered the Contractor is ineligible to receive payment under the Contract, then THC may, upon written notice of to the Contractor, terminate all or any part of the Contract. THC will deliver the written notice in the form and manner specified for notices elsewhere in the Contract (Notices). Termination is not an exclusive remedy, but is in addition to any other rights and remedies as provided in equity, by law, or otherwise under the Contract. THC may exercise any other right, remedy, or privilege which may be available to it under applicable law of the State of Texas, or any other applicable law, or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless THC notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall be liable for all costs and expenses, including court costs and attorneys' fees, incurred by THC with respect to the enforcement of any of the remedies listed herein.

If Contractor is found to be in default under any provision of this Contract, THC may cancel this Contract without notice and re-solicit or award the Contract to the next best solicitation respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

The defaulting Contractor shall be responsible for paying damages to THC including, without limitation, re-procurement costs and any consequential damages to the State of Texas or THC resulting from Contractor's performance.

1.3. Rights Upon Termination or Expiration.

In the event that this Contract is terminated for any reason, or upon its expiration, THC shall retain ownership of all associated Work products and documentation (as further detailed in Work Product section) obtained from Contractor under this Contract.

1.4. No State or THC Liability Upon Termination.

If this Contract is terminated for any reason, neither THC nor the State of Texas will be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

1.5. Survival.

Expiration or termination of this Contract, for any reason, does not release Contractor from any liability or obligation set forth in this 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 this Contract, including, without limitation, the provisions regarding warranty, indemnification, confidentiality, records, audit rights, property rights, dispute resolution, invoicing, default, rights and remedies upon termination, and this Survival section.

2. DISPUTE RESOLUTION, APPLICABLE LAW and VENUE, SOVEREIGN IMMUNITY, and NO IMPLIED WAIVER**2.1. Dispute Resolution Process, Chapter 2260.**

The dispute resolution process provided for in Texas Government Code, Chapter 2260, must be used, as further described herein, to attempt to resolve disputes arising under the Contract.

If Contractor asserts a claim for breach of contract, and the Parties are unable to resolve the Contractor's claim in the ordinary course of business, it shall be submitted to the negotiation process provided for in Chapter 2260. To initiate the process, Contractor shall submit a written notice, as required by Chapter 2260 and in a manner conforming to the Notice requirements of the Contract, to the THC Executive Director or his or her designee. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

2.2. Contractor's Sole and Exclusive Remedy.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by THC if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Texas Legislature under Civil Practices and Remedies Code, Chapter 107.

2.3. Negotiation and Mediation.

For claims or disputes under this Contract not falling within the scope of Chapter 2260, THC and Contractor will first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third-party to be chosen by THC and Contractor within 15 (fifteen) days after written notice by the Party demanding mediation under this Section. Contractor will pay all costs of the mediation unless THC, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, THC and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that THC and the Contractor will, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. THC's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section will not be construed as a waiver by THC of, (i) any rights, privileges, defenses, remedies, or immunities available to THC as an agency of the State of Texas or otherwise available to THC; (ii) THC's termination rights; or (iii) other termination provisions or expiration dates of this Contract.

2.4. Continuing Contractor Performance.

Notwithstanding any other provision of this Contract, unless otherwise requested or approved in writing by THC, Contractor shall continue performance and will not be excused from performance during the period any breach of contract claim or dispute is pending under any of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051, and such suspension of performance is expressly applicable and authorized under that law.

2.5. Choice of Law.

This Contract will be governed by and construed in accordance with the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

2.6. Choice of Venue.

The venue of any properly allowed litigation or other dispute resolution proceeding arising out of, or in any way relating to, this Contract is fixed, exclusively, in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to THC. The Contractor hereby irrevocably and unconditionally consents to such exclusive jurisdiction and hereby waives and agrees not to assert: (i) that Contractor is not personally subject to the jurisdiction of a court of competent jurisdiction identified above, (ii) that the suit, action, or proceeding is brought in an inconvenient forum, (iii) that the venue of the suit, action, or proceeding is improper, or (iv) any other challenge to jurisdiction or venue.

2.7. Sovereign Immunity.

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by THC or the State of Texas of any privileges, rights, defenses, or immunities from suit or from liability that THC or the State of Texas may have by operation of law. Neither the execution of this Contract by THC nor any other conduct of any representative of THC relating to this Contract (prior or subsequent to its execution) may be considered a waiver of sovereign immunity.

2.8. Strict Compliance and No Implied Waiver.

Contractor must strictly comply with all of the requirements of this Contract. The failure of THC to insist at any time upon the strict compliance with any requirement of this Contract or to exercise any option, right, power, or remedy contained in this Contract will not be construed as a waiver or a relinquishment thereof for the future. A waiver by THC of any breach of any term of this Contract will not be construed as a waiver of any continuing or successive breach, or a basis for estoppel.

3. CONFIDENTIALITY, PUBLIC INFORMATION, MEDIA RELEASES, and AUDIT RIGHTS

3.1. Texas Public Information Act.

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that THC will comply with the Texas Public Information Act, as codified in Chapter 552, Texas Government Code, and interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act.

Copies of documents not maintained in digital format must be provided to THC within thirty (30) days. Copies of documents maintained in digital format must be provided to THC in .pdf format within thirty (30) days. In case of an Open Records Request, THC may request that documents be made available to THC within five (5) days.

3.1.1. Requests for Information Under the Texas Public Information Act.

THC agrees to notify Contractor in writing, within a reasonable time from receipt, of a request for information related to Contractor's work under this Contract. Contractor shall notify THC's point of contact within 24 (twenty-four) hours of receipt of any third-party requests for information that was provided by the State of Texas for use in performing this Contract. THC will make a determination whether to submit a Public Information Act request to the Attorney General of the State of Texas.

3.1.2. Production of Information Under the Texas Public Information Act.

Contractor shall cooperate with THC in the production of documents responsive to a request. In accordance with Texas Government Code § 2252.907, Contractor is required to make any information created or exchanged with THC or the State of Texas pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to THC or the State of Texas. Copies of documents maintained in digital format shall be provided to THC in .pdf format within 30 (thirty) days. Copies of documents not maintained in digital format must also be provided to THC within 30 (thirty) days. In the case of an Open Records Request, THC may request that documents be made available to THC within five (5) days.

3.2. Confidentiality.

Notwithstanding any disclosures required by the Public Information Act, or other legal obligation, Contractor agrees to maintain the confidentiality of information received from THC and the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

3.3. Media Releases and Public Disclosures.

Contractor is not authorized to make or participate in any media releases or public announcements or disclosures pertaining to this Contract or the services to which this Contract relates without THC's prior written consent, and then only in accordance with explicit written instructions from THC. Contractor shall not use THC's name, logo, or other likeness in any press release, marketing material, or other announcement without THC's prior written approval. THC does not endorse any vendor, commodity, or service. Notwithstanding the foregoing, THC agrees that Contractor may include general references to the work Contractor is performing under this Contract in its marketing materials, including proposals and statements of qualifications, for purposes of demonstrating professional experiences and qualifications.

3.4. Audit Provisions.

Contractor and subcontractors shall cooperate with any authorized agents of THC and/or the State of Texas conducting any lawful audit or investigation and shall provide them with prompt access to any information pertaining to this Contract, or otherwise considered relevant to the investigation or audit, upon THC's or the State's request as provided for herein or pursuant to any applicable laws or regulations of the State of Texas. Contractor's failure to comply with the Audit Provisions of this Contract will constitute a material breach of this Contract and will authorize THC and the State of Texas to immediately assess appropriate damages for such failure.

Contractor shall make available at reasonable times, upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents, and other information kept current by Contractor pertaining to this Contract for purposes of inspecting, monitoring, investigating, auditing, or evaluating by THC, the State Auditor, or any other authorized agent of the State of Texas.

3.4.1. State Auditor's Right to Audit.

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 any contract or indirectly through a subcontract under any contract. The acceptance of funds by Contractor, or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract, acts as acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through this Contract and the requirement to cooperate is included in any subcontract it awards.

3.4.2. Record Retention.

Contractor shall maintain and retain supporting fiscal documents, and any other and records, relating to the performance of this Contract and demonstrating that any payments under this Contract were made 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 State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all audits, billing questions, claims, and litigation matters are resolved, whichever is later.

4. INSURANCE and OTHER SECURITY OBLIGATIONS

4.1. Contractor Insurance Requirements.

Contractor represents and warrants that it will, within seven (7) business days of executing this Contract, provide THC with current Certificates of Insurance or other proof acceptable to THC of, at a minimum, the following insurance coverages:

4.1.1. Workers' Compensation, Unemployment and Employer's Liability

Contractor is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits:

Employers' Liability: Each Accident
\$1,000,000; Disease: Each Employee
\$1,000,000; and Disease: Policy Limit
\$1,000,000.

4.1.2. Commercial General Liability

Personal injury and advertising injury with, at a minimum, the following limits:

Bodily Injury and Property Damage: Each occurrence limit \$1,000,000; and Aggregate Limit: \$2,000,000.
Medical Expense: \$5,000 each person.
Personal Injury and Advertising Liability: \$1,000,000.
Products/Completed Operations Aggregate Limit: \$2,000,000.
Damage to Premises Rented to Contractor: \$50,000.

4.1.3. Insurance Company Standards and Certificates of Insurance

Contractor represents and warrants that all coverages are with companies licensed in Texas, with A rating from A.M. Best Co., and authorized to provide the required coverages. Contractor also represents and warrants that all of the above policies and bonds contain endorsements prohibiting cancellation except upon at least 30 (thirty) days prior written notice to THC. Contractor must, within the time provided above, furnish proof to THC of such coverage in the form of a Certificate of Insurance from Contractor's insurance carrier(s) indicating the above coverages.

The Certificate of Insurance must be addressed to the Texas Historical Commission as the Certificate holder. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract and shall provide THC with an executed copy of the policies immediately upon request.

4.2. Contractor Tax Obligations.

Contractor shall demonstrate onsite compliance with the Federal Tax Reform Act of 1986, § 1706, amending § 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. Contractor shall also comply with all federal and state tax laws and withholding requirements, including, without limitation, laws regarding wages, insurance, and workers' compensation.

4.3. No THC or State Liability.

Neither THC nor the State of Texas will be liable to Contractor or its employees, agents, or others for any unemployment or workers' compensation coverage, or federal or state withholding requirements. THC will not be liable for any taxes from this Contract.

4.4. Tax and Insurance Indemnifications by Contractor.

Contractor shall indemnify and hold harmless THC and the State of Texas and/or their employees, agents, representatives, subcontractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and pay all related costs of defense, attorneys' fees and expenses, relating to tax liability, unemployment insurance, and/or workers' compensation in its performance under this Contract. Contractor shall indemnify and hold harmless THC and the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section (Insurance and Other Security Obligations). 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 shall not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Contractor and THC agree to furnish timely written notice to each other of any such claim(s).

5. INDEMNIFICATION

5.1. Acts or Omissions.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUPPLIERS, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS 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 TEXAS ATTORNEY GENERAL. CONTRACTOR AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

5.2. Infringements.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THC 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: (i) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (ii) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (iii) THC'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THC BY CONTRACTOR OR OTHERWISE TO WHICH THC HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR AND THC 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 TEXAS 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 TEXAS ATTORNEY GENERAL. IN ADDITION, CONTRACTOR WILL REIMBURSE THC 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 THC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR, OR IF THC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF THC'S COUNSEL.

If Contractor becomes aware of an actual or potential claim, or THC provides Contractor with notice of an actual or potential claim, then Contractor may (or in the case of an injunction against THC, shall), at Contractor's expense (i) procure for THC 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 THC's use is non-infringing.

6. CONTRACT VALUE, INVOICING, PAYMENTS, DISCOUNTS, REFUNDS, and TESTING

6.1. Total Contract Value.

The Parties stipulate and agree that THC's total liability to Contractor, and as payment of all consideration for the full, satisfactory, and timely performance of all of Contractor's duties, responsibilities, and obligations under the Contract, including without limitation, for professional fees, and reimbursement, if applicable, of any costs and expenses incurred, or any other liability whatsoever, arising out of any performance herein shall not exceed the total value stated in the Contract.

6.2. Funding, Excess Obligations.

The Parties acknowledge and agree that nothing in this Contract will be interpreted to create a future obligation or liability in excess of funds currently appropriated to THC by the Texas Legislature. Contractor acknowledges and agrees that payments under this Contract are contingent upon THC's receipt of funds appropriated by the Texas Legislature. This Contract is subject to termination or cancellation, without penalty to THC, either in whole or in part, subject to the availability of THC funding. In the event appropriated funds are not available to continue payments for Contractor's performance under this Contract, THC will notify Contractor as soon as reasonably possible, and THC may terminate this Contract at that time, or such other date, as loss of appropriated funds may require. To the extent funds are available, Contractor will be paid for work completed prior to the effective date of termination. THC will not be liable for any damages, or any other amounts, which are caused by, or associated with, such termination.

6.3. No Quantity Guarantees.

Unless explicitly stated in detail elsewhere in this Contract, THC makes no express or implied warranty that any minimum compensation or minimum quantity will be guaranteed under this Contract.

6.4. Approval of Invoices and Payment.

Prior to authorizing any payment to Contractor, THC shall evaluate Contractor's performance using performance standards set forth in the Contract. Contractor shall submit to THC itemized invoice(s) with THC's contract and purchase order numbers and including a copy of THC purchase order (when available). THC is under no obligation to make any payment whatsoever without the prior submission of detailed and correct invoices.

Subject to the foregoing, THC shall make all payments in accordance with the Texas Prompt Payment Act, as codified in Chapter 2251, Texas Government Code. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice.

6.5. Discounts.

If Contractor at any time during the term of this Contract provides a discount on the final Contract costs, Contractor shall notify THC in writing ten (10) calendar days prior to the effective date of discount. THC will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.

6.6. Refunds.

Contractor will promptly refund or credit within 30 (thirty) calendar days any funds erroneously paid by THC which are not expressly authorized under this Contract.

6.7. Debts and Delinquencies to the State of Texas.

The Comptroller of the State of Texas is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the State. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract will be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas.

6.8. Permits, Certifications and Licenses.

Contractor represents and warrants that it has determined what licenses, certifications, and permits are required under this Contract and has acquired all applicable licenses, certifications, and permits.

6.9. Changes in Scope and Substitutions.

Changes to the scope of this Contract affecting the cost of services or goods provided by the Contractor must be approved in writing by THC, and no payment will be due for work performed or goods supplied without such written approval. Substitutions are not permitted without written approval of THC.

6.10. Testing and Inspections.

THC may test and inspect goods and services before and/or after they are purchased under this Contract to ensure compliance with this Contract. Authorized THC personnel shall have access to Contractor's place of business for the purpose of inspecting such goods. To the extent practical, THC's inspections will not disrupt Contractor's daily operations.

6.10.1. Testing Process.

Tests shall be performed on samples submitted with the Contractor's solicitation response or on samples taken from regular shipments. All costs of testing and inspection shall be borne by Contractor. In the event the goods and/or services tested fail to meet or exceed all conditions and requirements of the Contract, they will be rejected, in whole or in part, at THC's option, and returned to Contractor or held for disposition at Contractor's expense. Latent defects may result in cancellation of this Contract at no expense to THC or the State of Texas.

6.10.2. Testing Failure.

If a material fails to meet specifications, then Contractor shall be notified by written notice in the form and manner specified for notices elsewhere in the Contract (Notices). Contractor will have ten (10) working days after receipt of the notification to remove the rejected material from State property. The material will be removed at Contractor's expense. The material not removed in the allotted time period will be disposed of by THC, and Contractor will be charged for all disposal expenses incurred.

7. INDEPENDENT CONTRACTOR, SUBCONTRACTORS, CONTRACTOR AUTHORITY LIMITATION**7.1. THC's Project Manager.**

THC may designate a Project Manager for this Contract, and, if THC does make such a designation, then the Project Manager would serve as the main point of contact between THC and Contractor. THC's Project Manager would also supervise THC's review of Contractor's work and deliverables, schedules, Security Incident response (as defined elsewhere herein), budget and invoicing administration, and similar matters. The Project Manager does not have any express or implied authority to vary the terms of this Contract, amend this Contract in any way, or waive strict performance of the terms, or conditions of this Contract.

7.2. Independent Contractor Status.

Contractor and Contractor's employees, representatives, agents, suppliers, third-party service providers, and any subcontractors shall serve as independent contractors in providing services or goods under this Contract.

Contractor or Contractor's employees, representatives, agents, suppliers, third-party service providers, and any subcontractors are *not* employees of THC or the State of Texas. This Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and THC.

7.3. Subcontractors.

Should Contractor subcontract any of the services required under this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Contractor is responsible for any payments and other claims due to such subcontractors, and THC is in no manner liable to any of Contractor's subcontractor(s). In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with this Contract. THC retains the right to check a subcontractor's background and approve, or reject, the use of submitted subcontractors.

7.4. Limitation on Contractor Authority.

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

8. INFORMATION SECURITY AND ACCESS

8.1. Security Incident Policy.

Contractor shall provide notice to THC (through THC's designated Project Manager or other primary point of contact for the Contract) within twenty-four (24) hours of Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of materials (Security Incident).

Within twenty-four (24) hours of the notification of a Security Incident, Contractor shall provide a written report to THC detailing the circumstances of the Security Incident, which includes at a minimum, if available:

- a) A description of the nature of the Security Incident;
- b) The type of theft or damage involved;
- c) Who may have caused the theft or damage;
- d) What steps Contractor has taken, or will take, to investigate the Security Incident;
- e) What steps Contractor has taken, or will take to, mitigate any negative effect of the Security Incident; and
- f) A point of contact for additional information.

Each day thereafter until the investigation is complete, Contractor shall provide THC with a written report regarding the status of the investigation and the following additional information as it becomes available:

- a) Who is known or suspected to have gained unauthorized access to the site;
- b) Whether there is any knowledge the site has been abused or compromised;
- c) What additional steps Contractor has taken, or will take, to investigate the Security Incident;
- d) What steps Contractor has taken, or will take, to mitigate any negative effect of the Security Incident;
- e) What corrective action Contractor has taken, or will take, to prevent future similar unauthorized use or disclosure.

Contractor shall confer with THC regarding the proper course of the investigation and risk mitigation. THC reserves the right to conduct an independent investigation of any Security Incident, and should THC choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to THC and THC's authorized representative(s). If THC, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to THC by Contractor. If Contractor does not reimburse such costs within thirty (30) days of THC's written request, then THC will have the right to collect such costs.

8.2. Data Management and Security Controls.

In accordance with Texas Government Code § 2054.138, Contractor certifies that it will comply with the security controls required under this Contract and will maintain records and make them available to THC as evidence of Contractor's compliance with the required controls.

8.3. Cybersecurity Training.

Contractor shall ensure that any Contractor employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Texas Government Code § 2054.519. Such training is required to occur during the Contract term and, if any, the renewal or extension period. Contractor shall provide THC with verification of the completion of the requisite training.

8.4. Electronic and Information Resources Accessibility Standards.

When applicable, THC is required to procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Tex. Admin. Code §§ 213.10 – .17, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

To the extent applicable and required by law, the Contractor shall provide THC and the Department of Information Resources (DIR) with the URL to its Voluntary Product Accessibility Template (VPAT) for compliance review with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act of 1973, § 508, as amended, 29 USC § 794d, 36 CFR § 1194.1), or indicate that the product/service accessibility information is available from the General Services Administration Accessibility Requirements Tool (ART) (<https://www.section508.gov/art/#/>). Contractors not listed with ART, or supplying a URL to their VPAT, must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding ART or on obtaining a copy of the VPAT is located at <https://www.section508.gov/buy/>.

9. PROPERTY RIGHTS

9.1. Work Product and Work for Hire.

For purposes of this Contract, the term Work is defined as all work papers, work products, materials, deliverables, reports, approaches, designs, specifications, statistical analyses, research, systems, programs, software, source code, documentation, methodologies, concepts, intellectual property, or other property developed, produced, or generated in connection with the services provided under this Contract. All Work developed pursuant to this Contract is made the exclusive property of THC. Contractor and Contractor's employees will have no rights in, or ownership of, the Work and any and all documentation or other products and results of the services or any other property of THC. All right, title, and interest in and to said property shall vest in THC upon creation and shall be deemed to be a work-made-for-hire and made in the course of the services rendered pursuant to this Contract.

Contractor does hereby sell, transfer, and irrevocably assign to THC, its successors and assigns, the entire right, title, and interest in and to the Work and any registrations and copyright applications relating thereto, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims, and payments, now or hereafter, due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on rights to the Work, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers, and to perform such other actions, as THC may deem necessary to secure for THC, or its designee, all rights to the Work.

To the extent that title to any such Work may not, by operation of law, vest in THC, or such work may not be considered a work-made-for-hire, all rights, title, and interest therein are hereby irrevocably assigned to THC. In the event that Contractor has any rights in and to the Work that cannot be assigned to THC, Contractor hereby grants to THC 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, offer for sale, or otherwise exploit the Work, in each case without any restrictions and without accounting to Contractor, 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.

THC shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give THC and/or the State of Texas, as well as any person designated by THC and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

No later than the first calendar day after the termination or expiration of this Contract or upon THC's request, Contractor shall deliver to THC all completed, or partially completed, Work and any and all documentation or other products and results of the services performed pursuant to the Contract. Failure to timely deliver such materials will be considered a material breach of this Contract. Contractor will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of THC.

9.2. License Grant.

To the extent applicable to any property of Contractor being validly utilized by THC under this contract, Contractor hereby grants to THC a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (i) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the property, in each case without any restrictions and without accounting to Contractor; and (ii) to sublicense any or all such rights to third parties.

9.3. Trademark Ownership.

Contractor hereby acknowledges and agrees that THC's trademarks remain the exclusive property of THC, that all right, title, and interest in and to the trademarks is exclusively held by THC, and all goodwill associated with such trademarks inures solely to the benefit of THC.

9.4. Use of State Property.

Contractor is prohibited from using State Property for any purpose other than performing services authorized under this Contract. State Property includes, but is not limited to, THC's office space, identification badges, THC's information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads or other tablets, external hard drives, data storage devices, any THC-issued software, and THC Virtual Private Network (VPN client)), and any other resources of THC. Contractor shall not remove State Property from the continental United States. In addition, Contractor shall not use any computing device to access THC's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless this Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor will be responsible for (i) all repair and replacement charges incurred by THC that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds this Contract's scope. Contractor will fully reimburse such charges to THC within ten (10) calendar days of Contractor's receipt of THC's notice of amount due. Use of State Property for a purpose not authorized by this Contract will constitute breach of this Contract and may result in termination of this Contract and the pursuit of other remedies available to THC under this Contract, at law, or in equity.

9.5. Damage to Governmental Property.

Contractor shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to this Contract. Contractor shall notify THC in writing of any such damage within one (1) calendar day. Contractor is responsible for the removal of all debris resulting from work performed under this Contract.

10. NONDISCRIMINATION AND HUB

10.1. Equal Opportunity.

Contractor represents and warrants that it 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.

10.2. Historically Underutilized Business.

In accordance with Texas Government Code §§ 2161.181-182, State agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUB) in contracts for construction, services, including professional and consulting services and commodities contracts. The Texas Comptroller of Public Accounts (CPA), as described in 34 Tex. Admin. Code § 20.281 – .298, encourages the use of HUBs by implementing these policies through race-, ethnic-, and gender-neutral means. The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in state contracting in accordance with THC projected percentage goals listed below:

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders' contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26% for all other services contracts; and
- 21.1% for commodities contracts.

THC shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year. It is the policy of THC to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with Chapter 2161, Texas Government Code, and the Texas CPA HUB rules in 34 Tex. Admin. Code §§20.281 – .298.

THC identifies HUB vendors from the CPA Centralized Master Bidders List (CMBL). This is a list of vendors that may perform the subcontract opportunities. The class codes are: 956/30, 956/70 and 962/52. This list is located at:

<https://comptroller.texas.gov/purchasing/vendor/cmb/>. The THC HUB Coordinator is Dr. Carol Egele at responses@thc.texas.gov.

11. GENERAL CONTRACT TERMS AND CONDITIONS

11.1. Merger and Integration.

This Contract, including any attachments, exhibits, and addenda, contains the entire agreement between the Parties and supersedes any prior oral or written agreements between THC and Contractor on the matters contained herein. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract is invalid and unenforceable.

11.2. Amendments and Other Modifications for Legal Compliance.

Except as may be otherwise expressly provided herein, no modification, alteration, amendment, or waiver of any term, provision, covenant, or condition of this Contract shall be valid unless in writing and executed by THC and Contractor

Notwithstanding any other provision in this Contract, THC reserves the right to unilaterally deem any alterations, additions, or deletions to the terms of the Contract that are required by changes in federal or Texas law or regulations automatically incorporated into the Contract, without the need for written amendment, to ensure THC and Contractor remain in compliance with all applicable laws and regulations. Should such a change be necessary, it shall be deemed effective on the date designated by such law or regulation.

11.3. Assignment.

Contractor may not assign this Contract or assign, transfer, or delegate, in whole or in part, any of its interest in, or rights, duties, or obligations under, this Contract without the prior written consent of THC, and any attempted or purported assignment, transfer or delegation thereof without such consent will be null and void.

11.4. No Third-Party Beneficiaries.

The Contract is made solely and specifically among and for the benefit of the Parties named herein and no other person or entity 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.

11.5. Timing.

Time is of the essence in the performance of this Contract.

11.6. Severability.

If any provision of the Contract is construed to be illegal, invalid, void, or unenforceable, such construction will not affect the legality, validity, or enforceability of any of its other provisions. It is the intent and agreement of the Parties that the Contract shall be deemed amended by modifying any provision to the extent necessary to render it valid, legal, and enforceable while preserving its original intent or, if such modification is not possible, by substituting another provision that is valid, legal, and enforceable and that achieves the same objective. All unaffected provisions of the Contract will continue in full force and effect.

11.7. Force Majeure.

Neither Contractor nor THC will be liable to the other for any failure or delay in performance of any requirement of this Contract caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform as soon as possible. Force majeure is defined as acts of God (including, without limitation, hurricanes, floods, fires, and tornadoes), war, explosions, failure of transportation, pandemics or epidemics, order of legal authority, or other unavoidable cause case not attributable to the fault or negligence, and beyond the reasonable control, of either Party. Each Party must provide the other with written notice, with proof of receipt, within three (3) business days of the existence of such force majeure event or otherwise waive this right as a defense.

11.8. Notices.

All written notices required under this Contract will be delivered or sent to, as applicable, the Contractor's office address (as provided in its solicitation response), or THC's office or postal mailing address (1700 N. Congress Ave., Austin, TX 78701, or PO Box 12276, Austin, TX 78711-2276). Notices may be by either: (1) in person hand delivery; (2) express or priority commercial package delivery service with tracking and delivery confirmation (e.g., FedEx); or (3) by US Mail, registered or certified, return receipt requested. Notice will be effective on receipt by the affected Party. Either Party may change their designated notice address in this Section by written notification to the other Party. Fax or email notices are invalid unless both Parties agree to waive the above hard copy requirements.

11.9. Signature Effect and Authority.

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract and warrants that all statements and information contained herein are current, complete, true, and accurate. By executing this Contract, the Contractor represents and warrants that the individual affixing their signature (electronically or manually) is authorized to sign all contract documents on behalf of the Contractor and to bind the Contractor to the contract.

11.10. False Statements.

If Contractor signed its solicitation response or signs this Contract with a false statement or material misrepresentation, or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications, and affirmations included in this Contract, Contractor will be in default under this Contract and THC may terminate or void this Contract for cause and pursue other remedies available to THC under this Contract and applicable law. Should information relevant to the representations, warranties, guarantees, certifications, and affirmations included in this Contract change at any time during the term or performance of this Contract, the Contractor must provide THC the updated information within ten (10) calendar days.

11.11. Binding Effect.

At THC's option, this Contract will inure to the benefit of, be binding upon, and be enforceable against, Contractor's respective permitted successors, assigns, transferees, and delegates.

12. CONTRACTOR REPRESENTATIONS, WARRANTIES, and COMPLIANCE OBLIGATIONS**12.1. Contractor Representations and Warranties Regarding State Employees and Conflicts of Interest.****12.1.1. No Conflicts.**

Contractor represents and warrants that the provision of goods and services or other performance under this Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. If circumstances change during the course of this Contract, then Contractor will promptly notify THC.

12.1.2. Financial Participation Prohibited.

Pursuant to Texas Government Code § 2155.004(b), Contractor certifies that neither Contractor, nor any person or entity represented by Contractor that will participate financially in this Contract, has received compensation from THC, or any other entity of the State of Texas, to participate in the preparation of the specifications or solicitation on which this Contract is based.

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

12.1.3. Dealings With Public Servants.

Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any public servant or employee in connection with this Contract.

12.1.4. Lobbying and State Employee Compensation Prohibition.

Contractor represents and warrants that THC's payments to Contractor, and Contractor's receipt of appropriated or other funds under this Contract, are not prohibited by Texas Government Code §§ 556.005, .0055, or .008.

12.1.5. Restricted Employment of Certain State Personnel.

Pursuant to Texas Government Code § 572.069, Contractor certifies that it has not employed, and will not employ, a former officer or employee of the State of Texas who participated in a procurement or contract negotiation for THC involving Contractor within two (2) years after the date that this Contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

12.1.6. Disclosure of Prior State Employment.

To the extent applicable and in accordance with Texas Government Code § 2254.033, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by THC or another agency of the State of Texas at any time during the two (2) years preceding the submission of Contractor's solicitation response, or, in the alternative, Contractor has disclosed in its solicitation response to THC (i) the nature of the previous employment with THC or the other State of Texas agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

12.1.7. Executive Head of a State Agency Certification.

Under Texas Government Code § 669.003, Contractor certifies that it does not employ, or has disclosed its employment of, any former executive head of THC. Contractor must provide the following information for this Contract:

- Name of Former Executive –
- Name of State Agency –
- Date of Separation from State Agency –
- Position with Contractor –
- Date of Employment with Contractor –

12.1.8. Disclosure and Certificate of Interested Parties.

Pursuant to Texas Government Code § 2252.908, THC may not enter into certain Contracts with a business entity unless the entity submits a disclosure of interested parties (Certificate of Interested Parties – Form 1295) to THC at the time of contracting. To complete Form 1295, the Contractor must visit the Texas Ethics Commission's website and access the Form 1295 Electronic Filing Application. An authorized agent of the Contractor must sign a printed copy of the form affirming, under the penalty of perjury, that the completed form is true and correct, and that Form 1295, bearing the unique certification of filing number, must be filed with THC. THC shall request the form concurrent with the issuance of a notice of award for the Contract. Additional information about Form 1295, including frequently asked questions and instructional videos for business entities, may be found on the Texas Ethics Commission's website: <https://www.ethics.state.tx.us/filinginfo/1295/>.

12.1.9. Former Agency Employees.

Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under this Contract, were former employees of THC during the 12 (twelve) month period immediately prior to the date of execution of this Contract.

12.2. Contractor Representations and Warranties Regarding Eligibility.**12.2.1. Child Support.**

Under Texas Family Code § 231.006(d), regarding child support, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to Texas Family Code § 231.006(d), must include names and Social Security numbers of each person with at least 25% (twenty-five percent) ownership of the business entity executing this Contract. Disclosure of Social Security Numbers (SSN) required under Texas Family Code §§ 231.006(c) and 231.302(c)(2) will be used to identify persons that may owe child support and will be kept confidential to the fullest extent allowed under Texas Family Code § 231.302(e).

12.2.2. Felony Criminal Convictions.

Contractor represents and warrants that neither Contractor nor Contractor's employees, agents, or representatives, including any subcontractors and employees, agents, or representatives of such subcontractors, have been convicted of a felony criminal offense, or that, if such conviction has occurred, Contractor has fully advised THC as to the facts and circumstances surrounding the conviction(s).

12.2.3. Prior Disaster Relief Violation.

Texas Government Code §§ 2155.006 and 2261.053, prohibits State agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004, occurring after September 24, 2005. Under Texas Government Code § 2155.006, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12.2.4. Critical Infrastructure Affirmation.

Pursuant to Texas Government Code § 2274.0102, 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 Texas Government Code § 2274.0103, or (2) headquartered in any of those countries.

12.2.5. Human Trafficking.

Under Texas Government Code § 2155.0061, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12.2.6. Foreign Terrorist Organization.

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or other foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

12.2.7. 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.

12.2.8. Suspension and Debarment.

Contractor certifies that it and its principals are not suspended or debarred from doing business with the State or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

12.2.9. Executive Order GA-48.

Contractor certifies that neither it, nor its holding companies or subsidiaries, is:

- a) Listed in Section 889 of the 2019 National Defense Authorization Act;
- b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or
- c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 CFR Section 791.4; or
- d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 CFR Section 791.4.

12.3. Contractor Representations and Warranties Regarding Boycotts and Prohibitions.**12.3.1. COVID-19 Vaccine Passport Prohibition.**

Contractor certifies it does not require its customers to provide 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.

12.3.2. Energy Company Boycotts.

Contractor represents and warrants that, (i) it does not, and will not for the duration of this Contract, boycott energy companies or (ii) verification required by Texas Government Code § 2274.002 does not apply to this Contract. If situations relevant to this provision change during the course of this Contract, Contractor shall promptly notify THC.

12.3.3. Entities that Boycott Israel.

Contractor represents and warrants that (i) it does not, and shall not for the duration of this Contract, boycott Israel or (ii) the verification required by Texas Government Code § 2271.002 does not apply to this Contract. If circumstances relevant to this provision change during the course of this Contract, then Contractor shall promptly notify THC.

12.3.4. Firearm Entities and Trade Associations Discrimination.

Contractor verifies that: (i) it does not, and will not for the duration of this Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (ii) the verification required by Texas Government Code § 2274.002 does not apply to this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify THC.

12.4. Other General Contractor Obligations.**12.4.1. Contracting Information Responsibilities.**

When applicable, the Contractor represents and warrants that it will comply with the requirements of Texas Government Code § 552.372(a). 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 the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

12.4.2. Buy Texas and Texas Bidder.

In accordance with Texas Government Code § 2155.4441, Contractor agrees that during the performance of this Contract, Contractor will purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the State. Additionally, Contractor certifies that if a Texas address is shown as the address of the Contractor in this Contract, the Contractor qualifies as a Texas Bidder as defined in Texas Government Code § 2155.4441.

12.4.3. Disaster Recovery Plan.

In accordance with 13 Tex. Admin. Code § 6.94(a)(9), upon request by THC, Contractor will provide the descriptions of its business continuity and disaster recovery plans.

12.4.4. Deceptive Trade Practices and Unfair Business Practices.

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17, 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 also certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit.

12.4.5. Antitrust.

Contractor represents and warrants that, in accordance with Texas Government Code § 2155.005, neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has:

- (i) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, in Chapter 15, Texas Business and Commerce Code, or the federal antitrust laws; or
- (ii) communicated directly or indirectly the contents of Contractor's solicitation response to any competitor or any other person engaged in the same line of business as Contractor.

12.5. Contractor's Ongoing Legal Compliance Obligations.**12.5.1. Contractor Compliance with Laws.**

Contractor must comply with all laws, regulations, requirements, and guidelines applicable to a contractor providing 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.

12.5.2. Program Fraud and False or Fraudulent Statements or Related Acts.

Contractor acknowledges that Administrative Remedies for False Claims and Statements, 31 U.S.C., Chapter 38, apply to Contractor's actions pertaining to this Contract.

12.5.3. E-Verify Program.

Contractor certifies that it shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of, (i) all persons employed by Contractor to perform duties within the State of Texas; and (ii) all persons, including subcontractors, assigned by Contractor to perform work pursuant this Contract within the United States of America. By entering into this Contract, Contractor certifies and affirms that all employees and other persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract are eligible to work in the United States of America. The Contractor shall provide, upon request of THC, 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 most recent hires that match the criteria above by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of THC, with no fault to THC, and with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State of Texas must undertake to replace the terminated Contract.

12.5.4. Immigration.

Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

12.5.5. Americans with Disabilities Act.

Contractor represents and warrants its compliance with the requirements of the American with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

12.5.6. Federal Occupational Safety and Health Law.

Contractor represents and warrants that all articles and services will 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).

*****END of SECTION****