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Department of Information Resources

DIR-CPO-6135 Appendix A Standard

Contract Terms and Conditions Master

Cooperative Contract

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1 Contract Scope

Successful Respondent shall make the products and services specified in the Contract available for purchase by Eligible Customers under the terms and conditions provided by the Contract.

2 No Quantity Guarantees

The Contract is not exclusive to Successful Respondent. Eligible Customers may obtain products and services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products or services will be procured through the Contract.

3 Definitions

Except as otherwise expressly provided herein, all capitalized terms used in the Contract shall have the meanings given to them in this Section.

3.1 Business Day

Refers to days on which normal business operations are typically conducted, excluding weekends and national holidays specified in Texas Government Code Section 662.003. If the Contract calls for performance on a day that is not a Business Day, then performance will occur on the next Business Day. Unless otherwise stated, a Business Day begins at 12:00 a.m. and ends at 11:59 p.m., Central Time.

3.2 Compliance Check

An audit or similar review of Successful Respondent's compliance with the Contract performed by a third-party auditor, DIR staff, or their designees.

3.3 Contract

The Master Cooperative Contract between DIR and Successful Respondent, including all Appendices, Exhibits, and other attachments thereto. Notwithstanding the foregoing, unless expressly provided or the context otherwise requires, references to the Contract in conjunction with Section or Article references shall be deemed references to the body of the Contract.

3.4 Customer

An entity that purchases goods or services under the Contract.

3.5 Customer Data

Any data or information of or regarding a Customer that is provided to or obtained by Successful Respondent in connection with the negotiation and execution of the Contract or the performance of Successful Respondent's obligations under the Contract. For the avoidance of doubt, Customer Data includes information about Customers provided by DIR to Successful Respondent.

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Customer Data does not include:

(a) financial and accounting information (including costs, expenditures, billing collections, revenues, and finances) of Successful Respondent or its Third-Party Providers;

(b) information created by Successful Respondent to measure the productivity and efficiency of its products and services or to improve the processes and procedures used by Successful Respondent in the performance of its obligations under the Contract;

(c) human resources and personnel information of Successful Respondent or its Third-Party Providers; or

(d) information with respect to third-party contracts or licenses of Successful Respondent, its affiliates or subcontractors and used in the performance of its obligations under the Contract.

3.6 Eligible Customer

Any entity designated by DIR or by law as eligible to purchase goods and services through DIR's cooperative contracts program, including any of the following entities identified in Texas Government Code Section 2054.0525:

(a) a state agency;

(b) a local government;

(c) the legislature or a legislative agency;

(d) the supreme court, the court of criminal appeals, or a court of appeals;

(e) a public hospital owned or operated by this state or a political subdivision or municipal corporation of this state, including a hospital district or hospital authority;

(f) an independent organization certified under Texas Utilities Code Section 39.151, for the ERCOT power region;

(g) the Texas Permanent School Fund Corporation;

(h) an assistance organization, as defined by Texas Government Code Section 2175.001;

(i) an open-enrollment charter school, as defined by Education Code Section 5.001;

(j) a private school, as defined by Education Code Section 5.001;

(k) a private or independent institution of higher education, as defined by Education Code Section 61.003;

(l) a public safety entity, as defined by 47 U.S.C. Section 1401;

(m) a volunteer fire department, as defined by Texas Tax Code Section 152.001; and

(n) a governmental entity of another state.

The Parties acknowledge and agree that the scope of Eligible Customers is subject to modification by the Texas Legislature, and that the then-current statutory definition for "Eligible entity" shall control for all purposes.

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3.7 Designated Reseller

Refers to the company or companies designated by Successful Respondent to provide products, services, and support resources to Customers under this Contract as referenced in Section 7 of the Master Contract.

3.8 DIR

Refers to the Texas Department of Information Resources.

3.9 Effective Date

Refers to the date on which the last party signs the Contract.

3.10 Invoice

Refers to an instrument submitted by Successful Respondent to Customer for payment of goods or services.

3.11 Purchase Agreement

Refers to the binding documents or set of documents used by Customer and accepted by Successful Respondent to purchase products or services from Successful Respondent under the Contract. A Purchase Agreement may take the form of a fiscal purchase order, Statement of Work, service agreement, procurement card, purchase order, fiscal form, other authorized instrument, or a combination of such documents.

3.12 State

Refers to the State of Texas.

3.13 Statement of Work (SOW)

Refers to a document entered into between Customer and Successful Respondent that states the requirements for a Purchase Agreement, including deliverables, performance specifications, and other requirements specific to the Successful Respondent under the Purchase Agreement that are not specified in the Contract.

3.14 Successful Respondent

Refers to the party identified as either "Successful Respondent" or "Vendor" in Section 1.1 of the Contract.

3.15 Third-Party Provider

Refers to an affiliate, subcontractor, vendor, reseller, order fulfiller, manufacturer, publisher, distributor, Designated Reseller, or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Agreement issued under the Contract.

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4 General Provisions

4.1 Entire Agreement

The Contract constitutes the entire agreement between DIR and Successful Respondent. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract is binding or valid.

Customers shall execute a Purchase Agreement with Successful Respondent to purchase products or services under the Contract. The Contract and the Purchase Agreement constitute the entire agreement between the Customer and Successful Respondent. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract or the Purchase Agreement is binding or valid.

4.2 Modification of Contract Terms and Amendments

(a) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract.

(b) Except as provided below, the parties to the Contract may only modify or amend the Contract upon mutual written agreement signed by authorized representatives of both DIR and Successful Respondent.

(c) Notwithstanding Section 4.2(b) above, DIR reserves the right, in its sole discretion, to unilaterally, upon thirty (30) calendar days written notice to Successful Respondent without the Successful Respondent's written consent or signature, amend the Contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for DIR's compliance with all applicable state and federal laws, regulations, requirements, and guidelines, or to satisfy a procedural change due to DIR system upgrades or additions.

(d) Notwithstanding Section 4.2(b) above, the parties may modify or amend Appendix B, VetHUB Subcontracting Plan (HSP), by mutual agreement through written correspondence without an amendment to the Contract.

(e) Customers do not have authority to modify the terms of the Contract. However, the Master Cooperative Contract authorizes Additional Agreements that do not conflict with the Contract and that are acceptable to both Customer and Successful Respondent to be added in a Purchase Agreement and given effect. No Additional Agreement added in a Purchase Agreement can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a Purchase Agreement and the Contract, the Contract controls.

(f) Customer and Successful Respondent will negotiate and enter into written agreements regarding Statements of Work, service level agreements, remedies, acceptance criteria, information confidentiality, security requirements, limitation of liability (if any), and other terms specific to their Purchase Agreements under the Contract.

4.3 Invalid Term or Condition

(a) To the extent any term or condition of the Contract conflicts with an applicable state or

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United States law or regulation, that Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of the term or condition and DIR does not waive the applicable state or United States law or regulation which conflicts with the Contract term or condition.

(b) If a term or condition in the Contract, or the application of a term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances remains valid and in full force and effect.

4.4 Assignment

(a) DIR may assign the Contract or its rights and obligations under the Contract without prior written approval to: 1) a successor in interest (another state agency as designated by the Texas Legislature) or 2) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

(b) A Customer may assign a Purchase Agreement issued under the Contract or its rights and obligations under the Purchase Agreement without prior written approval to: 1) a successor in interest (another state agency as designated by the Texas Legislature) or 2) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

(c) Successful Respondent shall not assign or delegate the Contract or its rights or obligations under the Contract, including by operation of law or through a change in control, without prior written approval from DIR. Any attempted assignment or delegation in violation of this provision is null and void and has no effect.

(d) Successful Respondent shall not assign or delegate a Purchase Agreement or its rights or obligations under the Purchase Agreement, including by operation of law or through a change in control, without prior written approval from the Customer. Any attempted assignment or delegation in violation of this provision is null and void and has no effect.

4.5 Survival

(a) All Purchase Agreements shall survive the expiration or termination of the Contract for the term of the Purchase Agreement, unless the Customer terminates the Purchase Agreement sooner. However, regardless of the term of the Purchase Agreement, no Purchase Agreement shall survive the expiration or termination of the Contract for more than three (3) years (the "Survival Term").

(b) In all instances of expiration or termination of the Contract, Successful Respondent shall continue to report all sales and pay the DIR Administrative Fees for the duration of the Survival Term. For the avoidance of doubt, Successful Respondent shall report even in months where sales are $0.

(c) Any provision of this Contract that contemplates performance or observance subsequent

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to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

(d) The following provisions are among those that survive termination of the Contract or a Purchase Agreement:

(1) Contract Section 5, and Section 10.4 of this Appendix A regarding the DIR Administrative Fee, and any and all payment obligations for which invoices were provided to Customer prior to the termination or expiration of the Contract;

(2) Section 4.10, Warranty and Return Policies;

(3) Section 4.12, Non-solicitation of Customer Employees;

(4) Section 5, Intellectual Property Matters;

(5) Section 6, Data Terms;

(6) Section 13, Indemnification and Liability;

(7) Section 10.4, Required Reports;

(8) Section 10.5, Records and Audit;

(9) Sections 12.6 and 12.7 regarding Rights Upon Termination;

(10) Section 14, Required Insurance Coverage; and

(11) Section 15.7, Confidentiality and the Texas Public Information Act.

4.6 Choice of Law

The Contract is governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions.

4.7 Compliance with Laws

Successful Respondent shall comply with all laws and regulations applicable to the Contract and to the goods and services purchased under the Contract through a Purchase Agreement, as these laws and regulations currently exist and may be amended throughout the term of the Contract and any applicable Purchase Agreement.

4.8 Limitation of Authority

Successful Respondent has no authority to act for or on behalf of DIR or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

4.9 Independent Contractor

Successful Respondent agrees and acknowledges that during the existence of the Contract and

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any resulting Purchase Agreements, it is furnishing services in the capacity of an independent contractor and that Successful Respondent and its personnel are not employees of the Customer, DIR, or the State of Texas.

4.10 Warranty and Return Policies

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Agreement within thirty (30) calendar days of receipt of an Invoice for the products or services. Successful Respondent shall correct the error, inaccuracy, or other deficiency at no additional cost to Customer.

In addition to the minimum warranty provided above, Successful Respondent shall adhere to Successful Respondent's then-currently published policies concerning warranties and returns. Warranty and return policies offered to Customers shall not be more restrictive or more costly than warranty and return policies for other similarly situated customers for similar products and services.

4.11 Force Majeure

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Agreement for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, court order, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome (each such event, an "Event of Force Majeure"), on the condition that the party experiencing an Event of Force Majeure has prudently and promptly acted to take all steps that are within the party's control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the Event to the other parties when commercially reasonable. Subject to this Section, non-performance due to an Event of Force Majeure shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Agreement if Customer determines that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of the Customer. Upon request by DIR or Customer, Successful Respondent shall provide copies of its most recent business continuity and disaster recovery plans.

4.12 Non-Solicitation of Customer Employees

Successful Respondent shall not solicit, directly or indirectly, any DIR employee who is associated with the Contract during the Contract term or for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any Customer employee who is associated with a Purchase Agreement during the Purchase Agreement term or for a period of ninety (90) calendar days following the expiration or termination of the Purchase Agreement. For the avoidance of doubt, the publication of a generally available advertisement or solicitation and the consideration and hiring of a person responding to such a solicitation is not a breach of this Section, unless the advertisement or solicitation is undertaken as a means to circumvent this Section. This provision shall not operate or

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be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.

4.13 General Requirements of Lease Documents

The following general terms apply to all lease-type documents and agreements entered into in connection with the Contract or a Purchase Agreement.

(a) All leases and lease-related documents are Additional Agreements as defined in the Contract.

(b) Leases shall not automatically renew at the end of the term.

(c) Any fees beyond those set forth in Appendix C, Pricing Index, must be explicitly identified in the lease documents. This includes but is not limited to early termination fees, shipping fees, return fees, and any other charge or fee related to the lease.

(d) Remedies for breach of the lease must include all remedies available in the Contract. Successful Respondent may not disclaim damages or establish exclusive remedies in the lease documents.

(e) Customers shall not be required to obtain consent before relocating a piece of leased equipment, but the Successful Respondent may require a reasonable form of notice of the relocation.

(f) Customers shall not indemnify Successful Respondent.

4.14 Submission of Written Complaints

A person may submit a written complaint to DIR using the form provided on DIR's webpage at the following address: https://dir.texas.gov/form/complaints.

4.15 Captions

The captions contained in the Contract, Appendices, and Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision.

5 Intellectual Property Matters

5.1 Intellectual Property Matters Definitions

5.1.1 Work Product

Means all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including all tangible or intangible items or things that have been or will be prepared, created, developed, produced, invented or conceived at any time after the Effective Date in connection with, or as a result of, the services provided under the Contract, including but not limited to any:

(a) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts,

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configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or websites, other written or machine readable expression of works fixed in any tangible media, and all other copyrightable works);

(b) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin;

(c) ideas, designs, concepts, personality rights, methodologies, processes, techniques, apparatuses, inventions, formulas, approaches, specifications, systems, discoveries, or improvements, including any patents, trade secrets and know-how;

(d) domain names;

(e) any copies, and similar or derivative works to any of the foregoing, all documentation and materials related to any of the foregoing;

(f) all other goods, services, or deliverables to be provided to Customer under the Contract or a Statement of Work; and

(g) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented, or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:

(1) by any Successful Respondent personnel or Customer personnel; or

(2) any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of which was created, invented or conceived by that person while affiliated with Customer.

5.1.2 Intellectual Property (IP) Rights

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

(a) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;

(b) any work of authorship, including any copyrights, moral rights, or neighboring rights;

(c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;

(d) domain name registrations; and

(e) any other proprietary or similar rights.

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The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

5.1.3 Third Party IP

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Agreement issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Agreement issued under the Contract.

5.1.4 Successful Respondent IP

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

(a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information, or funding from or on behalf of Customer relating to the services or Work Product; or

(b) after the Effective Date if tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent's provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of which was created, invented or conceived by the person while affiliated with Customer.

5.2 Ownership

As between Successful Respondent and Customer, the Work Product and any associated Intellectual Property Rights are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work

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Product by Successful Respondent. Successful Respondent will not make or retain any copies of the Work Product or any documentation or other products and results of the services without the prior written consent of Customer.

5.3 Further Actions

Successful Respondent, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of further documents in a form determined by Customer. In the event Customer shall be unable to obtain Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent's unreasonable failure to respond to Customer's repeated requests for signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Successful Respondent irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent's behalf and stead to execute and file any document and to do all other lawfully permitted acts to further any purpose with the same effect as if executed and delivered by Successful Respondent, provided however that no grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent with respect to the document. It is understood that this power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute applications and to take all other action concerning the Work Product, and Successful Respondent shall cooperate in the preparation and prosecution of all applications and in any legal actions and proceedings concerning the Work Product.

5.4 Waiver of Moral Rights

Successful Respondent irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of Moral Rights. The term "Moral Rights" refers to any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not the right is denominated or referred to as a moral right.

5.5 Confidentiality

All documents, information and materials forwarded to Successful Respondent by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Successful Respondent under Section 5.8 Successful Respondent License to Use. Hereunder, Successful Respondent shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in

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any manner without the prior written approval of Customer.

5.6 Injunctive Relief

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of those rights would cause substantial and irreparable harm to Customer's business. Therefore, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as injury should be presumed.

5.7 Return of Materials Pertaining to Work Product

Upon the request of Customer, but in any event upon expiration or termination of the Contract, or a Statement of Work, Successful Respondent shall surrender to Customer (1) all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data; and (2) all other documents or materials (generated or developed by Successful Respondent or furnished by Customer to Successful Respondent, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in that Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Successful Respondent by Customer or by anyone else that pertain to the Work Product, including originals and copies.

5.8 Successful Respondent License to Use

Customer grants to Successful Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Successful Respondent nor any Third-Party Provider shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

5.9 Third-Party Underlying and Derivative Works

(a) To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to

(1) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon Successful Respondent IP or Third-Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and

(2) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if the materials include any

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Third-Party IP.

(b) On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third-Party IP that may be embodied or reflected in the Work Product.

5.10 Agreement with Third Party Providers

Successful Respondent agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain the written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Successful Respondent will promptly give copies of the agreements to the Customer upon request.

5.11 License to Customer

Successful Respondent grants to Customer, at no additional charge, a worldwide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, reproduce, modify, display, perform (by any means), transmit, distribute, store, prepare derivative works of, and otherwise exploit any Successful Respondent IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Successful Respondent IP remain in Successful Respondent.

5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, on the condition that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by the competitive materials. To the extent that Successful Respondent wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for the desired use.

6 Data Terms

6.1 Authorized Use of Customer Data

Successful Respondent and its Third-Party Providers shall not use Customer Data for any purpose other than the fulfillment of this Contract. Successful Respondent shall not use Customer Data in any manner for purposes of training artificial intelligence technologies unless Successful Respondent obtains Customer's prior written consent. Successful Respondent shall not sell, assign, lease, or encumber Customer Data.

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6.2 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all Customer Data for Customers located in the State of Texas must remain and be located, handled, stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the United States, unless the Customer provides specific written authorization for Customer Data to be located elsewhere. All Customers located outside the State of Texas may allow data location and handling outside of the United States at the Customer's discretion. **Customers should consider consider whether they require U.S.-only data location and handling and make successful respondent aware of their requirements.**

6.3 Data Classification

Upon request of a Customer that is a Texas state agency, Successful Respondent shall coordinate with Customer to implement a data classification scheme, as required under Texas Government Code Section 2054.161, for any data used in or produced from the products and services.

6.4 Data Breach Notification and Response

In the event that Successful Respondent discovers, is notified of, or knows of any actual, suspected, or threatened data breach that compromises or could reasonably be expected to compromise Customer Data through unauthorized use, disclosure, or acquisition, Successful Respondent shall promptly, but no later than eight (8) hours after such discovery, provide notice of such breach to the affected Customer and, if the affected Customer is located in Texas, to DIR. After such notification, Successful Respondent shall:

(a) investigate to determine the nature, cause, and extent of the breach;

(b) take any action necessary to contain the incident and remediate, as soon as practicable and to the extent practicable, any harmful effect of the breach known to Successful Respondent;

(c) provide Customer and DIR with regular updates on the status of the breach; and

(d) cooperate with Customer in providing any required notices regarding the breach.

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7 Accessibility Standards

7.1 General Accessibility Requirements

(a) Under Texas Government Code Chapter 2054, Subchapter M, and DIR implementing rules, DIR and certain Customers must procure electronic and information resources that comply with the accessibility standards defined in Texas Administrative Code Title 1 Chapter 206 and Chapter 213, and in the Worldwide Web Consortium WCAG 2.1 AA technical standard as applicable when products or services are available in the commercial marketplace or when products are developed in response to procurement solicitations. All associated documentation must also be in an accessible format. Examples of accessible format include: properly formatted PDFs created by exporting documents instead of creating a jpeg file; alt text for images; keyboard-only navigation; color contrast; compatible with zoom magnification; graphics include labels and do not rely solely on color.

(b) The Parties acknowledge and agree that accessibility requirements are subject to modification by relevant legislative bodies, and that the then-current accessibility requirements shall control for all purposes.

(c) Successful Respondent shall work with Customer to ensure that the products and services provided pursuant to the Contract and any associated Purchase Agreement comply with the Customer's accessibility requirements.

7.2 Specific Accessibility Requirements

(a) Successful Respondent shall cooperate with Customers, including by providing the information and documents identified below, to ensure that Customers are able to comply with all applicable accessibility laws and standards in purchasing products and services under this Contract.

(b) Upon Customer request, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) WCAG Edition (Version 2.4 or higher) or URL links to specific ACRs located on manufacturer webpages (where available) for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product, product family, or service (as applicable) requested by such Customer. Instructions on how to complete this document are included in the template itself. Successful Respondent may provide ACRs based on earlier versions of the VPAT® template if completed ACRs are based on testing within the past two years. If Successful Respondent claims that a proposed product, family of products, or service is exempt from accessibility requirements, it must specify the exempt product or family of products and the basis for the exemption in "Notes" located in the product information section of the VPAT 2.4 or higher.

(c) Upon Customer request, Successful Respondent must provide a completed, current, and accurate Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services and services that include user accessed, online components) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.

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(d) For non-COTS offerings, Successful Respondent must ensure that the accessibility standards defined in Texas Administrative Code Title 1 Chapter 206 and Chapter 213, and other applicable standards, are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, quality assurance testing, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by Customers.

(e) Upon Customer request, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) Vendor Self-Assessment.

(f) Upon Customer request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, methods, and prior work.

8 Contract Promotion

8.1 Texas State Agencies Required to Purchase Through DIR Contracts

Texas Government Code Section 2157.068 requires Texas state agencies to buy commodity items using contracts developed by DIR unless the agency obtains an exemption from DIR.

Successful Respondent shall direct all Texas state agencies to coordinate all sales through existing DIR contracts unless Customer demonstrates that it has obtained a written exemption from DIR. Institutions of higher education are exempt from this Section.

8.2 Endorsements

DIR does not endorse vendors, products, or services. The existence of this Contract does not indicate in any way that DIR endorses, approves, or otherwise recommends Successful Respondent or its offerings.

8.3 Public Disclosure

Successful Respondent shall not make public disclosures or news releases about the Contract without prior written approval of DIR.

8.4 Internet Access to Contract and Pricing Information

No later than thirty (30) calendar days after the Effective Date, Successful Respondent shall establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's webpage. Successful Respondent must use a web hosting service that provides a dedicated internet protocol address. Successful Respondent must ensure their webpage is secured using modern encryption standards, including maintaining a valid and up-to-date security certificate, requiring all users to access the site via Hypertext Transfer Protocol Security (HTTPS), and configuring the hosting environment to enforce secure protocols.

Successful Respondent shall provide DIR with timely written notice of any change in URL or other

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information needed to access the site or maintain the link.

The Contract constitutes a public document under Texas law and Successful Respondent shall not restrict access to Contract terms and conditions, including pricing, by any means including but not limited to use of restrictive technology or passwords. DIR may terminate the Contract without penalty if Successful Respondent does not meet the webpage requirements.

The webpage must include:

(a) a detailed list of products or services awarded;

(b) the current MSRP or list price and the applicable discount percentage for all products or services awarded, or a mechanism to obtain pricing, as applicable;

(c) Successful Respondent contact information, including name, telephone number and email address;

(d) instructions for obtaining quotes and entering into Purchase Agreements;

(e) the Contract number with a hyperlink to the Contract's DIR webpage;

(f) the DIR logo in accordance with the requirements of Section 8.8; and

(g) any additional information that the Master Cooperative Contract identifies as required to be included on the webpage.

8.5 Accurate and Timely Contract Information

Successful Respondent agrees to accurately and completely post, maintain, and display the webpage information above in an objective and timely manner. Successful Respondent shall, at its own expense, correct any non-conforming or inaccurate information posted at Successful Respondent's webpage within ten (10) Business Days after written notification by DIR.

8.6 Webpage Compliance Checks

DIR may conduct periodic Compliance Checks of the information posted for the Contract on Successful Respondent's webpage. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed on this webpage is compliant with the pricing as stated in the Contract.

8.7 Responsibility for Webpage Content

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials on Successful Respondent's webpage. DIR may require a change of Contract-related content if, in the opinion of DIR, it does not adequately represent the Contract.

8.8 DIR and Customer Logos

Successful Respondent may use a Customer's logo only upon prior written approval from that Customer.

Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

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(a) the logo may not be modified in any way;

(b) the size of the DIR logo must be equal to or smaller than Successful Respondent's logo; and

(c) the DIR logo is only used to communicate the availability of services under the Contract to Customers.

Any other use of the DIR logo requires prior written permission from DIR.

8.9 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. DIR may use the logo on the DIR webpage or on printed materials. Any use of Successful Respondent's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract gives DIR any right, title, or interest in or to Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

8.10 Trade Show Participation

DIR may require Successful Respondent to participate in no more than two (2) DIR-sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation is at Successful Respondent's expense and includes providing a staffed booth display or similar presence. DIR will provide a minimum of four (4) months advance notice of any required participation. Successful Respondent must display the DIR logo at all DIR-sponsored trade shows. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on Successful Respondent's booth.

9 Purchase Agreements, Invoices, and Payments

9.1 Purchase Agreements

Customers must place Purchase Agreements directly with Successful Respondent. Purchase Agreements become effective and binding upon Successful Respondent when accepted by Successful Respondent.

9.2 Invoices

(a) Successful Respondent shall submit Invoices directly to Customer. Customer shall make all payments for services purchased under the Contract and provide any acceptance of those services to Successful Respondent.

(b) Invoices must be timely and accurate. Each Invoice must match Customer's Purchase Agreement and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Agreement number or other pertinent information for verification of receipt of the products and services by the Customer.

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(c) Successful Respondent shall not list the DIR Administrative Fee as a separate line item when it provides pricing or Invoices to Customer.

9.3 Payments

Successful Respondent and Customers shall comply with Texas Government Code Chapter 2251, commonly known as the Texas Prompt Payment Act, as applicable. For Customers that are not subject to Texas Government Code Chapter 2251, Customer and Successful Respondent must agree to acceptable payment terms in the Purchase Agreement. Payment under the Contract does not foreclose the right to recover wrongful payments at a later time.

9.4 Tax-Exempt

Government entity Customers are typically exempt from the assessment of State sales, use and excise taxes under Texas Tax Code Section 151.309 and from Federal Excise Tax under 26 United States Code Sections 4253(i) and (j). All Customers shall provide evidence of tax-exempt status to Successful Respondent upon request.

9.5 Travel Expense Reimbursement

Pricing for services provided under the Contract exclude any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may be separately available, and includes personal vehicle mileage or commercial coach transportation, hotel accommodations, parking, and meals. Reimbursement amounts must not exceed the amounts authorized for state employees as adopted by each Customer; and all reimbursement rates must not exceed the maximum rates established for state employees under the current State Travel Management Program (https://comptroller.texas.gov/purchasing/programs/travel-management/). Successful Respondent must not include travel time as part of the amounts payable by Customer for any services rendered under the Contract. Successful Respondent must obtain Customer's written pre-approval for any anticipated travel expenses. Customer may reject payment for travel expenses which are not pre-approved in writing. The DIR Administrative Fee does not apply to travel expense reimbursement.

9.6 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free on Board Customer's destination. Successful Respondent may not charge additional fees for standard shipping and handling. If a Customer requests expedited or special delivery, Customer must pay for any additional charges for expedited or special delivery.

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10 Contract Administration

10.1 Service, Sales, and Support of the Contract

Successful Respondent shall provide service, sales, and support resources to serve all Customers. Successful Respondent shall sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that Eligible Customers are made aware of the existence of the Contract.

10.2 Contract Managers

DIR and Successful Respondent shall each designate a contract manager ("Contract Manager") to support the Contract (respectively, the "DIR Contract Manager" and "Successful Respondent Contract Manager"). DIR will post information regarding each Contract Manager on its webpage for the Contract. DIR may require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

10.2.1 DIR Contract Manager

Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

The DIR Contract Manager's duties include but are not limited to:

(a) managing the Contract and monitoring compliance;

(b) advising DIR of Successful Respondent's performance under the Contract; and

(c) periodic verification of pricing and monthly reports submitted by Successful Respondent.

10.2.2 Successful Respondent Points of Contact

(a) Upon execution of the Contract, Successful Respondent shall provide DIR with written notification of

(1) Successful Respondent Contract Manager's name and contact information;

(2) Successful Respondent sales representative name and contact information;

(3) Successful Respondent Accounts Payable contact name and contact information; and

(4) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.

(b) Successful Respondent Contract Manager's duties shall include but are not limited to:

(1) marketing and management of the Contract;

(2) facilitating dispute resolution between Successful Respondent and Customers; and

(3) advising DIR of Successful Respondent's performance under the Contract.

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10.3 Required Meetings

DIR may require Successful Respondent and any Third-Party Providers to participate in meetings throughout the life of the Contract. In addition to the meetings specifically identified below, DIR, in its sole discretion, may require participation in additional meetings, including meetings to review Successful Respondent's performance under the Contract. Meetings will be held virtually or in person at a location selected by DIR in Austin, Texas, and at a date and time mutually acceptable to DIR and Successful Respondent. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at any meeting.

10.3.1 Orientation Meeting

No later than thirty (30) calendar days after execution of the Contract, Successful Respondent shall attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments.

10.3.2 End of Contract Transition Meeting

In its sole discretion, DIR may require participation in meetings related to the termination or expiration of the Contract.

10.4 Required Reports

10.4.1 Reporting Responsibility

Successful Respondent shall file any necessary reports. DIR may verify required reports and take any actions necessary to enforce its rights under the Contract. If DIR requests any additional documentation needed to verify the reports, Successful Respondent shall provide all required documentation at no cost.

10.4.2 Detailed Monthly Vendor Sales Report

(a) Using the Vendor Sales Report (VSR) portal, Successful Respondent shall submit a monthly sales report detailing sales activity under the Contract for the previous month period. This includes months in which there are no sales. Monthly sales reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report is due on the next Business Day. For example, Successful Respondent must submit its monthly sales report for January between February 1st and February 15th.

(b) The sales report shall include, at a minimum, the following information per transaction: the detailed sales for the period, Customer name, Invoice date, Invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Agreement number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each sales report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction.

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(c) Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

10.4.3 DIR Cost Avoidance Reports

As part of the performance measures reported to State leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, MSRP or list price, and price to Customer under the Contract. If Successful Respondent holds a current contract with a Consortium for the same types of offerings awarded on the DIR contract, Successful Respondent may be requested to provide the customer pricing on the awarded Consortium contract.

10.4.4 VetHUB Subcontracting Plan Reports

Successful Respondent shall electronically provide each Customer with its VetHUB Subcontracting Plan (HSP) report as required by Texas Government Code Chapter 2161. DIR shall be copied on all reports submitted to Customer.

10.4.5 Accurate and Timely Submission of Reports and DIR Administrative Fees

(a) Successful Respondent shall submit sales reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) Business Days of written notification by DIR. Successful Respondent shall deliver any late sales reports or late DIR Administrative Fee payments within three (3) Business Days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate sales reports or DIR Administrative Fee payments or deliver late sales reports and DIR Administrative Fee payments within three (3) Business Days, Successful Respondent shall contact DIR and provide a corrective plan of action, including the timeline for completion. The corrective plan of action is subject to DIR approval.

(b) If Successful Respondent fails to correct inaccurate sales reports or cure the delay in timely and accurate delivery of sales reports and payments within the corrective plan of action timeline, DIR may, at DIR's expense, require an independent third-party audit of Successful Respondent's records as specified in Section 10.5, Records and Audit. DIR will select the auditor (and all payments to auditor will require DIR approval). If DIR finds that Successful Respondent is responsible for inaccurate reports, DIR may invoice Successful Respondent for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

(c) Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of $100/day, up to $1000/month, for each Business Day the report or payment is due, or suspension or termination of Successful Respondent's Contract.

(d) For Customers whose payments are processed by the Comptroller of Public Accounts, the volume of payments made to Successful Respondent through the Comptroller and the

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administrative fee based thereon are presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

10.5 Records and Audit

10.5.1 Review by State Auditor

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. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure all subcontractors are aware of this clause and that a requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

10.5.2 Review by DIR or its Designee

Successful Respondent agrees that DIR, a DIR designee, or third-party auditor may conduct an audit, Compliance Check, or other similar investigation of Successful Respondent's compliance with the Contract.

10.5.3 Records Retention and Access

(a) Successful Respondent shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final, and unappealable resolution of all Compliance Check, audit, or litigation issues that arise under the Contract, whichever is later. The records shall include per transaction: Customer name, Invoice date, Invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Agreement number, contact name, Customer's complete billing address, the calculations supporting each DIR Administrative Fee owed under the Contract, subcontracting reports, and other documentation as may be requested.

(b) Successful Respondent shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, Purchase Agreements, and any other items relevant to the performance of the Contract to DIR, the State Auditor's Office, and other persons or entities designated by DIR for the purposes of inspecting, auditing, conducting a Compliance Check, or copying the records.

(c) Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) Business Days' notice prior to inspecting, conducting a Compliance Check, or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be

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made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's records shall be available to DIR staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff and designees during the performance of the inspection, audit, or Compliance Check. If DIR finds that Successful Respondent is responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

10.6 Proof of Financial Stability and Notice of Financial Events

Either DIR or Customer may require Successful Respondent to provide proof of financial stability prior to or at any time during the Contract term. In the event that Successful Respondent becomes insolvent or is the subject of any bankruptcy or receivership proceeding prior to or during the Contract term or a Purchase Agreement term, Successful Respondent shall provide written notice to DIR and to Customer within five (5) Business Days of the insolvency or initiation of the bankruptcy or receivership proceedings.

11 Dispute Resolution

11.1 No Waiver

A party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right to demand strict compliance with that or any other provision.

Nothing in this Contract or in any Purchase Agreement constitutes a waiver of any defense or immunity whatsoever.

11.2 Dispute Resolution Process

(a) Disputes arising under the Contract or a Purchase Agreement shall be resolved in accordance with Texas Government Code Chapter 2260. The contested case process provided in Texas Government Code Chapter 2260 is the Successful Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract or Purchase Agreement.

(b) Except as provided in Texas Government Code Section 2251.051, Successful Respondent shall continue performance while the dispute is being resolved unless the Customer has terminated the Purchase Agreement.

(c) For Customers not subject to Texas Government Code Chapter 2260, disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer.

(d) DIR shall not be a party to any dispute between Customers and Successful Respondent unless DIR, in its sole discretion, decides to intervene.

(e) In any dispute with a unit of State government as defined in Texas Government Code Section 2260.001, the exclusive venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise states its applicability to the contracting Customer. If litigation does not involve any unit of State government, then venue

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is fixed in the state or federal courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise states its applicability to the contracting Customer.

11.3 Vendor Performance Reporting Required

Texas state agencies are required by rule (34 Texas Administrative Code Section 20.509(a)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over $25,000.00.

12 Termination

12.1 Absolute Right to Terminate

DIR shall have the absolute right to immediately terminate the Contract without recourse in the following circumstances:

(1) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #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;

(2) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;

(3) Successful Respondent becomes suspended or debarred from doing business with the State of Texas;

(4) Successful Respondent is or becomes statutorily ineligible to receive state contracts;

(5) DIR receives notice of potential criminal violations by Successful Respondent, whether or not the potential violations directly impact the provision of goods or services under the Contract; or

(6) DIR receives notice of any actual, suspected, or threatened data breach as described in Section 6.4.

DIR shall provide Successful Respondent with written notice of termination. DIR will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) Business Days after the termination.

12.2 Immediate Suspension

(a) DIR may, in its sole discretion, elect to suspend Successful Respondent for any of the following:

(1) Any of the same reasons as the absolute right to terminate set forth above;

(2) Successful Respondent fails to pay the DIR Administrative Fee or timely file

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required reports; or

(3) DIR in its sole discretion determines that suspension is in the best interests of the State.

(b) While suspended, Successful Respondent shall not make any new sales under the Contract until it receives further written notice from DIR. Successful Respondent may be ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer.

(c) DIR will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) Business Days after the suspension .

(d) Successful Respondent may provide a written response and request an opportunity to present its position. DIR will review Successful Respondent's response but is under no obligation to provide formal response.

(e) The suspension ends when DIR either provides written notice that the suspension is lifted or provides notice of the termination of the Contract in accordance with this Section 12.

12.3 Termination for Non-Appropriation

12.3.1 Termination for Non-Appropriation by Customer

Customers may terminate a Purchase Agreement if funds sufficient to pay its obligations under the Contract are not appropriated:

(a) by the governing body on behalf of local governments;

(b) by the Texas legislature on behalf of state agencies; or

(c) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Texas Government Code Chapter 317.

In the event of termination, Customer will not be in default or breach under a Purchase Agreement or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, for any damages, or for any other amounts caused by or associated with termination.

12.3.2 Termination for Non-Appropriation by DIR

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated by:

(a) Texas legislature; or

(b) budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Texas Government Code Chapter 317.

In the event of termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, for any damages or for any other amounts caused by or associated with termination.

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12.4 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving Successful Respondent thirty (30) calendar days' written notice. A Customer may terminate a Purchase Agreement by giving Successful Respondent thirty (30) calendar days' written notice.

12.5 Termination for Cause

12.5.1 Termination for Cause by DIR

DIR may, upon written notice to Successful Respondent, terminate the Contract in whole or in part as of the termination date specified in the notice if Successful Respondent:

(a) Commits a material breach of this Contract which is not cured within thirty (30) calendar days after notice of breach from DIR, or such other applicable timeframe for cure expressly provided herein; or

(b) Commits a material breach of this Contract which is not capable of being cured within the period specified in the notice.

12.5.2 Termination for Cause by Successful Respondent

(a) Successful Respondent may terminate the Contract in whole as of the termination date specified in its notice if Successful Respondent issues a written notice of default to DIR upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions:

(1) First, the Successful Respondent must comply with the requirements of Texas Government Code Chapter 2260 in an attempt to resolve a dispute;

(2) Second, if the dispute remains unresolved after complying with Texas Government Code Chapter 2260's dispute resolution provisions, then Successful respondent shall give DIR thirty (30) calendar days from receipt of notice to cure said default. If DIR fails to cure the default within the timeframe allowed, the Successful Respondent may, at its option and in addition to any other remedies it may have available, terminate the Contract.

(b) Successful Respondent may terminate a Purchase Agreement in whole or in part as of the termination date specified in its notice if Successful Respondent issues a written notice of default to Customer upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract or Purchase Agreement, subject to the following preconditions:

(1) First, the Successful Respondent must follow the dispute resolution process described in Section 11.2 above;

(2) Second, if the dispute remains unresolved, the Successful Respondent shall give Customer thirty (30) calendar days from receipt of notice to cure said default. If Customer fails to cure said default within the timeframe allowed, the Successful Respondent may, at its option and in addition to any other remedies it may have available, terminate a Purchase Agreement.

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12.5.3 Termination for Cause by Customer

(a) Customers are not parties to the Contract and therefore have no power to terminate the Contract.

(b) Customer may, upon written notice to Successful Respondent, terminate a Purchase Agreement in whole or in part as of the termination date specified in the notice if Successful Respondent:

(1) Commits a material breach of a Purchase Agreement which is not cured within thirty (30) calendar days after notice of breach from Customer, or such other applicable timeframe for cure expressly provided in the notice or in the Purchase Agreement; or

(2) Commits a material breach of a Purchase Agreement which is not capable of being cured within the period specified in the notice or in the Purchase Agreement.

(c) Customer may immediately suspend or terminate a Purchase Agreement without advance notice in the event Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if that non-compliance relates or may relate to Successful Respondent's provision of goods or services to the Customer.

12.6 Customer Rights Under Termination of Contract

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Agreement issued prior to the termination or expiration of the Contract. A Purchase Agreement and certain rights and obligations survive the expiration or termination of the Contract in accordance with Section 4.5.

12.7 Successful Respondent Rights Under Termination of Purchase Agreement

In the event a Purchase Agreement expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted by Customer. Certain rights and obligations survive the expiration or termination of the Contract in accordance with Section 4.5.

12.8 Transition Assistance

Upon request by Customer prior to expiration or termination of a Purchase Agreement, Successful Respondent shall provide reasonable and necessary assistance to accomplish a complete transition of the products or services from Successful Respondent to Customer or any replacement provider designated by Customer without any interruption of or adverse impact on the products or services. Successful Respondent shall perform services related to the transition at no additional cost beyond what would be paid under a Purchase Agreement. Customer and Successful Respondent may identify specific transition services needed in a Purchase Agreement.

13 Indemnification and Liability

13.1 Indemnification

(a) **Successful respondent shall defend, indemnify, and hold harmless DIR, the State of Texas,**

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and customers, and their officers, directors, agents, employees, representatives, contractors, successors, assignees, and designees from any and all third party liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, resulting from, or related to:

(1) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract;

(2) 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 (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract;

(3) any breach, disclosure, ransomware attack, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer Data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or Third-Party Providers in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract; and

(4) tax liability, unemployment insurance, workers' compensation, or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract.

(b) Successful Respondent shall coordinate the defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit. Successful Respondent may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. For non-Texas state agency Customers, Customer's legal counsel shall coordinate the defense with Successful Respondent. Successful Respondent and the Customer shall furnish timely written notice to each other and to DIR of any claim.

(c) This section is not intended to and shall not be construed to require Successful Respondent to indemnify or hold harmless DIR or Customers for any claims or liabilities resulting from the negligent acts or omissions of DIR or Customer or their employees.

13.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent shall pay all costs as defense, including attorneys' fees, and may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense:

(a) procure for Customer the right to continue to use the affected portion of the product or

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service, or

(b) 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.

13.3 Property Damage

In the event of loss, damage, or destruction of any tangible or real property of Customer or the State due to the negligence, misconduct, wrongful act or omission on the part of Successful Respondent, its employees, agents, representatives, or third-party providers, Successful Respondent shall pay the full cost of either repair, reconstruction, or replacement of the property, at the Customer's sole election. Customer shall determine the cost, which Successful Respondent shall pay within ninety (90) calendar days after the date Successful Respondent receives Customer's written notice of the cost.

13.4 Limitation of Liability

(a) For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties are liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of those damages.

(b) Successful Respondent and a Customer may include in a Purchase Agreement a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to the Purchase Agreement; on the condition that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Agreement. This value includes all amounts paid and amounts to be paid over the life of the Purchase Agreement to Successful Respondent by the Customer as described in the Purchase Agreement.

(c) Notwithstanding the foregoing or anything to the contrary, any limitation of Successful Respondent's liability contained in this Contract or in a Purchase Agreement shall not apply to: claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of a violation.

14 Required Insurance Coverage

14.1 General Insurance Requirements.

(a) As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage to DIR within ten (10) Business Days of execution of the Contract if Successful Respondent may provide services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers.

(b) In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the specified

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insurance coverage, and shall provide proof of the insurance coverage to Customer within ten (10) Business Days following the execution of a Purchase Agreement.

(c) Successful Respondent may not begin performance under the Contract until it provides proof of insurance coverage to DIR. Successful Respondent may not begin performance under a Purchase Agreement until it provides proof of insurance coverage to Customer and Customer approves the proof of coverage.

(d) If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles to conduct work on behalf of Customers, Successful Respondent may certify to those facts and agree to provide notice and the required insurance if the facts change. DIR will provide a form for the Certification of Off-Premises Customer Services, which Successful Respondent shall execute. An executed Certification shall satisfy the insurance requirements.

(e) Successful Respondent acknowledges that Customer may have additional insurance requirements.

(f) Proof of additional insured coverage for DIR shall be provided to DIR. Proof of additional insured coverage for Customer shall be provided to Customer.

14.2 Provider and Additional Insured Requirements

All required insurance must be issued by companies that have a minimum A rating and a minimum Financial Size Category Class of VII from AM Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Agreement issued to Successful Respondent thereunder.

14.3 Commercial General Liability

Commercial general liability must include $1,000,000.00 per occurrence for bodily injury and property damage with a separate aggregate limit of $2,000,000.00; medical expenses per person of $5,000.00; personal injury and advertising liability of $1,000,000.00; products/completed operations aggregate limit of $2,000,000.00; and damage to premises rented limit of $50,000.00. Customers may require additional umbrella/excess liability insurance. The policy shall contain the following provisions:

(a) Blanket contractual liability coverage for liability assumed under the Contract;

(b) Independent contractor coverage;

(c) DIR and Customer listed as an additional insured; and

(d) Waiver of subrogation.

14.4 Workers' Compensation Insurance

Workers' compensation insurance and employers' liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act found in Texas Labor Code Title 5, Subtitle A, and minimum policy limits for employer's liability of $1,000,000 per

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accident, $1,000,000 disease per employee and $1,000,000 per disease policy limit.

14.5 Business Automobile Liability Insurance

Business automobile liability insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. The policy shall contain the following provisions:

(a) Waiver of subrogation; and

(b) DIR and Customer listed as an additional insured.

15 Successful Respondent Obligations

15.1 Drug Free Workplace Policy

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 United States Code Sections 8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 Code of Federal Regulations Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may be issued.

15.2 Ability to Conduct Business in Texas

Successful Respondent shall be validly formed and currently authorized to do business under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code Chapter 9. Upon request by DIR, Successful Respondent shall provide all documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and under the laws of its state of organization.

15.3 Equal Opportunity Compliance

Successful Respondent shall abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws, the laws of the State of Texas, and the laws of the state in which Successful Respondent's primary place of business is located. In accordance with those laws, regulations, and executive orders, Successful Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent shall take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

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15.4 Use of Subcontractors

If Successful Respondent uses any subcontractors in the performance of the Contract, Successful Respondent must make a good faith effort in the submission of its Appendix B, VetHUB Subcontracting Plan (HSP). Successful Respondent must provide a revised copy of Appendix B, VetHUB Subcontracting Plan (HSP), and obtain DIR's approval of the form before it can engage additional subcontractors in the performance of the Contract or remove subcontractors currently engaged in the performance of the Contract. Successful Respondent is solely responsible for the performance of its obligations under the Contract.

15.5 Responsibility for Actions

Successful Respondent is solely responsible for its actions and those of its Third Party Providers. Successful Respondent agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

15.6 Taxes, Worker's Compensation, and Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent is entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent shall comply with all applicable state and federal laws, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and the State shall not be liable to Successful Respondent, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance, workers' compensation, or any benefit available to a state employee or employee of another governmental entity Customer.

15.7 Confidentiality and the Texas Public Information Act

Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code Section 552.003 are subject to the Texas Public Information Act. Successful Respondent also acknowledges that DIR and governmental body Customers will comply with the Public Information Act, all opinions of the Texas Attorney General's office concerning the Act, and applicable judicial orders or opinions interpreting the Act.

15.8 No Recordings

Successful Respondent shall not record any meeting, call, conference, or other communication with DIR, a Customer, or an Eligible Customer, without prior written consent of DIR, the Customer, or the Eligible Customer, as applicable.

15.9 Security of Premises, Equipment, Data and Personnel

Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third

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Party Providers shall preserve the safety, security, and the integrity of the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or Third Party Provider protects its own information. Successful Respondent shall be liable for all damage to Customer-owned, leased, or occupied property and equipment caused by Successful Respondent or a Third Party Provider. If Successful Respondent or Third Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Agreement.

15.10 Background and Criminal History Investigation

Prior to commencement of any services, background and criminal history investigation of Successful Respondent's employees and Third Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct the background checks itself. Should any employee or Third Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background or criminal history check, then Customer may immediately terminate its Purchase Agreement and related Service Agreement or request replacement of the employee or Third Party Provider in question.

15.11 Overcharges

Successful Respondent assigns to DIR all claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 United States Code Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Texas Business and Commerce Code Chapter 15.

15.12 Use of State Property

Successful Respondent shall not use equipment, property, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers, and telephones using State of Texas long distance services. Upon demand by Customer, Successful Respondent shall immediately reimburse Customer for any charges it incurs by using a Customer's equipment for any purpose other than performing services under this Agreement. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Agreement, and other remedies available to DIR and Customer under the Contract and applicable law.

15.13 Immigration

Successful Respondent shall comply with all requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

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15.14 Product or Services Substitutions

Successful Respondent must not make substitutions to products or services without the prior written consent of DIR or Customer, as applicable.

15.15 Secure Erasure of Hard Disk Capability

Successful Respondent agrees that all managed products or services equipped with hard disk drives such as computers, telephones, printers, fax machines, scanners, multifunction devices, shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of the managed products or services, either at the end of product's useful life or the end of the related Purchase Agreement for such products or services, in accordance with 1 Texas Administrative Code Chapter 202 or NIST 800-88.

15.16 Successful Respondent Reporting Requirements

Successful Respondent shall comply with Texas Business and Commerce Code Chapter 110, requiring computer technicians to report images of child pornography.

15.17 Artificial Intelligence (AI) Requirements

(a) If Successful Respondent develops, deploys, or uses an AI system in the performance of this Agreement, Successful Respondent shall comply with all policies and standards adopted pursuant to applicable laws, including the Texas AI Code of Ethics established pursuant to Texas Government Code Section 2054.702 (SB 1964, 89th Leg., R.S.), and the minimum risk management and governance standards developed pursuant to Texas Government Code Section 2054.703 (SB 1964, 89th Leg., R.S.).

(b) In the performance of this Agreement, Successful Respondent shall not develop, deploy, or use AI in a manner prohibited by law, including, but not limited to, Texas Business & Commerce Code Chapter 552. For the avoidance of doubt, this includes any prohibitions related to the development, deployment, or use of AI by a governmental entity.

(c) Successful Respondent shall provide, or assist Customers in providing, any AI system disclosure or notice required by applicable law, including Texas Business & Commerce Code Section 552.051 and Texas Government Code Sections 2054.707 and 2054.711, for AI systems developed, deployed, used, or made available in the performance of this Agreement.

(d) If Successful Respondent deploys or uses any heightened scrutiny AI system in the performance of this Agreement, Successful Respondent shall conduct, or assist Customer in conducting, an impact assessment consistent with applicable law, including but not limited to Texas Government Code Section 2054.708.

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16 Required Clauses and Certifications

16.1 Antitrust Affirmation

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

16.2 Buy Texas

To the extent applicable, in accordance with Texas Government Code Section 2155.4441, Successful Respondent agrees that during the performance of a Purchase Agreement 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.

16.3 Child Support Obligation Affirmation

Successful Respondent certifies that it is not currently delinquent in the payment of any franchise tax owed to the State and is not ineligible to receive payment under Texas Family Code Section 231.006. Successful Respondent acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

16.4 Cloud Computing Risk and Authorization Management Program (TX-RAMP)

If the services to be provided under a Purchase Agreement include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program (TX-RAMP), as provided by Texas Administrative Code Title 1 Sections 202.27 and 202.77, and the TX-RAMP Program Manual (Program Manual). Successful Respondent shall maintain program compliance and certification throughout the term of the Purchase Agreement, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing the Purchase Agreement. Upon request from DIR or the Customer issuing the Purchase Agreement, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent's compliance with TX-RAMP.

16.5 Computer Equipment Recycling Program

If the products and services to be provided include the purchase or lease of computer equipment, Successful Respondent certifies that it is in compliance with Texas Health and Safety Code Chapter 361 Subchapter Y, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 Texas Administrative Code Chapter 328.

16.6 Contracting Information Responsibilities

Successful Respondent represents and warrants that it will comply with the requirements of Texas

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Government Code Section 552.372(a) as applicable. Except as provided by Texas Government Code Section 552.374(c), the requirements of Texas Government Code Chapter 552 Subchapter J, may apply to the Contract or Purchase Agreements, and Successful Respondent agrees that the Contract or Purchase Agreements can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

16.7 COVID-19 Vaccine Passport Prohibition

Successful Respondent certifies that, under Texas Health and Safety Code Section 161.0085, Successful Respondent is not ineligible to receive the Contract.

16.8 Critical Infrastructure Affirmation

Pursuant to Texas Government Code Section 2275.0102:

(a) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;

(b) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and

(c) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure.

16.9 Additional Certification Regarding Foreign Ownership

Pursuant to Texas Executive Order GA-48, Respondent certifies that neither it, nor its holding companies or subsidiaries, is:

(a) Listed in Section 889 of the 2019 National Defense Authorization Act; or

(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 C.F.R 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 C.F.R Section 791.4.

16.10 Cybersecurity Training

In accordance with Texas Government Code Section 2054.5192, for any contract with a Texas state

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agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that the officer, employee, or subcontractor shall complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by Customer Texas state agency or institution of higher education. The cybersecurity training program must be completed by the officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer Texas state agency or institution of higher education completion of the program by each officer, employee, or subcontractor.

16.11 Data Management and Security Controls

If a Purchase Agreement is subject to Texas Government Code Section 2054.138, Successful Respondent shall meet the security controls required by the Purchase Agreement and shall periodically provide to the Customer evidence that Successful Respondent meets all required security controls.

16.12 Dealings with Public Servants

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

16.13 Deceptive Trade Practices; Unfair Business Practices

(a) Successful Respondent represents and warrants that neither Successful Respondent nor any of its subcontractors has been

(1) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Texas Business and Commerce Code Chapter 17, or

(2) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

(b) Successful Respondent certifies that it has no officers who have served as officers of other entities who have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation, or other proceeding.

16.14 Debts and Delinquencies

Successful Respondent acknowledges and agrees that, to the extent Successful Respondent owes any debt including but not limited to delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full.

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16.15 Energy Company Boycotts

If Successful Respondent is required to make a verification pursuant to Texas Government Code Section 2276.002, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract.

16.16 Entities that Boycott Israel

In accordance with Texas Government Code Section 2271.002, Successful Respondent certifies that either:

(a) It meets an exemption criterion under 2271.002; or

(b) It does not boycott Israel and will not boycott Israel during the term of the Contract.

16.17 E-Verify Program

Pursuant to Texas Government Code Chapter 673, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

(a) all people employed by Successful Respondent to perform duties within Texas; and

(b) all persons, including subcontractors, assigned by Successful Respondent to perform work pursuant to the Contract within the United States of America.

16.18 Excluded Parties

Successful Respondent Certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.

16.19 Executive Head of a State Agency Affirmation

Pursuant to Texas Government Code Section 669.003, relating to contracting with an executive head of a Texas state agency, no person who served as an executive of DIR in the past four (4) years was involved with or has any interest in the Contract. If Successful Respondent employs or has used the services of a former executive of DIR, then Successful Respondent shall provide the following information to DIR: name of the former executive, the date of separation from DIR, the position held with Successful Respondent, and the date of employment with Successful Respondent.

16.20 Financial Participation Prohibited

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

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16.21 Firearm Entities and Trade Associations Discrimination

If Successful Respondent is required to make a verification pursuant to Texas Government Code Section 2274.002, Successful Respondent verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

16.22 Foreign Terrorist Organizations

In accordance with Texas Government Code Section 2252.152, Successful Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.

16.23 Former Agency Employees

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

16.24 Human Trafficking Prohibition

In accordance with Texas Government Code Section 2155.0061, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

16.25 No Conflicts of Interest

Successful Respondent represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety.

16.26 Prior Disaster Relief Contract Violation

Under Texas Government Code Section 2155.006 and Section 2261.053 it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

16.27 Public Information

Pursuant to Texas Government Code Section 2252.907, Successful Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Each State governmental body Customer should include in their Purchase Agreement any additional terms regarding the specific format by which Successful Respondent must make the information accessible by the public.

16.28 Suspension and Debarment

Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the

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General Services Administration, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.

16.29 Additional Certifications

Successful Respondent certifies, represents, and warrants that:

(a) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;

(b) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;

(c) as of the Effective Date of the Contract, it is not listed in any of the Divestment Statute Lists published on the Texas Comptroller of Public Accounts webpage (https://comptroller.texas.gov/purchasing/publications/divestment.php);

(d) all equipment, materials, works, and services to be used in performing and fulfilling the requirements of the Contract shall be of high professional quality and workmanship and consistent with or better than applicable industry standards, if any;

(e) it has complied with Texas Government Code Section 556.0055 and its restriction on lobbying expenditures; and

(f) its receipt of appropriated or other funds under this Agreement is not prohibited by Texas Government Code Section 556.005 or Section 556.008.

16.30 No False Statements

Successful Respondent represents and warrants that all information provided by Successful Respondent is current, complete, true, and accurate. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent shall fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.

16.31 Updates to Certifications

Successful Respondent shall report to the DIR Contract Manager within five (5) Business Days any change to the information contained in the Certification Statement of Exhibit A of the RFO or Section 16, Successful Respondent Certifications of this Appendix A to the Contract. Successful Respondent shall fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and the status of conflicts of interest.

16.32 Customers May Require Additional Certifications

Successful Respondent acknowledges that each Customer may require additional certifications or representations in addition to the certifications in this Contract.

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<END OF APPENDIX A>