

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number



TWC CUSTOMER SERVICES CONTRACT: Durable Medical Equipment (DME)

I. PARTIES

This Durable Medical Equipment contract ("Contract") is entered into between the Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78778-0001, ("TWC"), and:

Legal Name of Contractor:	Kerring Group, LLC
Mailing Address:	P. O. Box 342347
City, State and Zip:	Austin, TX 78734
Street Address (if different):	2900 W. Anderson Lane, Suite c
City, State and Zip:	Austin, TX 78734
Telephone:	(512) 400-2523
FAX number:	(512) 451-6345
Contact Person:	Kelly Murphey
E-mail address of Contact Person:	kellym@kgustin.com

Hereafter referred to as the "Contractor." The Contractor is a Limited Liability Company with filing number 802125680.

II. DEFINITIONS

CONFIDENTIAL INFORMATION: Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of TWC that consists of or includes any or all of the following:

- a. Customer Information;

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

- b. Protected Health Information (PHI), in any form including without limitation, Electronic PHI or Unsecured PHI;
- c. Sensitive Personal Information, as defined by Texas Business and Commerce Code, § 521.002(a)(2);
- d. Federal Tax Information;
- e. Personally Identifiable Information (PII) as defined by Texas Business and Commerce Code § 521.002(a)(1);
- f. Social Security Administration Data, including, without limitation, Medicaid information;
- g. All privileged work product; all information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health and Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552;
- h. PII as defined by 2 CFR 200.1;
- i. Information deemed confidential under The Rehabilitation Act of 1973, 29 U.S.C. Chapter 16, as amended, and implementing regulations 34 C.F.R. Parts 361 through 396.

CONFLICT OF INTEREST: A conflict of interest is a situation that creates a risk that professional judgment or actions will be unduly influenced by a personal interest or relationship and creates substantial conflicts with the proper discharge of duties required by a contract and the public interest. Each Contractor must comply with the content on Conflict of Interest located in the [VR-SFP](#) Chapter 3: Basic Standards.

CONTRACTOR (or PROVIDER): A legal entity or individual who TWC is contracted with to provide goods and/or services for TWC Customers.

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

Contractor can be used interchangeably with Provider, Service Provider, or Vendor.

CONTRACTOR PROVIDED SPECIFICATIONS: A written detailed description of the exact product to be provided, including the cost of the product and the date by which the product will be delivered.

CUSTOMER: An individual that has met the TWC eligibility criteria and has been approved to receive TWC-VR services.

CUSTOMER CO-PAY: Amount specified as the Customer's cost of the DME by a Third-Party Payment entity, as applicable, which may include co-payment, coinsurance, or deductible.

DURABLE MEDICAL EQUIPMENT (DME): Durable Medical Equipment that may be included in the Contract is limited to the DME described in the [TWC VR Standards for Providers](#) (VR-SFP) Manual Chapter 8: Durable Medical Equipment (DME), Section 8.3. The specific DME to be provided to a Customer will be listed in a valid Service Authorization (SA) provided by TWC-VR to Contractor authorizing the purchase.

FABRICATED GOOD: A DME device constructed to meet a specific need.

FUNCTIONAL UNIT: The fully constructed or Fabricated unit of Durable Medical Equipment that can be immediately put into operational use by the Customer for who it was specified. For example, a wheelchair would include the frame, seating system, controls, batteries, or other parts necessary to make it immediately usable by the Customer.

MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP): The manufacturer's published suggested retail price.

MEDICAL RECORDS: Medical records may include a history and physical narrative; operative reports; progress notes; or summaries.

PARENT COMPANY: The business that is requesting or has been granted a bilateral contract with TWC to provide services on behalf of Customers.

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

THIRD PARTY PAYMENT: Payment by a financial agent, including but not limited to self-insured plans, commercial/private insurance plans, Medicare, Medicaid, or other parties that are—by statute, contract, or agreement—legally responsible for payment of a claim for a health care item or service.

TWC PRICE: The TWC Price for DME is the lesser of (1) the allowable insurance rate, if applicable; or (2) the MSRP minus the established TWC percentage discount provided in VR-SFP, Section 8.6.

VOCATIONAL REHABILITATION DIVISION (VRD): The TWC Vocational Rehabilitation Division (VRD) administers the Vocational Rehabilitation Services Program, which is a joint state and federally funded program to assess, plan, develop, and provide VR services for eligible individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that these individuals can prepare for and engage in competitive integrated employment and achieve economic self-sufficiency. In accordance with the Rehabilitation Act of 1973, as amended, VRD is the single designated state unit for the VR program.

VOCATIONAL REHABILITATION (VR) STANDARDS FOR PROVIDERS

MANUAL (SFP) (or STANDARDS): The [VR Standards for Providers \(VR-SFP\) Manual](#) focuses on the business practices, processes, and policies that must be followed for TWC and the contracted Provider to comply with federal and state laws and TWC rules and requirements. The [VR-SFP Manual](#) ensures TWC-VR Customers receive quality services.

III. PURPOSE AND SCOPE

The Contract is to provide the DME as approved in the [VR-SFP](#), Chapter 8-Durable Medical Equipment. Services shall be available to TWC Customers at the following accessible specified location:

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

Location Name: Kerring Group, LLC

Address: 2900 W. Anderson Ln, Suite C

City, State and Zip: Austin, TX 78757

Telephone: (512) 400-2523

FAX number: (512) 451-6345

Location Contact Person: Kelly Murphey

E-mail address of Location Contact Person: kellym@kgaustin.com

Services shall be provided in accordance with Solicitation Posting #: 3202300176, this Contract, and the TWC VR SFP in the following counties: Falls, McLennan, Travis, Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Williamson, Brazos, Burleson, Grimes, Leon, Madison, Robertson, Washington, Bell, Lampasas, Milam, San Saba, San Jacinto, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Walker, Waller, Wharton, Gonzales, Atascosa, Bexar, Comal, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Wilson, Kleberg, Nueces, San Patricio

IV. CONTRACT PERIOD

This Contract is effective on the later of 07/01/2024 or on the date of last signature of both parties ("Effective Date") through 06/30/2026 ("Termination Date").

V. RENEWAL

If TWC-VR determines it its sole discretion that renewal is warranted, this Contract may be renewed in writing prior to contract expiration under the same general terms and conditions for up to two (2) two-year (2-year) renewal periods.

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

VI. LEGAL AUTHORITY

Pursuant to its authority under [Texas Labor Code Chapter 352](#), [Texas Government Code § 2155.144](#), and Title 40 Part 20, Texas Administrative Code (TAC) § 858.2, TWC is authorized to enter into this Contract.

VII. PAYMENT RATES AND TERMS

A. Contractors must comply with the following sections defined in the [VR-SFP Manual](#), Chapter 8: Durable Medical Equipment for the goods and services being delivered:

1. DME Contractor Qualifications,
2. Description of DME,
3. DME Maintenance and Warranty,
4. DME Methodology for Payment, and
5. Outcomes Required for Payment.

B. TWC payment for Durable Medical Equipment will be calculated as described in the [VR SFP](#), 8.6 DME Methodology for Payment and Contractor must follow the following procedure unless superseded by later amendment to applicable chapters of the VR-SFP.

1. The Contractor must provide TWC-VR the cost estimate information required in VR-SFP Section 8.7 and receive a SA prior to obtaining or manufacturing DME for the Customer.
2. If the Customer has coverage from a Third-Party Payment entity, the Contractor shall complete all billing activities and have available to provide to TWC-VR any available Explanation of Benefits prior to invoicing TWC—including any documentation if a Third-Party Payment entity denies a submitted claim.
3. As the payer of last resort, TWC's payment will be the lesser of:
 - a) the TWC Price;

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

- b) the amount allowed by the Customer's Third-Party Payment entity; or
- c) the Customer Co-Pay.

- C.** TWC will pay Contractor for each approved good or service, when authorized by a TWC SA, in accordance with the fee schedules payable for those goods or services as provided in the applicable [VR-SFP Manual](#) section, for the provision of each good or service by Contractor to a VR Customer. However, TWC shall not be liable for any payment pursuant to the resulting contracted purchase in which TWC expectations are not met or the goods were not received, verified, and accepted by TWC in accordance with requirements, including specifications, deliverables, and outcomes in applicable sections of the VR-SFP.
- D.** In accordance with the Prompt Payment Act, Texas Government Code Chapter 2251, TWC will make payment on a correct, and properly prepared and submitted invoice within 30 days of receipt. The invoice shall meet the state requirements, be performed in accordance with the SA, Contract, and applicable VR Standards for the goods or services(s) provided to Customers. If applicable, an invoice must be supported by other documentation required and be subject to TWC review and approval. Any invoices or other submitted documentation, including required reports that are incorrect or incomplete, shall be returned to the Contractor for the correction before resubmission to TWC for payment. At a minimum, invoices must include the following:
1. Contractor complete legal name (DBA optional), email and phone number (if applicable), and correct remittance address, including city, state, and ZIP code;
 2. Contractor contact name and department, of person designated to answer invoice questions, and telephone number, email address, or FAX number;

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

3. A valid contractor 14-digit Texas Identification number (TIN) issued by the Comptroller of Public Accounts;
4. Correct TWC SA number, and contract number;
5. TWC office name and address, or TWC' delivery address, as applicable, as indicated on the SA;
6. An itemized description of the goods or services to be provided/performed, in sufficient detail to identify the order or authorization, including the dates of service or period;
7. Quantity, unit cost and total amount being billed, and as documented on the original SA;
8. A copy of the written instructions Contractor provided to the Customer on how to operate and maintain the DME;
9. A Warranty coverage date or Warranty expiration date;
10. Documentation showing the MSRP at the time the SA was issued;
11. Comparable benefits submission, comparable benefits response, and explanation of benefits (EOB), as applicable;
12. Other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary; and
13. Any other information required by applicable state and federal laws, rules, and regulations governing provision of services under this Contract and policies and standards issued by TWC.

VIII. CONTRACTOR OBLIGATIONS

Contractor shall:

- A.** Provide Customer's TWC-VR Counselor a referral packet containing a prescription for DME, the applicable evaluation(s) showing the appropriateness of the DME for the condition and the Customer's needs, and

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

a quote supported by documentation from the manufacturer showing the MSRP and insurance verification and an estimation of benefits if applicable. TWC will evaluate the referral packet documentation to determine if the DME is appropriate for the Customers Individual Plan for Employment. If appropriate, TWC may issue the Contractor a SA authorizing the Contractor to begin work on acquiring and/or manufacturing the DME authorized in the SA.

- B.** Contractor may not perform the evaluation required to be submitted with the Referral. DME evaluations must be performed by someone other than the entity providing the DME to the Customer.
- C.** Provide Durable Medical Equipment goods and associated services to Customers, deliver goods, and submit required reports of services rendered in accordance with the SA, TWC expectations, contractual requirements, and VR Standards, as applicable.
- D.** Alert the VR staff member listed on the SA of the estimated delivery date if unable to make delivery within 45 days and provide an explanation for why delivery could not be made within the original established timeframe.
- E.** Maintain current qualifications, credentials, certifications, and/or licensures as required to provide the services under this Contract and in accordance with the VR-SFP and applicable law.
- F.** Submit documentation showing current qualifications, licenses, credentials, and/or certifications as required to provide the goods or services provided under the Contract in accordance with the VR Standards and VR requirements to TWC prior to execution of this Contract, within 30 days of any change to certifications, licenses, or credentials including changes in staff; upon Contract renewal; and upon request by TWC-VRD, as applicable.
- G.** Maintain compliance with applicable sections of the [VR-SFP Manual](#), including Chapter 1: Introduction to Vocational Rehabilitation; Chapter 2, Obtaining a

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

Contract for Goods or Services; Chapter 3: Basic Standards; and Chapter 8: Durable Medical Equipment.

- H.** Provide proof of coverage in compliance with any applicable insurance requirements for services authorized by this Contract as outlined in the VR Standards.
- I.** Not pursue the Customer, the Customer's parent or guardian, or any other individual for additional payments without prior written approval from TWC. This prohibition does not prevent Contractor from pursuing Third Party Payment entities, if applicable, in accordance with Section VII.B of this Contract and the VR-SFP prior to receiving final payment from TWC.
- J.** Accept TWC's final payment for goods or services for Customers as fulfilling Contractor's claim for those goods or services.
- K.** Regularly review the VR Standards in the [VR-SFP Manual](#) for services authorized by this Contract, pending revisions at least every (30) days, and comply with those revisions for all goods and services provided after the effective date of the revisions. All references to the VR Standards and the VR-SFP Manual herein are references to the most recent standards in effect published by TWC on its website.

IX. TWC OBLIGATIONS

- A.** TWC is not obligated by this Contract to refer any Customers to Contractor. The TWC counselor will make individual Customer referrals for specific services.
- B.** TWC shall determine the need for services on an individual Customer basis. The TWC counselor and an identified Customer will jointly determine the need for services and select from among the available providers the provider that is best suited for meeting the Customer's needs.
- C.** TWC will not be liable to Contractor for any expenses paid or incurred by Contractor except as provided specifically by this Contract including any

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

applicable VR Standards, as authorized by a TWC SA and provided to Contractor on behalf of a Customer.

- D.** TWC shall publish on its website the most current applicable VR Standard in the VR-SFPs and make them available to the public.
- E.** TWC shall publish on its website all proposed revisions to the VR-SFP at least thirty (30) days prior to their effective date and making them available to the public. A revision log of all amendments to the VR-SFP is available on TWC's website.

X. STANDARD TERMS AND CONDITIONS

ATTACHMENT 1 - TEXAS WORKFORCE COMMISSION (TWC) VR-OE TERMS & CONDITIONS (1/2024)

The VR-OE Terms and Conditions (1/30/2024) in their entirety, found in Attachment 1, are incorporated into and made part of this Contract.

[Signature Page Follows]

1-582655449-3-001

Payee I.D. Number

3024VRS243

Contract Number

SIGNATURES

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective Parties named below.

TEXAS WORKFORCE COMMISSION

KERRING GROUP LLC

Cheryl Fuller

Signature

Kelly Murphey

Signature

Cheryl Fuller

Print Name

Kelly Murphey

Print Name

Director, Vocational Rehabilitation Division

Title

Vice President

Title

6/12/2024

Date

6/11/2024

Date

Attachment 1

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

By responding to the solicitation, or fulfilling the contract, procurement, or service authorization (SA) the Vendor agrees to the terms and conditions below, which apply to and become a part of every Texas Workforce Commission (TWC) purchase. Only mutual written exceptions will be valid. References to IFB/RFO/RFP/OE/Proposal equates to "Service Authorization" or "Contract" and "Bidder/ Offeror/Proposer/Respondent/Contractor" equates to "Vendor." Any specification in the solicitation or subsequent contract that conflicts with these standard terms and conditions takes precedence. All references to "days" shall be calendar days unless specified otherwise.

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

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

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

1. SOLICITATION RESPONSE REQUIREMENTS (As applicable to the services/products.)

1.1. Written Specifications: TWC will not be bound by any oral

statement or representation contrary to the written specifications contained in the solicitation.

- 1.2. Incomplete Responses:** Late, illegible, incomplete and/or unsigned responses may be deemed non-responsive and may not be considered.
- 1.3. Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.4. Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the contract.

2. GENERAL CONDITIONS

- 2.1. Damage to Grounds and Buildings (As applicable to the services/products):** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.
- 2.2. Texas Public Information Act:**
 - 2.2.1** Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas

Government Code, Chapter 552 (Public Information Act).

- 2.2.2** All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, Vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.
- 2.2.3** All information, documentation, and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to Vendor who submitted it during the retention period.
- 2.2.4** Pursuant to Texas Government Code § 2252.907, Vendor shall make any public information created or exchanged with the State pursuant to any contract with TWC, and not otherwise excepted from disclosure under the Texas Public

Information Act, available in a format that is accessible by the public at no additional charge to TWC.

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

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

2.3.2 Either party may provide written notice to the other party of a change of address of the party or to change the contact name and information. Amendments shall be in writing and signed by both parties.

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

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

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

2.5. INDEMNIFICATION:

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

PSYCHIATRIST, THE STATE OF TEXAS SHALL INDEMNIFY CONTRACTOR IN ACCORDANCE WITH TEX. CIV. PRACT. & REM. CODE, CH. 104.

2.5.2 VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TWC AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) TWC'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TWC BY VENDOR OR OTHERWISE TO WHICH TWC HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL(OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, VENDOR WILL REIMBURSE TWC AND THE

STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TWC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TWC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TWC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TWC'S COUNSEL.

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

2.5.2.2 IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TWC PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, TWC MAY REQUIRE VENDOR, AT VENDOR'S TO (1) PROCURE FOR TWC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH

FUNCTIONALITY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TWC'S USE IS NON-INFRINGEMENT, OR (3) ACCEPT RETURN OF THE INFRINGING PRODUCT OR TERMINATION OF THE SERVICE AND REFUND ANY AMOUNTS PAID BY TWC WITH RESPECT TO THE INFRINGING PRODUCT OR SERVICE.

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

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

2.5.3.2 VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR EMPLOYEES, AGENTS,

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

- 2.6. Vendor Performance:** Pursuant to Texas Government Code §§ 2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.7. Force Majeure:** TWC may grant relief from performance of an awarded contract or PO, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for

such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.

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

2.8. Dispute Resolution Procedures:

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

resulting adverse impact to the Protestant; (5) a statement of the argument and authorities that the Protestant offers in support of the protest; (6) an explanation of the action the Protestant is requesting from the Agency; (7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant; and (8) the protest must be signed by an authorized representative for the Protestant and the signature notarized. TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law. TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The Director will issue the final written decision to the protestor. TWC may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.

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

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

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

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

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

reports, books, records, and supporting documents. Vendor and any subcontractors shall provide TWC with any information that TWC deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC. For the purpose of this section, TWC's right to audit extends to any agency of the Federal government or State of Texas authorized by law or TWC, including an investigation or audit by the State Auditor or the Comptroller General of the United States. (See Section 11 for additional TWC Monitoring terms and conditions.)

- 2.13. State Auditor:** Pursuant to Texas Government Code §2262.154, the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

Vendor and any subcontractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all requested information and materials. Vendor's failure to comply with this Section shall constitute a material breach of

contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure.

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

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

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

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

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

secrets, and other proprietary rights therein (including renewals thereof) to TWC.

2.15.3 Vendor will assist TWC or its nominees (including, but not limited to, the State of Texas) to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.

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

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

- 2.17. Governing Law and Venue:** The contract shall be governed, construed, and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.
- 2.18. Survival:** Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, transition, records, audit, property rights, dispute resolution, invoice, fees verification, confidentiality, and rights and remedies upon termination.
- 2.19. Severability:** If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.
- 2.20. Block Terrorism:** TWC and Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including, but not limited to, the making or receiving of any contribution of funds, goods, or services to or for

the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>

2.21. No Waiver: Nothing in the contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. The contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TWC or the State of Texas under the contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into the contract or by its conduct prior to or subsequent to entering into the contract.

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

2.22.1 An email containing a copy of Vendor's response to solicitation, in searchable Portable Document Format (PDF) format, which has excised, blacked out, or otherwise redacted information from its solicitation response that Vendor reasonably considers to be confidential and exempt

from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Vendor's solicitation response, such as social security numbers). The email shall also contain an Appendix for Vendor's solicitation response which provides a cross reference for the location of all information redacted by Vendor and a general description of the redacted information. The PDF should be entitled "For Public Release: Redacted Version of [Name of Vendor]'s Proposal and Exhibits. Texas Workforce Commission's RFP/RFO/IFB solicitation No. __."

2.22.2 Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database. TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than thirty (30) days after date of contract award. By submitting a response to this solicitation, Vendors acknowledge that they understand and accept this requirement. See the LBB website at <http://www.lbb.state.tx.us/>.

2.23. Whistleblower Protection: Pursuant to 41 U.S.C. § 4712, Vendors may not discharge, demote, or discriminate against employees for reporting information that employee reasonably believes is evidence of gross mismanagement of a federal grant or contract, gross waste of federal funds, abuse of authority relating to a federal grant or contract, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation relating to a federal contract or grant. Employees

subject to adverse action in violation of this section may file a complaint with the Office of the Inspector General no later than three years from the date of the adverse action. Vendors must provide written notification of these whistleblower protections to employees performing on covered contracts.

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

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

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

2.24.2.1 Collect Sensitive PII only as authorized.

2.24.2.2 Limit the use of Sensitive PII.

2.24.2.3 Minimize the proliferation of Sensitive PII.

2.24.2.4 Secure Sensitive PII both physically and in electronic form.

2.24.2.5 Report suspected privacy incidents within twenty-four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at

CISO@twc.texas.gov.

- 2.24.2.6** Not transmit or store Sensitive PII in a server or storage device that is located in a foreign country.
 - 2.24.2.7** Awarded Vendor will not transmit Sensitive PII via email or store on CDs, DVDs, thumb drives and the like without prior review and encryption protocol approved by TWC.
 - 2.24.2.8** Failure to follow these requirements will constitute a breach of contract.
- 2.25. Change in Law:** Any alterations, additions, or deletions to the terms of the contract which are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment, and shall become effective on the date designated by such law or by regulation.
- 2.26. Davis-Bacon Act:** Vendors on all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.")
- 2.27. Environmental Protection (As applicable to services/products):** Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).

- 2.28. Contracting Information Responsibilities:** If the contract has a stated value equal to or in excess of \$1 million or results in the expenditure of an amount equal to or in excess of \$1 million in public funds, in accordance with Texas Government Code §552.372, Vendor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirement applicable to TWC, (2) promptly provide to TWC any contracting information related to the contract that is in the custody or possession of Vendor on request of TWC, and (3) on termination or expiration of the contract, either provide at no cost to TWC all contracting information related to the contract that is in the custody or possession of Vendor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to TWC. Except as provided by Texas Government Code §552.374(c), the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the contract and Vendor agrees that the contract may be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 2.29. Disaster Recovery Plan (As applicable to the services/products):** Pursuant to 13 Texas Administrative Code (TAC) § 6.94(a)(9), Vendor shall provide to TWC the description of its business continuity and disaster recovery plans.
- 2.30. Media Releases:** Vendor shall not use TWC's name, logo, or other likeness in any press release, marketing material, or other announcement without TWC's or the relevant state agency's prior written approval. TWC does not endorse any vendor,

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

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

- 2.31.1** the percentage of the total costs of the program or project which will be financed with Federal money;
- 2.31.2** the dollar amount of Federal funds for the project or program; and,
- 2.31.3** the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

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

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

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

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

3. REQUIRED CERTIFICATIONS

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

3.1 Vendor certifies that all statements and information prepared and submitted in this Proposal are current, complete, true and accurate. Submitting a Proposal with a false statement or

material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.

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

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

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

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

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

3.4.3 Vendor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by Vendor,

and Vendor's subcontractors, as proof that this provision is being followed.

3.4.4 If this certification is falsely made, the contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. Vendor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated contract.

3.5 Inducements/Dealings with Public Servants: Pursuant to Texas Government Code § 2155.003, Vendor affirms it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response.

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

legislators.

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

3.8 Non-Discrimination (see Section 9 for additional applicable provisions): Vendor certifies that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under the contract. Vendor certifies compliance with the Housing and Urban Development Act § 3, 12 USC § 1701u, relating to economic opportunities for low and very low-income persons; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); the Rehabilitation Act of 1973 (29 U.S.C. §794, 794d); Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor."; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.

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

- 3.10 Franchise Tax:** Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
- 3.11 Child Support:** Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code §231.006 (relating to child support) and acknowledges that the contract may be terminated, and payment may be withheld if certification is inaccurate. Pursuant to Texas Family Code §231.006(c), Vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.
- 3.12 Certain Bids and Contracts Prohibited:** Under Texas Government Code § 2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.13 Fair Business Practices:** Vendor has not been found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year. Vendor further affirms that no officer of the Vendor has served as an officer of any company found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.14 Antitrust Affirmation:** Vendor affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any

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

- 3.15 No Compensation:** Vendor certifies it has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.
- 3.16 Conflict of Interest:** Vendor certifies it has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.
- 3.17 Prior Disaster Relief Contract Violation:** Under Texas Government Code § 2155.006 and § 2261.053, Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
- 3.18 Independent Contractor:** Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an

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

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

3.20 Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069: Vendor certifies that it has not employed and will not employ a former TWC or state officer or employee who participated in a procurement or contract negotiations for TWC or the State of Texas involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

3.21 Vendor certifies that both of the following statements are true

and correct. Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:

- 3.21.1** Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.
- 3.21.2** Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.
- 3.22** **Entities that Boycott Israel:** In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code § 808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor certifies that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.
- 3.23** **Prohibition on Contracts with Companies Boycotting Certain Energy Companies, Texas Government Code Chapter 2274:** In contracts worth \$100,000 or more in value, if Vendor is a Company with 10 or more full-time employees, Vendor verifies that it does not boycott energy companies as defined in Texas Government Code, § 2274.001(1) and will not boycott energy companies during the term of the contract.
- 3.24** **Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries, Texas Government Code, Chapter 2274:** In contracts worth \$100,000 or more in value, if Vendor is a company with 10 or

more full-time employees, Vendor verifies, that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and Vendor will not discriminate against a firearm entity or firearm trade association during the term of the contract.

3.25 Prohibition on Contracts or Other Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure in this State, Texas Government Code, Chapter 2274: If the contract involves Vendor accessing critical infrastructure as defined in Texas Government Code, § 2274.0101, Vendor certifies it is not:

- 3.25.1** owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - 3.25.1.1** individuals who are citizens of China, Iran, North Korea, Russia or a designated country as defined in § 2274.0101(4); or
 - 3.25.1.2** a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or other designated country as defined in § 2274.0101(4); or
- 3.25.2** headquartered in China, Iran, North Korea, Russia or other designated country as defined in § 2274.0101(4).
- 3.25.3** This provision applies regardless of whether the Vendor's or its parent company's securities are publicly traded, or the Vendor or its parent company is listed on a public stock

exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

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

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

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

Former Executive Name: _____

State Agency Name: _____

Date Separated from Agency: _____

Position with Vendor: _____

Date employed with Vendor: _____

3.29 Buy Texas: Vendor agrees to comply with Texas Government Code §2155.4441, pertaining to purchasing products and materials produced in the State of Texas.

- 3.30 Texas Bidder Affirmation:** Vendor certifies that if a Texas address is shown as the address of the Vendor on this solicitation response, Vendor qualifies as a Texas Bidder as defined in Texas Government Code § 2155.444(c).
- 3.31 Human Trafficking:** Under Texas Government Code §2155.0061, Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the contract, TWC may immediately terminate the contract without further obligation to Vendor.
- 3.32 Trafficking in Persons:** The parties acknowledge the requirements of 2 C.F.R. Part 175, including the U.S. Department of Education's modifications to these requirements, and agree to comply with the requirements regarding trafficking in persons.
- 3.33 Disclosure of Prior State Employment:** Pursuant to Texas Government Code § 2254.033, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the

previous employment with TWC or the other agency; (b) the date employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.

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

If the contract is for professional services as described by Chapter 2254 of the Texas Government Code, Vendor represents and warrants that if a former employee of TWC was employed by Vendor within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Vendor that the employee worked on while employed by the TWC in accordance with Texas Government Code § 2252.901.

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

3.36 Cybersecurity Training: Vendor certifies that it will comply with the requirement of Texas Government Code § 2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee or subcontractor employee has access to a state computer system or database, Vendor shall ensure that

Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code § 2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.

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

3.38 Prohibited Technologies: Vendor represents and warrants that neither Vendor, Vendor's employees, nor Vendor's contractors will use any device to conduct state business that contains, accesses, or consists of any prohibited technologies. Vendor represents and warrants that it will implement a written policy to prohibit its employees or contract workers from using any device to conduct state business that contains, accesses, or consists of any prohibited technologies. Vendor represents and warrants that no device that contains, accesses, or consists of any prohibited technologies will be in the vicinity of a device conducting state business on behalf of the Vendor.

3.38.1 For the purpose of this section, state business includes accessing any state-owned data, applications, email accounts, non-public facing communications, VoIP, SMS, video conferencing,

CAPPS, Texas.gov, and any other state databases or applications. Prohibited Technology means the software and hardware products listed on the Department of Information Resources (DIR) webpage located at:

<https://dir.texas.gov/information-security/prohibited-technologies>. Vendor is responsible for periodically checking this list and remaining in compliance with additions.

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

4. SPECIFICATIONS

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

furnish the item(s) as specified in the solicitation.

- 4.2** Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.
- 4.3** **No Substitutions:** Vendor will not make any substitution to the specifications of any solicitation or PO, unless the substitution is (1) proposed to TWC in writing by the Vendor, and (2) supported by the expressed written prior approval of TWC.
- 4.4** **Replacement Parts Available:** The Vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.
- 4.5** All electrical items must meet all applicable standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 4.6** Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.

5. DELIVERY (As applicable to the services/products)

- 5.1** Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.
- 5.2** If delay is foreseen, Vendor shall give written notice to TWC who reserves the right to extend delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting Vendor.

6. VALIDATION, INSPECTION & TESTS

- 6.1** Vendor agrees to provide TWC with information necessary to validate any statements made in the Vendor's solicitation response, if requested by TWC. This may include, but is not limited to, allowing access for on-site observation, granting permission for TWC to verify information with third parties, allowing inspection of Vendor's records, and allowing inspection of plans for compliance.
- 6.2** All goods will be subject to inspection and test by TWC to the extent practicable at all times and places. Tests may be

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

7. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

- 7.1** Vendor represents that it has determined what licenses, patents and permits are required under the contract and has acquired all such licenses, patents and permits.
- 7.2** Vendor agrees that for the exclusive use by TWC or the State of Texas for State business, TWC and the State of Texas are free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed because of the contract.

8. TERMINATION PROVISIONS

- 8.1** The contract shall not be construed as creating a debt on behalf of TWC in violation of Texas Constitution Article III, § 49a. Vendor understands that all obligations of TWC under the contract are subject to the availability of state funds.
- 8.2** **Termination for Cause:** TWC reserves the right to immediately terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty, for

breach of contract by the Vendor.

- 8.3 Termination for Convenience:** TWC reserves the right to terminate any PO or contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) days' advance written notice, if TWC determines that such termination is in the best interest of the state.
- 8.4** In the event of such termination under 8.2 or 8.3, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC and the State of Texas shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC and the State of Texas shall have no other liability, including no liability for any costs associated with the termination.
- 8.5** TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Vendor. (See Sections 9.5-9.7 for additional related provisions).
- 8.6** TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the Vendor shall transfer title and deliver to the TWC any

partially completed work products, deliverables, source and object code, or documentation that the Vendor has produced or acquired in the performance of the contract.

9. ADDITIONAL TERMS FOR VOCATIONAL REHABILITATION CONTRACTED SERVICES

9.1 Privacy, Security, and Breach Notification

9.1.1 "TWC Confidential Information" means any communication or record (whether oral, written, electronically stored, or transmitted, or in any other form) provided to or made available to the Vendor electronically or through any other means that consists of or includes any or all of the following:

- 9.1.1.1** Customer Information;
- 9.1.1.2** Protected Health Information (PHI) in any form including, without limitation, Electronic PHI or Unsecured PHI;
- 9.1.1.3** Sensitive Personal Information defined by Texas Business & Commerce Code § 521.002;
- 9.1.1.4** Federal Tax Information;
- 9.1.1.5** Personally Identifiable Information defined by 2 CFR § 200.1;
- 9.1.1.6** Social Security Administration data including, without limitation, Medicaid information;
- 9.1.1.7** Information deemed confidential under The

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

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

9.1.2 Any TWC Confidential Information received by the Vendor under the contract may be disclosed only in accordance with applicable law. Any electronically transmitted communication or record containing TWC Confidential Information must be sent in a FIPS 140-2 compliant encrypted format. By signing the contract, Vendor certifies that the Vendor is, and intends to remain for the term of the contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including, without limitation, the following:

9.1.2.1 Relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;

9.1.2.2 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164;

9.1.2.3 Relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;

9.1.2.4 The Privacy Act of 1974, as amended by the

Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;

9.1.2.5 Internal Revenue Code, 26 U.S.C §§ 6103 and 6105, including IRS Publication 1075;

9.1.2.6 OMB Memorandum 07-16;

9.1.2.7 Texas Business and Commerce Code Chapter 521;

9.1.2.8 Texas Health and Safety Code, § 81.046 and Chapters 181 and 611;

9.1.2.9 Texas Human Resources Code § 12.003;

9.1.2.10 Texas Occupations Code Title 3, as applicable;

9.1.2.11 Constitutional and Common Law Privacy;

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

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

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

Vendor will submit a copy of that subcontractor agreement to TWC upon request.

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

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

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

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

9.2 Federal and State Requirements

9.2.1 Vendor will comply with all applicable state and federal laws, rules and regulations governing the provision of services under the contract and state policies and procedures issued by TWC, including, but not limited to, requirements specifically stated in the contract.

9.2.1.1 Vendor shall comply with state and federal nondiscrimination laws, including, without limitation:

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

9.2.1.1.2 Age Discrimination Act of 1975, 42

U.S.C. §§ 6101-6107;

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

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

9.2.1.1.5 The Texas Administrative Code applicable to this contract.

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

9.2.1.3 Vendor agrees to comply with Title VI of the Civil Rights Act of 1964 and its implementing regulations at 45 C.F.R. Part 80 and 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for

applicants and recipients who cannot express themselves fluently in English. Vendor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- 9.2.1.4** Vendor shall comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the U. S. Department of Agriculture or the U. S. Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- 9.2.1.5** Upon request, Vendor will provide the TWC Civil Rights Division with copies of all of the Vendor's civil rights policies and procedures.
- 9.2.1.6** Vendor must notify TWC Civil Rights Division about any civil rights complaints received relating to its performance under this contract. The notice must be delivered no more than ten (10) days after the Vendor receives the complaint. Notice provided pursuant to this section must be directed to:

**Texas Workforce Commission Civil Rights
Division**

101 East 15th Street, Guadalupe/CRD

Austin, Texas 78778-0001

Phone Toll Free: (888) 452-4778

Phone: (512) 463-2642

TTY Toll Free: (800) 735-2989

Fax: (512) 463-2643

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

9.2.2.1 34 C.F.R. Part 76, State-Administered Programs;

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

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

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

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

9.2.4 If applicable, the Vendor will comply with:

- 9.2.4.1** Health and Safety Code § 85.113 (workplace and confidentiality guidelines regarding AIDS and HIV);
- 9.2.4.2** All state and federal licensing and certification requirements and regulations prescribed by the U.S. Department of Health and Human Services, and TWC;
- 9.2.4.3** All mandatory standards and policies relating to energy efficiency contained in the state's energy conservation plan, Executive Order RP-49, and are related to the Energy Policy and Conservation Act;
- 9.2.4.4** The Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, regarding minimum wages, overtime pay, recordkeeping, and child labor;
- 9.2.4.5** 42 U.S.C. §675(4), which requires that foster care maintenance payments must be expended for items that are provided by foster parents and facilities; and
- 9.2.4.6** Referral of Debt to IRS for Tax Refund Offset 45 C.F.R. Part 31.

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

9.4 Participation of Historically Underutilized Businesses (HUBs): Vendor shall comply with any HUB requirements

identified in the solicitation under which the Vendor applied, if applicable.

9.5 Termination Provisions: The contract may be terminated by mutual consent of the parties. In the event of a Termination by Mutual Agreement, TWC's "Notice of Termination" will be delivered to the Vendor, specifying the extent to which performance of work under the contract is terminated and the date upon which the termination becomes effective. TWC will determine the effective termination date; however, in all cases, TWC will need at least thirty (30) days' written notice of the request to terminate prior to the effective termination date. TWC shall not be liable to the Vendor for any work done or materials purchased after termination or for lost profits or other damages. This right to terminate is in addition to and not in lieu of the rights provided to TWC by the contract or under Section 8 of the Terms and Conditions.

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

- 1.** Violation of the terms of the contract;

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

9.7 Remedies: The Vendor and any of its subcontractors associated with the contract will remedy in a timely manner, any weaknesses, deficiencies, or program noncompliance found as a result of a review, audit or investigation, and any performance or fiscal exceptions found by TWC, the SAO, the federal funding agency, their successor agencies, or any of their duly authorized representatives. TWC may withhold or recoup payments due or

paid under the contract, in whole or in part, in the event of the Vendor's noncompliance with any term or provision of the contract, any federal or state law or regulation, or any TWC rules or standards, including, but not limited to, the requirements specifically stated in the contract, relating to the Vendor's performance under the contract, as pursuant to Title 40 TAC § 858.9 or any other appropriate remedies deemed necessary by TWC.

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

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

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

10. ADDITIONAL TERMS

10.1 Abortion Provider and Affiliate Transactions Prohibited: Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Texas Government

Code § 2272.003 and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, § 6.24 of the General Appropriations Act.

- 10.2 Binding Effect:** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.
- 10.3 Federal Occupational Safety and Health Law:** Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).
- 10.4 Immigration:** Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- 10.5 Legal and Regulatory Actions:** Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Respondent is unable

to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

10.6 Limitation on Authority: Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.

10.7 No Third-Party Beneficiaries: The contract is made solely and specifically for the benefit of the named parties and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

10.8 Use of State Property: Respondent is prohibited from using State Property for any purpose other than performing Services

authorized under the contract. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, keyboards, headsets, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Respondent shall not remove State Property from within the borders of the continental United States. In addition, Respondent may not use any computing device to access Agency's network or e-mail while outside of the borders of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear (e.g., liquid damage, vermin infestations, etc.); (ii) all charges attributable to Respondent's use of State Property that exceeds the contract scope including staff time to reconfigure for reuse; and (iii) all costs to TWC to take the necessary steps to secure the State Property and get it ready for reuse. Respondent shall fully reimburse such charges to Agency within ten (10) days of Respondent's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

10.9 Refund: Vendor will promptly refund or credit within thirty (30)

days any funds erroneously paid by TWC which are not expressly authorized under the contract.

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

11. CONTRACT MANAGEMENT, OVERSIGHT, AND REVIEW

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

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

11.3 Items to be Reviewed: Vendor will provide all relevant

records, whether on paper, electronic, video or audio files, or in whatever form. TWC may also need to observe one or more aspects of Vendor's operations.

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

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

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

12. BACKGROUND CHECKS

12.1 Background checks by Vendor of all personnel who interact with VR customers: Vendors, that will provide goods or services directly to VR customers, must run a criminal

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

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

12.3 Credentialing, documenting, and renewing: For purposes of complying with this section, an employee's criminal background check expires after 3 years. The Vendor must run a new check before the 3 years expires or must remove the employee from interacting with VR customers on and after the date the background check expires. An employee whose criminal

background check has expired must not interact with VR customers. The Vendor will maintain records of all criminal background checks showing that the checks have been completed and that the employees have not failed the criminal background check. For the purpose of this section, documentation means a completed Background Check Search Confirmation and Attestation Form for each applicable individual showing the name of the individual checked, the signature of the individual showing consent to obtain and release background check information, dates of background checks, whether the individual passed the background check, and any other information required in the procedures contained in the VR-Standards for Providers Manual, Chapter 3, Basic Standards. Documentation of a current and passing criminal background check is both a "qualification" and a "credential" within the meaning of 40 TAC § 858.3(a)(1) and any successor regulation.

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

12.5 Record keeping and access to records: For each covered employee the Vendor must maintain documentation of conducting the background checks for a minimum of 6 years. Vendors must maintain the Background Check Search Confirmation and Attestation Form ("log") showing the name of the individual checked, the signature of the individual showing consent to obtain and release background check information, dates of background checks, whether the individual passed the

background check, and any other information required in the procedures contained in the VR-Standards for Providers Manual, Chapter 3, Basic Standards. Vendors must maintain a record of the payment for the background check, as applicable. Upon written request, the Vendor must provide access to or copies of all background check logs, payment records, and other required documentation to any VR counselor, contract management staff, contract monitoring staff, or other TWC staff.

- 12.6 Subcontractors:** All provisions in this section apply equally to any subcontractor, and this term will be included in any subcontract.
- 12.7 Standards for passing the background check; exceptions:** TWC has adopted a list of criminal offenses which disqualify Vendor employees from interacting with VR customers. The list is posted on the [VR Providers' Resources Page](#). TWC will consider exceptions in some cases to offenses included under subsections (b) and (c) of the list. Vendors are responsible for seeking an exception.
- 12.8 Guidance or Exceptions:** If a Vendor is unclear on the process to conduct a background check, or unclear about how to interpret the results, the Vendor shall ask VRD for technical assistance. TWC may grant exceptions to (i) remove the exclusion of an employee who failed a background check based on offenses contained in subsection (b) of the disqualifying offenses list or (ii) grant blanket exceptions to the requirement to conduct background checks on certain types of entities, procurements, services, or goods. Any exception granted by TWC must be supported by (a) a determination by TWC that the

need for the exception outweighs the likely risk, and (b) written, dated documentation that TWC agreed to the exception. TWC retains the right to place time limits or other restrictions on any granted exceptions.