

# Attachment A

## Texas Real Estate Commission Standard Terms and Conditions

**ITEMS BELOW APPLY TO AND BECOME PART OF BID.**  
**ANY EXCEPTIONS THERETO MUST BE IN WRITING.**

By accepting this Purchase Order (PO) and providing goods and/or services to the Texas Real Estate Commission (TREC), the Contractor agrees to comply with these Terms and Conditions in the event of any resulting PO. In the event of any conflict or inconsistency between these PO Terms and Conditions and any other part of the PO, these terms and conditions shall prevail unless otherwise stated on the PO. TREC, as applicable, disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by both parties. In the event of any conflict between these PO Terms and Conditions and any terms and conditions provided by the Contractor, these TREC terms and conditions prevail. POs that result from a formal solicitation shall be governed by the terms and conditions of the solicitation and resulting contract unless otherwise specified.

### 1. Compliance

The PO shall be governed, construed, and interpreted under the laws of the State of Texas. The Contractor shall comply with all rules, regulations, and statutes relating to purchasing in the State of Texas, in addition to the requirements of the PO. Any questions about POs must include the PO number and the PO issuance data or the PO Change Notice (POCN) date. The Contractor must comply with the specifications as outlined in the PO and any attachments to the PO. Unless otherwise specified, goods/products shall be new and unused and of current production, as applicable.

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA). TREC will not be bound by any oral statement or representation contrary to the PO specification, terms, conditions and attachments. Manufacturer's standard warranty shall apply unless otherwise stated in the PO, as applicable to goods and products.

### 2. Shipment and Delivery

The Contractor must provide or deliver the goods/products or services within the timeframes stated in the specifications or as indicated on the PO, and in accordance with the delivery timeframes quoted to TREC. "Delivery Days" means calendar days unless otherwise specified. Failure to provide the goods/products or services within the timeframes stated may cause the PO to be canceled. If a delay is foreseen, the Contractor must give written notice to TREC no later than five (5) business days in advance of the expected delivery date. The Contractor must keep informed about the status of the order. Default on promised delivery without an accepted reason, or failure to meet specifications, authorizes TREC to purchase the goods/products or services elsewhere and to charge the full increase, if any, in cost and handling to the Contractor.

The delivery location is listed in the "Ship To" block. Any change will be communicated through a POCN. The terms of the PO are "no arrival, no sale." Freight on Board (F.O.B.) Destination. Freight prepaid is allowed unless delivery terms are specified otherwise and accepted by TREC. Transportation costs shall be included in the invoice, if applicable. If transportation costs are based on actual costs, a copy of the freight billing showing actual charges for the shipment must be attached to the invoice. The title and risk of loss of goods shall not pass to TREC until TREC actually receives and takes possession of the goods at the place of delivery.

The Contractor, at the Contractor's cost, will package goods in accordance with commercial practice to secure the lowest appropriate transportation cost, with requirements of the common carrier and with applicable specifications. Each shipped package/container shall be clearly and permanently marked as follows: a. Contractor's name and address; b. Name and address of the place of delivery; c. PO Number; d. the package/container number and the total number of packages/containers (i.e. "box 1 of 4 boxes"); and e. the package/container bearing the packing list. The Contractor's count or weight shall be conclusive on shipments not accompanied by a packing list. TREC will refuse packages that do not have the PO Number clearly marked on the shipping label. No substitutions permitted without prior written approval of TREC.

The physical delivery of goods/products to:  
Texas Real Estate Commission  
Financial Services - Purchasing Section  
1700 Congress Ave #400  
Austin, Texas 78701

All deliveries must be made only during normal business hours, Monday – Friday, excluding holidays, unless prior written approval has been obtained from TREC.

### 3. Inspections and Tests

All products and goods will be subject to inspection and test by TREC. Tests may be performed on samples submitted with the bid, if requested, or on samples taken from regular shipment. All costs shall be the responsibility of the Contractor if products or goods fail to meet all conditions and requirements specified in the PO or the specifications of the manufacturer. Goods or products delivered and rejected in whole or in part

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may, at TREC's option, be returned to the Contractor or held for disposition at the Contractor's expense. Latent defects may result in revocation of acceptance, as applicable to products and goods.

#### 4. Invoicing and Payments

All payments will be made in accordance with Chapter 2251 of the Texas Government Code which governs remittance of payment and remedies for late payment and non-payment. A Payment will be made following satisfactory delivery and acceptance of goods/services and TREC's receipt of a correct invoice. No invoice shall be paid in excess of the net amount on the PO. All invoices must be sent to [accounts.payable@trec.texas.gov](mailto:accounts.payable@trec.texas.gov). Each itemized invoice must include:

- 4.1 Contractor's name, address, and telephone number;
- 4.2 Contractor's Vendor Identification Number referenced on the PO;
- 4.3 PO number;
- 4.4 Description of goods/products or services, quantity(ies), applicable unit prices, extended pricing, and invoice total; and
- 4.5 Shipment data of goods/products.

The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.

#### 5. TREC's Tax Exemption

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. The Contractor must not include taxes in invoices. TREC will furnish tax-exemption certificates upon request. The Contractor must not collect or cause TREC to pay taxes in the absence of any tax-exemption certificate.

#### 6. Protest Procedures

Any actual or prospective Bidder who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from any issued solicitation may formally protest as provided in TREC's rules at 22 TAC Rule §534.7 and the Texas Comptroller of Public Accounts' Rules at 34 TAC Chapter 20.

#### 7. Governing Law and Venue

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

#### 8. Price

Pricing must be in accordance with the Contractor's quote for the goods/products or services unless a price reduction is offered. The Contractor warrants that prices are not higher than the Contractor's current prices on orders by other purchasers for the same goods/products or services for similar quantities under similar or like conditions and methods of purchase. TREC has the right to reject the Contractor invoices that reflect pricing that is higher than original quoted in the Contractor's bid and specified in the PO. If the Contractor determines that prices will be higher than originally quoted, the increased pricing must be approved in writing by TREC before shipment of the goods or products or delivery of services.

#### 9. Withholding/Recoupment of Payments

TREC may withhold or recoup payments due or paid under the PO, in whole or in part, in the event of the Contractor's noncompliance with any terms or provisions of the PO, any federal or state law or regulation, or any TREC rules or standards including, but not limited to, the requirements specifically stated in the PO relating to the Contractor's performance. TREC may withhold or recoup payment due to the Contractor's failure to return materials or supplies given to the Contractor for the sole purpose of carrying out the services required under a PO and the withholding or recoupment of payment shall be for the replacement cost of such materials or supplies and not the original purchase price.

#### 10. Warranties

The Contractor warrants and guarantees that all requested items meet all specifications of the PO; in addition, the Contractor will provide manufacturer's standard warranty for all requested items. The Contractor will provide a one (1) year full replacement warranty for all requested items and will provide any other warranties specified in the PO. These warranties begin on the date TREC accepts the hardware and/or software. All warranties required by the PO survive beyond the termination, cancellation, or expiration date of the PO.

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### 11. Notices

All written notices required under the PO will be by email, hand delivery to the Contractor's office address specified on page 1 of the PO, or by U.S. Mail, certified, return receipt requested. Notices must include the PO number and the PO issuance data or the PO Change Notice (POCN) date.

Notice to TREC must be delivered to:

Texas Real Estate Commission  
Financial Services - Purchasing Section  
1700 Congress Ave #400  
Austin, Texas 78701  
Email: [procurement@trec.texas.gov](mailto:procurement@trec.texas.gov)

Notice will be effective on receipt by the affected party. Either party may change the designated notice address by written notification to the other party.

### 12. Vendor Performances

TREC is required by 34 TAC § 20.115 to report vendor (or Contractor) performance to the Vendor Performance Tracking System (VPTS) for each purchase over \$25,000 once the contract is completed or otherwise terminated. TREC, in its sole discretion, may report the Contractor's performance to VPTS for purchases that are less than \$25,000.

### 13. Additional Terms and Conditions

The following terms and conditions shall apply to the extent applicable to this PO. In some instances, the applicability is identified. References to "contract" and "PO" are interchangeable. TREC's signature on any agreement forms do not constitute TREC's agreement to any terms contrary to these required terms.

#### 13.1 Antitrust

The Contractor affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this contract, no representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this contract, no representative of the Contractor has violated any federal antitrust law; and (3) no representative of the Contractor has directly or indirectly communicated any of the contents of this bid to a competitor of the Contractor or any other company, corporation, firm, partnership, or individual engaged in the same line of business as the Contractor.

#### 13.2 Assignment for Services

The Contractor must not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from TREC. Any attempted assignment in violation of this provision is void and without effect.

#### 13.3 Buy Texas

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

#### 13.4 Child Support Obligation

Under Section 231.006 of the Family Code, the Contractor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any the Contractor subject to Section 231.006 of the Texas Family Code must provide to TREC the names and social security numbers of each person with at least 25 percent ownership of the business entity providing the services.

#### 13.5 Computer Equipment Recycling (purchase or lease of computer equipment only)

The Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

#### 13.6 Contracting Information Responsibilities

In accordance with Section 552.372 of the Texas Government Code, the Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TREC for the duration of the contract, (2) promptly provide to TREC any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TREC, and (3) on termination or expiration of the Contract, either provide at no cost to TREC all contracting information related to the

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Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided the records retention requirements applicable to TREC. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

### **13.7 COVID-19 Vaccine**

Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

### **13.8 Critical Infrastructure Affirmation**

Pursuant to Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

### **13.9 Cybersecurity Training**

As applicable, the Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training process.

### **13.10 Dealings with Public Servant Affirmation**

The Contractor 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 bid.

### **13.11 Debts and Delinquencies**

The Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

### **13.12 Disaster Recovery Plan**

As applicable, in accordance with 13 TAC § 6.94(a)(9), the Contractor shall provide to TREC the descriptions of its business continuity and disaster recovery plans.

### **13.13 Disclosure of Prior State Employment (Consulting Services only)**

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, the Contractor certifies that it does not employ an individual who has been employed by TREC or another agency at any time during the two years preceding the contract or, in the alternative, the Contractor has disclosed to TREC the following: (i) the nature of the previous employment with TREC or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

### **13.14 Dispute Resolution**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

### **13.15 Energy Company Boycotts**

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

### **13.16 Entities that Boycott Israel**

The Contractor represents and warrants that, pursuant to Section 2271.002 of the Texas Government Code, the Contractor does not boycott Israel and will not boycott Israel during the term of the contract.

### **13.17 E-Verify**

The Contractor certifies that for contracts for services, the Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: 1) all persons employed by the Contractor to perform duties within Texas; and 2) all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the contract within the United States of America.

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**13.18 Excess Obligations**

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

**13.19 Excluded Parties**

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

**13.20 Executive Head**

Under Section 669.003 of the Texas Government Code, the Contractor certifies that it does not employ, or has disclosed its employment of, any former executive head of TREC. The Contractor must provide the following information:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Contractor: \_\_\_\_\_

Date of Employment with Contractor: \_\_\_\_\_

**13.21 False Statements**

The Contractor represents and warrants that all statements and information prepared and submitted in the bid document are current, complete, true, and accurate. Submitting a bid 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 bid and any resulting contract.

**13.22 Financial Participation Prohibited Affirmation**

Under Section 2155.004(b) of the Texas Government Code, the Contractor certifies that the individual or business entity named in this 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.

**13.23 Firearm Entities and Trade Associations Discrimination**

If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Contractor does not make that verification, Contractor must so indicate in its Response and state why the verification is not required.

**13.24 Foreign Terrorist Organizations**

The Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**13.25 Former TREC Employees (Employment Contracts, Professional Services, or Consulting Services only)**

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

**13.26 Human Trafficking**

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

**13.27 Remedies (General)**

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TREC, 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 CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE

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CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TREC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **13.28 Indemnification (Intellectual Property only)**

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, 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 CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TREC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **13.29 No Conflicts of Interest**

The Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

### **13.30 Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

### **13.31 Public Information Act**

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

### **13.32 State Auditor's Right to Audit**

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.

### **13.33 Suspension and Debarment**

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

### **13.34 Television Equipment Recycling Program (Purchase or lease of covered television equipment only)**

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

### **13.35 Assignment for Goods**

The Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from TREC. Any attempted assignment in violation of this Section is void and without effect.

### **13.36 Electronic and Information Resources (EIR) Accessibility Standards**

a) For all EIRs, the Contractor shall provide all that apply: 1) accessibility information for the purchased products or services, where applicable, through one of the following methods: a. the URL to completed VPATs or equivalent reporting templates; b. an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or c. the URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any

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products under contract; and 2) credible evidence of the Contractor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, the Contractor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

- b) Absent an exception or exemption pursuant to §2054.460, Texas Government Code, and 1 TAC 213, all EIR products developed, procured or materially changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of 1 TAC Chapters 206 and 213, as applicable.

### **13.37 Force Majeure**

Neither the Contractor nor TREC shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

### **13.38 Independent Contractor**

The Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that the Contractor and its personnel are not employees of TREC or the State of Texas.

### **13.39 Sovereign Immunity**

Nothing in the contract shall be construed as a waiver of TREC's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TREC 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 TREC 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. TREC does not waive any privileges, rights, defenses, or immunities available to TREC by entering into the contract or by its conduct prior to or subsequent to entering into the contract.

### **13.40 Statutory Reporting Requirements**

Pursuant to Government Code 322.020 state agencies must report certain major contracts and their contents to the Legislative Budget Board (LBB). The LBB posts major contracts and their contents onto a public database. Submission of contract materials, regardless of confidentiality indications in the contract materials, will be considered the Contractor's recognition of the stated statute and the Contractor's consent to the Commission's submission to LBB for publication.

### **13.41 Termination**

**a) TREC may terminate or cancel the contract in any one of the following circumstances:**

#### **1) Termination for Convenience**

TREC reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if TREC determines that such termination is in the best interest of the state. In the event of such a termination, the Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TREC shall be liable for payments limited only to the portion of work TREC authorized in writing and which the Contractor has completed, delivered to TREC, and which has been accepted by TREC. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TREC shall have no other liability, including no liability for any costs associated with the termination.

#### **2) Availability of State Funds; Legislative Action; Necessity of Performance**

The Contract is subject to termination or cancellation, without penalty to TREC, either in whole or in part, subject to the availability of state funds. TREC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TREC becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either TREC's or the Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this section, TREC will not be liable to the Contractor for any damages which are caused or associated with such termination or cancellation, and TREC will not be required to give prior notice. Termination under this section shall not affect TREC's right to use previously paid Licensed Software through the term of each such license, nor any maintenance or support paid prior to such termination.

#### **3) Termination for Cause**

TREC may terminate the Contract immediately, in whole or in part, for cause by providing written notice to the Contractor of such termination if the Contractor fails to provide the contracted goods or services according to the provisions of the Contract, fails to execute the work properly, performs work in an unsatisfactory manner, or fails to comply with any of the terms or conditions of the Contract. Termination is not an exclusive remedy but is in addition to any other rights and remedies provided in equity, by law, or

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under this Contract. In the event of termination for cause, the Contractor will be held liable for all legal fees and other costs and expenses, including but not limited to attorney's fees and court costs, costs to re-solicit the contract, and any other damages to the State of Texas or TREC resulting from the Contractor's default. The defaulting the Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

**b) TREC's Right to Recover**

TREC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to TREC under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs if termination or cancellation is at the Contractor's request or if TREC terminates or cancels the Contract for cause. This right is in addition to any other remedies available to TREC under the Contract or under applicable law. TREC reserves the right to pursue any and all applicable rights and remedies if the Contract is terminated for any reason and TREC expressly waives no such rights or remedies.

**c) Notice of Termination or Cancellation Delivery**

Any termination by TREC of the Contract that requires notice may be accomplished by TREC's delivery to the Contractor of a written notice of termination or cancellation specifying that the Contract is terminated or canceled.

**d) Termination or Cancellation Effectiveness**

Unless otherwise specified in this Contract, any termination or cancellation of the Contract will be effective upon the date specified in TREC's notice of termination or cancellation.

**e) TREC Not Liable Upon Termination**

If the Contract is terminated for any reason, TREC and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

**13.42 Technology Access Clause (Automated Information Systems Contracts ONLY)**

Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairment. Accordingly, Contractor represents and warrants to TREC that the technology provided to TREC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.