

<b>Payee Name:</b> Public Consulting Group, LLC	<b>Contract No.:</b> 4387
<b>Payee ID:</b> 1042942913	<b>PO No.:</b> FY 2022: FY 2023: FY 2024: FY 2025:
<b>Division/Organization Code:</b> 208	
<b>Project Name:</b> OER Development and Revision	<b>RFP No.:</b> N/A – COVID-19 Disaster
<b>Legal/Funding Authority:</b> COVID-19 Funding, ESSER	<b>Project ID No.:</b>

**STANDARD CONTRACT BETWEEN THE  
TEXAS EDUCATION AGENCY AND  
PUBLIC CONSULTING GROUP, LLC**

**ARTICLE I. PARTIES TO CONTRACT**

This Contract (“Contract”) is entered into by and between the Texas Education Agency (“TEA”), a Texas State Agency and Public Consulting Group, LLC (“Contractor”).

**ARTICLE II. CONTRACT CONTINGENCY**

In accordance with Paragraph 2 of the attached Standard TEA Terms and Conditions, this Contract and all renewals and/or extensions, if applicable, are contingent upon the availability of funds to TEA as appropriated by the Texas State Legislature.

**ARTICLE III. PERIOD OF CONTRACT**

The term (“Term”) of this Contract shall be from the date of the final signature through August 31, 2025.

**ARTICLE IV. PURPOSE OF CONTRACT**

Contractor shall assist in the development and editing of TEKS and TPG-aligned instructional materials and supporting implementation resources that can be implemented in a remote, hybrid, and in-person instructional settings, at no cost to Texas LEAs, addressing the significant unfinished learning resulting from the COVID-19 pandemic, and all additional functions described in the Attachments to this Contract, listed below.

**ARTICLE V. PAYMENT UNDER CONTRACT**

TEA shall pay Contractor in accordance with the attached Task, Activity, Deliverable and Budget Plan (Attachment A). Upon Contractor’s satisfactory performance in accordance with Attachment A, TEA shall pay Contractor by State of Texas warrant(s) or direct deposit the amount of up to \$84,288,602.00 during the Term. The potential total value of this Contract, incorporating all optional renewal terms is \$84,288,602.00.

**ARTICLE VI. TERMS & CONDITIONS, ATTACHMENTS AND ANNEXES**

Attachments appear behind the Contract in this order.

- Attachment A – Task, Activity, Deliverable and Budget Plan
- Attachment B – Standard TEA Terms and Conditions
- Attachment C – Special Terms and Conditions of this Contract
- Attachment D – Request for Proposals - Instructional Materials Development and Revision
- Attachment E – [Intentionally Omitted.]
- Attachment F – [Intentionally Omitted.]
- Attachment G – [Intentionally Omitted.]

- Annex A, Certification Regarding Debarment, Ineligibility and Voluntary Exclusion (required if utilizing federal funds)
- Annex B, Lobbying (required if utilizing federal funds & over \$100,000)
- Annex C, [Intentionally Omitted.]

**ARTICLE VII. ORDER OF PRECEDENCE**

In the event of a conflict between or among the various documents comprising the Contract, the following order of precedence will control:


- Attachment C – Special Terms and Conditions of this Contract
- Attachment B – Standard TEA Terms and Conditions
- Standard Contract, inclusive of all attachments and annexes other than Attachment C and Attachment B
- Contractor’s Proposal to the Texas Education Agency entitled TEA Emergency Procurement for Instructional Materials Development and Revision submitted August 8, 2021

**ARTICLE VIII. ENTIRE CONTRACT**

This Contract together with the documents referenced in Articles VI and VII above, or cited within, comprise the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Contract shall be of no force or effect unless contained in a subsequent amendment executed by both parties.

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**AGREED** and accepted on behalf of Contractor as indicated by signature below of a person authorized to bind Contractor.


Signatory Name & Title	William S. Mosakowski, President and CEO
Signature & Date	 3-22-2022

Submit Electronically Copy to [TEAContracts@tea.texas.gov](mailto:TEAContracts@tea.texas.gov)

**THIS SECTION IS RESERVED FOR TEA USE.**

I, an authorized official of the TEA, hereby certify that this Contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above.

AGREED and accepted on behalf of TEA by a person authorized to bind TEA.

Signatory Name & Title	Mike Morath, Commissioner of Education
Signature & Date	 3/23/2022 <small>C4C0290E344445F...</small>

**Attachment A**  
**Task, Activity, Deliverable and Budget Plan**

<b>DEFINITIONS</b>	
<b>Review Rubric</b>	<i>Review Rubric</i> shall be defined as the scoring mechanism document by which each product and edition gets reviewed. Review Rubrics are aligned to the Texas Resource Review rubrics when possible and all reviewed components must meet the quality criteria in the rubric for approval. TEA may approve or deny any suggestions in its sole discretion based on expert internal and external feedback.
<b>Full Sets of Instructional Materials</b>	Full Sets of Instructional Materials include all the materials an educator requires to teach a course covering 100% of the TEKS or TPGs and 100% ELPS in the designated number of instructional days for that product and grade-level (180, 210 etc.). All instructional materials must meet print and digital accessibility requirements outlined in the Task Activity Plan.
<b>Round 1 Review</b>	<i>Round 1 Review</i> shall be defined as a review encompassing a review of all applicable Rubric criteria unless otherwise specified by TEA.
<b>Round 2 Review</b>	<i>Round 2 Reviews</i> shall be defined primarily as a review to determine whether revisions recommended in Round 1 have been completed fully and without error.
<b>Round 3 Review</b>	<i>Round 3 Reviews</i> shall be defined primarily as a review to provide updated scoring on a subset of Rubric indicators as needed pending any round 2 revisions made by the publisher.
<b>Program-Level Materials</b>	Program-level materials shall be defined as materials that provide guidance on, and/or an overview of, all or a majority of a given product. Program-level materials include but are not limited to: <ul style="list-style-type: none"> <li>• content-specific vision and program overview guides</li> <li>• implementation guides including but not limited to: bilingual program guide, internalization guides, planning guides, print guide, progress monitoring guides etc.</li> <li>• assessment guides</li> <li>• progress monitoring guides</li> <li>• data analysis protocols and tools</li> <li>• remote learning guidance</li> </ul>
<b>Course</b>	A Course shall be defined as one grade-level per one subject (e.g. 5th grade Math or 9th grade English). Course-level materials include but are not limited to: course-level overviews and scopes and sequences or year-at-a-glance, unit summaries, family welcome letters/ caregiver supports, grade-level pacing guides or implementation guides etc.

<b>Unit</b>	<p>A Unit shall be defined as a group of lessons comprising approximately 25 lessons and 30 instructional days. Units include all teacher-, caregiver-, and student-facing materials required for those lessons and instructional days including but not limited to:</p> <ul style="list-style-type: none"> <li>• Unit Plans/Unit Overviews, including but not limited to: a unit overview, enduring understanding and essential questions, implementation support/guidance, common misconceptions called out for teacher, text list with text summaries, materials list, unit-advance prep guidance, unit-specific TEKS and ELPS list, unit vocabulary and/or glossary, background knowledge building for teachers, detailed unit calendar / pacing plan, assessment overview, differentiation strategies and just in time intervention supports (at the unit and/or daily level), safety guidance (in the case of labs and/or experiments) adaptations for remote learning, unit sensitivity flags</li> <li>• Student and family facing unit overviews, module caregiver support guides and/or letters, unit-level digital and/or interactive tools</li> <li>• Daily lessons, as defined below</li> <li>• Unit-level content supplements (poetry supplements, cursive supplements, etc.)</li> <li>• Image cards, word wall resources, posters</li> <li>• Anchor charts, maps and other visual supports</li> <li>• Student facing activity books</li> <li>• Student facing 'textbook' editions (or non-consumable student editions)</li> <li>• Student readers</li> <li>• Trade book guides, text rationales, text sensitivity guidance</li> <li>• Digital components (read aloud videos, sound clips, etc.)</li> <li>• Pause point guidance and/or activities</li> <li>• Graphic Organizers</li> <li>• Assessments, including but not limited to TEKS aligned: section diagnostics, mid-unit checkpoint/quiz, end of unit assessments, rubrics, score guides with student work examples, standards mastery trackers, and answer keys</li> </ul> <p>The terms unit and module are often synonymous across OER products. Includes Spanish translation/transadaptation of K-6 units but excludes transcreation of designated K-6 units to be agreed on by vendor and TEA.</p>
<b>Lesson</b>	<p>A Lesson shall be defined as all student, teacher, and caregiver-facing daily instructional materials required to teach a daily lesson. Lessons include but are not limited to:</p> <ul style="list-style-type: none"> <li>• TEKS and ELPS-aligned daily lesson plans</li> <li>• student-facing lesson materials/practice activities aligned to the daily lesson plans</li> <li>• student homework and answer keys</li> <li>• daily projectables/PowerPoints</li> <li>• digital and interactive components</li> <li>• lesson texts</li> <li>• formative assessments (e.g. exit ticket, final check for understanding).</li> </ul> <p>There is no maximum number of pages for any single lesson or grade level. A single lesson in some cases may span more than one instructional day. Pause Points and assessment days within a unit are often not considered lessons but do count as an instructional day.</p>
<b>Instructional day</b>	<p>An instructional day is equal to a single unit of instructional period (a.k.a. a class period or a block of time). One lesson may span multiple instructional days (e.g. Lesson 1 Day 1, Lesson 1 Day 2). Conversely, an instructional day may include multiple lessons, as is the case with Prekindergarten, or may even focus on assessment (versus a new content lesson, as an example).</p>
<b>Integrated K-5 (Cross-curricular)</b>	<p>Integrated K-5 refers to a K-5 set of instructional materials where 100% of the standards across the Reading Language Arts, Science and Social Studies are covered with the intent of maximizing knowledge coherence for students.</p>
<b>Core Text</b>	<p>A core text is one which supports the learning goals and TEKS for all or a majority of the unit lessons and the unit assessment(s). Example: the novels in a novel study unit would all be considered core texts.</p>
<b>Supplemental Text</b>	<p>A supplemental text is one which supports the learning goals and TEKS for a single lesson and/or activity or for few lessons with minimal to no impact to the unit assessment.</p>

<b>Student Reader</b>	<p>The student-facing texts that accompany lessons within a unit are bundled into a "student reader" for that unit. This component is a non-consumable, meaning it is printed with the idea that it can be used for multiple years.</p> <p>All the texts in the reader should be at the appropriate Lexile level for the grade level and time of year. All texts must be reviewed and approved by TEA.</p>
<b>Translate</b>	Expressing English content in Spanish
<b>Transadapt</b>	When expressing English content in Spanish, adapting a concept to be Authentic to Spanish. For example, when adapting a grammar lesson on capitalization rules into Spanish, the lesson script, practices, and activity book pages are adapted to cover Spanish grammar.
<b>Transcreation / Transcreate</b>	This approach keeps a unit topic / theme, as well as the reading and writing skills, but changes the texts studied and lesson activities to study authentic Spanish books / stories ("authentic" meaning texts that are originally written in Spanish). For example, the personal narrative unit in 4th grade has the same genre and similar TEKS across languages, but the texts and lesson scripts / activities are completely different in each language. So far this approach has been most applicable in our K-5 literary units, where the student experience would be improved by studying an authentic text vs. a translation.

Task Activity Plan

						\$ 16,633,653	\$ 41,307,558	\$ 25,321,377	\$ 1,026,014	\$ 84,288,602
Task Number	Task/Activity	Deliverables	Deliverable Type	Deliverable Acceptance Criteria	Estimated Timeline	FY22	FY23	FY24	FY25	TOTAL
<b>1. Project Management</b>						\$ 707,598.00	\$ 1,425,900.00	\$ 892,884.00	\$ 102,018.00	\$ 3,128,400.00
1.1	Annual project kickoff	Design and facilitate annual program strategy workshop to identify milestones, capacity requirements, key decisions, and other elements of the project plan.	Smartsheet, Excel, Word and/or PowerPoint	Meeting agenda and related documents such as but not limited to project plans, product roadmaps, meeting notes, codified action steps with timelines etc.; Meeting can be in person, virtual, or hybrid, to be agreed upon by TEA and Vendor prior to meeting planning. TEA must approve deliverable(s) prior to vendor invoicing.	Once annually per our project plan.  Extensions may be approved in writing by TEA.	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 120,000.00
1.2	Annual product kickoff	Each product will have an annual product kick-off where plans for the year are reviewed, refined, and agreed upon. Specific agenda topics may include but are not limited to: product road map development and/or review, overview of focus group plan by product, stakeholder engagement strategy, etc.	Smartsheet, Excel, Word and/or PowerPoint	Meeting agenda and related documents such as but not limited to project plans, product roadmaps, meeting notes, codified action steps with timelines etc.; meetings can be in person, virtual or hybrid, to be agreed upon by TEA and Vendor prior to meeting planning (not to exceed 3 in person visits). TEA must approve deliverable(s) prior to vendor invoicing.	Once annually per product when a product is in a development year per our project plan.  Extensions may be approved in writing by TEA.	\$ 63,450.00	\$ 116,640.00	\$ 58,320.00	\$ 4,590.00	\$ 243,000.00
1.3	Project Workplan by product	Includes key milestones and detailed task plan, owner and status for each product edition. Vendor to track progress against plan and include status update in weekly product meetings.	Smartsheet project plan and dashboard	Vendor creates comprehensive project plan for each product edition in TEA approved Smartsheet project plan template. Comprehensive plan includes all deliverables and sub-deliverables, tasks, assigned owners, and interim and final deadlines. Vendor creates project plan dashboard in TEA approved Smartsheet dashboard template including status reports. TEA must approve deliverable(s) prior to vendor invoicing.	Initial plan established within first 30 days of product development; Project plans are updated on a monthly basis at minimum.  Extensions may be approved in writing by TEA.	\$ 90,180.00	\$ 185,436.00	\$ 110,484.00	\$ 8,100.00	\$ 394,200.00
1.4	Monthly program management meeting	Review project plan and assess progress towards milestones, goals, and final deliverables; troubleshoot project roadblocks/timeline challenges.	Smartsheet, Excel, Word and/or PowerPoint	Monthly status report including but not limited to upcoming milestones, deadlines, risks, roadblocks, action items, and decisions; virtual meeting. TEA must approve deliverable(s) prior to vendor invoicing.	Once monthly.  Extensions may be approved in writing by TEA.	\$ 96,192.00	\$ 197,798.40	\$ 117,849.60	\$ 8,640.00	\$ 420,480.00
1.5	Monthly budget report and meeting	Include overview of expected costs, invoiced costs and proposed requests for increases or decreases to agreed upon pricing on roadmap. Report should be organized by product.	Monthly budget report in TEA approved format	Report follows TEA approved template and tracks fiscal management of overall contract as well as work by product; virtual meeting. TEA must approve deliverable(s) prior to vendor invoicing.	Once monthly.  Extensions may be approved in writing by TEA.	\$ 30,720.00	\$ 74,880.00	\$ 74,880.00	\$ 11,520.00	\$ 192,000.00
1.6	Weekly product management meeting by product	Includes but not limited to vendor facilitating meeting, providing detailed meeting agenda, highlighting project successes and risks, capturing meeting key take-aways and next steps.	Weekly agenda in Excel, Word and/or PowerPoint	Weekly product management meeting in TEA approved agenda template. Topics covered include but are not limited to product-specific deadlines, roadblocks, deliverables and sub-deliverables, tasks, assigned owners etc.; virtual meeting. TEA must approve deliverable(s) prior to vendor invoicing.	Once weekly by product.  Extensions may be approved in writing by TEA.	\$ 384,768.00	\$ 791,193.60	\$ 471,398.40	\$ 34,560.00	\$ 1,681,920.00
1.7	Quarterly performance metrics reporting	Quarterly reporting of TEA performance metrics to track overall progress and success of project; summary report out meeting to TEA leadership on project status, LCM suggestions, strategic direction, refinements to focus group approach, identification of key risks and any key decisions.	Smartsheet, Excel, Word and/or Qualtrics	Vendor completes self-evaluation with evidence on TEA approved performance metrics; facilitates review meeting if needed. TEA must approve deliverable(s) prior to vendor invoicing.	Once quarterly.  Extensions may be approved in writing by TEA.	\$ 12,288.00	\$ 29,952.00	\$ 29,952.00	\$ 4,608.00	\$ 76,800.00
<b>2. OER Programmatic Development</b>						\$ 190,000.00	\$ 190,000.00	\$ 190,000.00	\$ -	\$ 570,000.00
2.1	Programmatic OER Calendars and Schedules	Develop programmatic OER calendars and schedules inclusive of multiple OER products with the goal of highlighting the different schedules and calendars across multiple OER products. Deliverables include but are not limited to: • School calendar including a 160 instructional day overview, a 180 day and a 210 day calendar overview for up to three grade-level bands (e.g. elementary, middle, and high school). Deliverable includes guidance on best instructional approach should a district need to pare down content (e.g. make a 210 model fit 205 instructional days) including recommendations on what not to teach if needed • Master schedule includes exemplar daily and weekly master schedule for all grades in up to three grade-level bands (e.g. elementary, middle, and high school) for both a traditional day as well as additional models (e.g. extended day). Deliverables considers LEA use of things like but not limited to: full suite of OER resources, small group instruction time, flextime for campus specific courses/activities, two recesses if elementary, transition time (e.g. breakfast in the classroom, library, computer lab, health and wellness block, innovation courses, other language courses (weekly French, German lesson etc.) specials classes (e.g., PE, Art, Music)); Guidance provides rationale for importance of each time block (e.g., research behind multiple student brain breaks), identifies implementation challenge of exemplars, and resolutions. • Diagnostic, summative, formative assessment calendar for all grades in up to three grade-level bands (e.g. elementary, middle, and high school) for 160, 180 and 210 day calendar. • Professional Learning or Professional Development calendar / scope and sequence for district-level leaders, school leaders, coaches and teachers highlighting PLC and PD schedules across multiple OER products.  LEA focus group input and feedback will be needed.  TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item. This price list represents the price for a newly developed item. If the deliverable exists and only needs to be revised, TEA and vendor will agree upon percent of deliverable being updated prior to vendor invoicing.	InDesign, Word, Excel, unlocked PDFs, PowerPoint	All deliverables follow TEA approved templates; final deliverables must be print ready for district use and meet TEA accessibility requirements. TEA must approve deliverables prior to vendor invoicing. Vendor must submit all final source files.  Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a> . • Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213 • Federal Section 508 standards and • Web Content Accessibility Guidelines (WCAG) 2.0 II • All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.  For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a>	Once annually per our project plan.  Extensions must be approved in writing by TEA.	\$ 190,000.00	\$ 190,000.00	\$ 190,000.00	\$ -	\$ 570,000.00
<b>3. Product Road mapping</b>						\$ 912,000.00	\$ 360,000.00	\$ -	\$ -	\$ 1,272,000.00
3.1	Product roadmap	Develop Product Roadmap that includes clear overview of program, course, unit and lesson development and/or continuous improvement plans, an explanation of how it aligns to educator feedback, and the approach to the development process including order of priority and proposed pricing of edits based on price list. Proposed pricing should be specific enough to include the price of each unit being created or revised in said product with a clear understanding of volume and pricing assumptions; can include invoice projections based on proposed price.	Excel, Word and/or PDF	Product roadmap follows TEA approved template; TEA must approve deliverable(s) prior to vendor invoicing.	As agreed to per the final, agreed on product development Calendar/timeline and/or project plan.  Extensions may be approved in writing by TEA.	\$ 912,000.00	\$ 360,000.00	\$ -	\$ -	\$ 1,272,000.00
<b>4. Product Development</b>						\$ 13,340,800.00	\$ 37,149,378.00	\$ 22,749,648.00	\$ 847,376.00	\$ 74,087,202.00
<b>4.A Program Level Development</b>						\$ 674,250.00	\$ 1,521,110.00	\$ 875,740.00	\$ 28,400.00	\$ 3,099,500.00



4.A.1	Product Specific Program Level Guides	<p>Develop product-specific program level guides in English (with Spanish translation and/or transadaptation) including but not limited to:</p> <ul style="list-style-type: none"> <li>• Program Overview highlighting the pedagogical approach to design, overview of included courses and S&amp;S, overview of alignment to other products, pacing supports, progress monitoring guides, learning acceleration strategies and guidance etc.</li> <li>• Bilingual Program Guide with overview of recommended product use in context of different bilingual program models. Assumes average document of 50 pages across all elements of program level development.</li> <li>• Assessment Guides with overviews of assessment strategy and approach, inventory of curriculum imbedded assessments, guidance on usage best practices, etc.</li> <li>• Product Implementation Guides to support implementation protocols including but not limited to unit internalization, assessment internalization, lesson internalization, lesson rehearsal practices, student work analysis and observation and feedback rubrics. Needed in both English and Spanish for K-6 materials. Includes a guide for teachers/educators to set up, launch, facilitate, monitor and assess independent reading in Elementary K-5 RLA, in 6-8 RLA and in 9-12 RLA. For K-5 mathematics, includes a document that pulls all the notes for pacing and differentiation to the course level.</li> <li>• Print Guides for districts who wish to self-print each product, send order out to a 3rd party printer, and/or order print copies. Print guides should also include the inventory list of any manipulative components required for implementation. For print ordering, guide includes but is not limited to: overview of ordering process, recommended timelines, overview of pricing, print inventory list, recommended storage and intake planning guidance and classroom set up guidance, break out of consumables Vs. non-consumables as well as estimate of shelf life for the product. Self-print guidance includes overview of what tools must distinctly be printed and at what quantities, self-print guidance, and paper and ink needs by component (e.g. print in color vs. black and white, landscape vs portrait, letter size vs. legal).</li> <li>• Year long pacing guides that consider LEA use of full suite of OER resources or partial OER resources, models consider assessment cadence and flextime for special events (e.g. career day, field day, presentations/assembly, community engagement activities etc.).</li> <li>• Remote Learning Guidance</li> </ul>	<p>InDesign, Word, Excel, unlocked PDFs, PowerPoint</p> <p>English with Spanish transadapted/translated</p>	<p>All guides must follow TEA approved templates; TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation); final deliverables must be print ready for district use and meet TEA accessibility requirements. All program level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverables prior to vendor invoicing. Vendor must submit all final source files.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <ul style="list-style-type: none"> <li>• Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>• Federal Section 508 standards and</li> <li>• Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>• All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.</li> </ul> <p>For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a></p> <p>See Task 8, Product Accessibility</p>	<p>Once per product edition on a timeline in accordance with our project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 303,550.00	\$ 783,110.00	\$ 500,160.00	\$ 19,680.00	\$ 1,606,500.00
4.A.2	Board Resources	<p>Board facing guide including but not limited to district guidance and presentation for districts seeking board adoption approval, and recommended Board engagement strategies to support adoption. Assumes average document of 50 pages. Assumes that some documents may need to be translated.</p> <p>TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item. This price list represents the price for a newly developed item. If the deliverable exists and only needs to be revised, TEA and vendor will agree upon percent of deliverable being updated prior to starting revisions. Vendor may requests adjustments to this percent during the revision process but TEA must approve. The price list amount will be prorated based on the agreed upon percentage improvement needed.</p>	<p>InDesign, Word, Excel, unlocked PDFs, PowerPoint</p> <p>English with Spanish transadapted/translated</p>	<p>Board resources follow TEA approved template; final deliverable(s) must be print ready for district use and meet TEA accessibility requirements. TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation). All program level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverable(s) prior to vendor invoicing. Vendor must submit all final source files.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <ul style="list-style-type: none"> <li>• Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>• Federal Section 508 standards and</li> <li>• Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>• All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.</li> </ul> <p>For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a></p> <p>See Task 8, Product Accessibility</p>	<p>Once per product edition on a timeline in accordance with our project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 47,225.00	\$ 95,175.00	\$ 49,570.00	\$ 1,280.00	\$ 193,250.00
4.A.3	TIA Implementation Guidance	<p>Develop product-specific TIA implementation guidance including but are not limited to:</p> <ul style="list-style-type: none"> <li>• Implementation guide that details how formative assessments can be used to measure growth</li> <li>• TIA Case studies of how districts are using products as student growth measures for their local designation system</li> <li>• User guides at the teacher, principal, and principal supervisor level about how to use each product as a student growth measure for their local designation system</li> </ul> <p>K-5 Math and RLA are highest priority.</p> <p>Assumes that some documents may need to be translated. Assumes average document of 50 pages per deliverable.</p> <p>TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item. This price list represents the price for a newly developed item. If the deliverable exists and only needs to be revised, TEA and vendor will agree upon percent of deliverable being updated prior to starting revisions. Vendor may requests adjustments to this percent during the revision process but TEA must approve. The price list amount will be prorated based on the agreed upon percentage improvement needed.</p>	<p>InDesign, Word, Excel, unlocked PDFs, PowerPoint</p> <p>English with Spanish transadapted/translated</p>	<p>TEA approved components; contains examples of how to set expected growth; Details what types of formative assessments will be used to set expected growth; final deliverable(s) must be print ready for district use and meet TEA accessibility requirements. Vendor must submit all final source files.</p> <p>For documents in Spanish, TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation).</p> <p>All program level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverable(s) prior to vendor invoicing.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <ul style="list-style-type: none"> <li>• Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>• Federal Section 508 standards and</li> <li>• Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>• All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.</li> </ul> <p>For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a></p> <p>See Task 8, Product Accessibility</p>	<p>Once per product edition on a timeline in accordance with our project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 323,475.00	\$ 642,825.00	\$ 326,010.00	\$ 7,440.00	\$ 1,299,750.00
<b>4.B Course Level Development</b>						\$ 1,037,000.00	\$ 1,906,900.00	\$ 965,100.00	\$ 27,000.00	\$ 3,936,000.00

4.B.1	Course Overviews	<p>Course Overview includes teacher, student and/or caregiver facing course overview documents inclusive of key course-level themes and/or topics, summary of units covered, list of core texts read, assessment approach and cadence for the course, parent welcome letter, summer recommended reading list for K-12 RLA.</p> <p>Assumes that some documents may need to be translated.</p> <p>TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item. This price list represents the price for a newly developed item. If the deliverable exists and only needs to be revised, TEA and vendor will agree upon percent of deliverable being updated prior to starting revisions. Vendor may requests adjustments to this percent during the revision process but TEA must approve. The price list amount will be prorated based on the agreed upon percentage improvement needed.</p>	<p>InDesign, Word, Excel, unlocked PDFs, PowerPoint</p> <p>English with Spanish transadapted/translated</p>	<p>Course overview follows TEA approved template; final deliverable(s) must be print ready for district use and meet TEA accessibility requirements. TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation). All course level documents must meet "approve" on the review rubric and get final sign-off from TEA prior to vendor invoicing. Vendor must submit all final source files.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <ul style="list-style-type: none"> <li>•Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>•Federal Section 508 standards and</li> <li>•Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>••All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.</li> </ul> <p>For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a></p> <p>See Task 8, Product Accessibility</p>	<p>Once per product edition on a timeline in accordance with our project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 600,900.00	\$ 1,125,300.00	\$ 633,180.00	\$ 15,720.00	\$ 2,375,100.00
4.B.2	Course-level Scope and Sequences	<p>Develop new scope and sequences including:</p> <ul style="list-style-type: none"> <li>• a 160 day pathway and a 210 day pathway with guidance around how to pair down if the LEA has fewer instructional days;</li> <li>• pathways to support TEA's ADSY initiative (Additional Days of the School Year) including: intersessional calendars with a series of 4-6 week long intersession scopes and sequences and recommended 5 week, 4 week and 3 week summer sequence.</li> </ul> <p>This work may involve the reorganization of course units. Assumes that some documents may need to be translated.</p> <p>TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item. This price list represents the price for a newly developed item. If the deliverable exists and only needs to be revised, TEA and vendor will agree upon percent of deliverable being updated prior to starting revisions. Vendor may requests adjustments to this percent during the revision process but TEA must approve. The price list amount will be prorated based on the agreed upon percentage improvement needed.</p>	<p>InDesign, Word, Excel, unlocked PDFs, PowerPoint</p> <p>English with Spanish transadapted/translated</p>	<p>Course-level scope and sequence follows TEA approved template; final deliverable(s) must be print ready for district use and meet TEA accessibility requirements. TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation). All course level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverable(s) prior to vendor invoicing. Vendor must submit all final source files.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <ul style="list-style-type: none"> <li>•Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>•Federal Section 508 standards and</li> <li>•Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>••All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.</li> </ul> <p>For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a></p> <p>See Task 8, Product Accessibility</p>	<p>Once per product edition on a timeline in accordance with our project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 397,300.00	\$ 650,700.00	\$ 232,020.00	\$ 5,880.00	\$ 1,285,900.00
4.B.3	Course-Level Standards-Alignment Application	<p>Complete TEA's Standards-Alignment application/document for each course to begin TRR process and ensure 100% TEKS coverage in support of SBOE adoption. Final deliverables need to meet 100% of TEKS and TRR quality score.</p>	<p>Web-based application, PDFs</p> <p>TEKS/TRR Report</p>	<p>Course level standard alignment follows TEA approved process and required templates; final deliverable(s) must meet TEA accessibility requirements and must meet 100% of TEKS and TRR quality score. All course level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverable(s) prior to vendor invoicing.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <ul style="list-style-type: none"> <li>•Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>•Federal Section 508 standards and</li> <li>•Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>••All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.</li> </ul> <p>For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a></p> <p>See Task 8, Product Accessibility</p>	<p>Once per product edition on a timeline in accordance with our project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 38,800.00	\$ 130,900.00	\$ 99,900.00	\$ 5,400.00	\$ 275,000.00
<b>4.C Unit Level Development</b>						\$ 11,629,550.00	\$ 33,721,368.00	\$ 20,908,808.00	\$ 791,976.00	\$ 67,051,702.00

4.C.1	Develop new unit and lesson level materials	<p>Development of new units and lessons in English and Spanish aligned to product specific review rubric (to be finalized during product roadmap development). A full unit includes but is not limited to: a unit plan/ the unit overview, daily teacher and student facing lessons, caregiver supports/guidance, unit assessments with answer keys and assessment score guides (leveraging CRIMSI data as appropriate), and development of Question and Test Interoperable (QTI), assessment items tagged by TEKS, all student facing lesson materials, all teacher facing lessons.</p> <p>Licensing rights for third party content, including text, media and images, may need to be acquired. Open source material should be prioritized when possible. Final licensing costs will be determined after product road mapping.</p> <p>Units and/or lessons may also include digital and interactive tools including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• development of new unit and/or lesson-level (hi-fi) videos for teacher, students and/or caregivers (English and K-6 Spanish)</li> <li>• sound &amp; Media Library (English and K-6 Spanish)</li> <li>• development of student-facing digital interactive questions (in English and K-6 Spanish)</li> </ul> <p>Average length of videos is 5 minutes. Final licensing costs will be determined after product road mapping.</p> <p>All new and revised K-6 unit materials must be transadapted and/or translated into Spanish (if a unit needs transcreation in Spanish, that is a separate task, see 4.C.2).</p> <p>Unit and/or lesson revisions may include but are not limited to the following examples:</p> <ul style="list-style-type: none"> <li>• revision to Unit Overview/front matter</li> <li>• Unit and/or lesson enhances to support diverse learning populations (e.g. Emergent Bilinguals, Gifted and Talented, Students with disabilities)</li> <li>• stronger TEKS or ELPS alignment</li> <li>• assessment revisions (to one or more of the assessment related documents, e.g. assessment, answer key, score guide)</li> </ul>	<p>InDesign, Word, Excel, unlocked PDFs, PowerPoint, Video file, Audio file, Video or Audio Source file</p> <p>English with Spanish transadapted/translated</p>	<p>All unit-level materials follow, where relevant:</p> <ul style="list-style-type: none"> <li>- TEA approved blueprint and template;</li> <li>- TEA approved video storyboard and script;</li> <li>- Video meets "approve" on the review rubric and gets final sign-off from TEA</li> <li>- The sound/media plan and</li> <li>- Approved English dialect and pronunciation;</li> <li>- Audio clips meet "approve" on the review rubric and gets final sign-off from TEA</li> </ul> <p>Final deliverable(s) must be print ready for district use and meet TEA accessibility requirements.</p> <p>For all deliverables TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation). TEA must approve all licensed texts, media and images. Proof of licensing required. Licensed texts will be negotiated for each unit. All unit level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverable(s) prior to vendor invoicing. Vendor must submit all final source files.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <p>See Task 8, Product Accessibility</p> <ul style="list-style-type: none"> <li>•Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>•Federal Section 508 standards and</li> <li>•Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>•All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for</li> </ul>	<p>On an ongoing basis on a timeline to be agreed upon by product and recorded in the TEA approved project plan for said product.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 10,473,445.00	\$ 28,995,831.80	\$ 17,689,057.00	\$ 648,174.00	\$ 57,806,507.80
4.C.2	Develop new unit-level materials in Spanish for Reading Language Arts K-6 - teacher and student with transcreation approach (applies to SLAR K-6 ONLY)	<p>Development of transcreated new units in Reading Language Arts K-6 with a focus on leveraging authentic Spanish Language texts. A full unit includes but is not limited to: a unit plan/ the unit overview, daily teacher and student facing lessons, caregiver supports/guidance, unit assessments with answer keys and assessment score guides, and development of Question and Test Interoperable (QTI), assessment items tagged by TEKS, all student facing lesson materials, all teacher facing lessons.</p> <p>Licensing rights for third party content, including text, media and images, may need to be acquired. Open source material should be prioritized when possible. Final licensing costs will be determined after product road mapping.</p> <p>Units and/or lessons may also include digital and interactive tools including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• development of new unit and/or lesson-level (hi-fi) videos for teacher, students and/or caregivers (English and K-6 Spanish)</li> <li>• sound &amp; Media Library (English and K-6 Spanish)</li> <li>• development of student-facing digital interactive questions (in English and K-6 Spanish)</li> </ul> <p>Average length of videos is 5 minutes. Final licensing costs will be determined after product road mapping.</p> <p>Unit and/or lesson revisions may include but are not limited to the following examples:</p> <ul style="list-style-type: none"> <li>• revision to Unit Overview/front matter</li> <li>• assessment revisions (to one or more of the assessment related documents, e.g. assessment, answer key, score guide)</li> <li>• revisions to teacher-facing lessons materials</li> <li>• revision to student-facing lesson materials</li> <li>• text replacement</li> <li>• new lesson creation</li> </ul> <p>Final deliverable(s) must be print ready for district use and meet TEA accessibility requirements.</p>	<p>Spanish transcreated Word and PDF documents Word, PDF, PowerPoint, Excel, Video file, Audio file, Video or Audio Source file</p>	<p>All unit-level materials follow, where relevant:</p> <ul style="list-style-type: none"> <li>- TEA approved blueprint and template;</li> <li>- TEA approved video storyboard and script;</li> <li>- Video meets "approve" on the review rubric and gets final sign-off from TEA</li> <li>- The sound/media plan and</li> <li>- Approved English dialect and pronunciation;</li> <li>- Audio clips meet "approve" on the review rubric and gets final sign-off from TEA</li> </ul> <p>Final (non digital and interactive tools) deliverable(s) must be print ready for district use and meet TEA accessibility requirements.</p> <p>For all deliverables TEA approves Spanish dialect used in document as well as approach used (e.g. translation or transadaptation). TEA must approve all licensed texts, media and images. Proof of licensing required. Licensed texts will be negotiated for each unit. All unit level documents must meet "approve" on the review rubric and get final sign-off from TEA. TEA must approve deliverable(s) prior to vendor invoicing. Vendor must submit all final source files.</p> <p>Accessibility: You can find this information via the "accessibility" section of the URL <a href="http://tea.texas.gov/websites">tea.texas.gov/websites</a>.</p> <p>See Task 8, Product Accessibility</p> <ul style="list-style-type: none"> <li>•Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213</li> <li>•Federal Section 508 standards and</li> <li>•Web Content Accessibility Guidelines (WCAG) 2.0 II</li> <li>•All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for</li> </ul>	<p>On an ongoing basis on a timeline to be agreed upon by product and recorded in the TEA approved project plan for said product.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 1,156,105.00	\$ 4,725,536.20	\$ 3,219,751.00	\$ 143,802.00	\$ 9,245,194.20
<b>5. Stakeholder Engagement</b>										
5.1	Focus groups	<p>Plan and execute product-specific focus groups for Educators and other Texas stakeholder groups (e.g. TASB, TASA, TAPP, SBOE) engaging in tasks such as but not limited to getting input on: product roadmaps, text selection, course-level scope and sequence, unit plans, lesson plans, assessments etc. to inform the continuous improvement of the product. Vendor should propose overview of focus group plan by product; plan should include number of focus groups and on what topic(s) as part of their kickoff with the ability to adapt in the Q1 reflection meetings.</p> <p>TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item.</p>	<p>PowerPoint, Agenda, HQIM Sample Materials, Exit Survey, Exit Survey Results</p>	<p>Focus groups follow TEA approved guidelines, protocols, meeting and materials templates; meeting can be virtual or in person (with no more than two in person focus groups by product). Final deliverable(s) must meet TEA accessibility requirements. TEA must approve deliverable(s) prior to vendor invoicing.</p>	<p>On an ongoing basis on a timeline to be agreed upon by product and recorded in the TEA approved project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 554,840.00	\$ 331,320.00	\$ 147,840.00	\$ -	\$ 1,034,000.00
5.2	Focus Group Executive Summaries	<p>Review and analyze focus group feedback and results and develop executive summaries to inform product road map development. Executive summaries should include but not be limited to: a copy of the verbatim notes taken at each focus group, key take-aways from the focus group, large themes and/or trends from each product, etc.</p> <p>Based on road map, review proto-type instructional materials with focus group to ensure we are directionally aligned/get feedback and that proto-type materials address user input (post road map, user group feedback).</p>	<p>Excel, Word, PDF, Data Dashboard</p>	<p>Summary follows TEA approved template; TEA must approve deliverable(s) prior to vendor invoicing.</p>	<p>On an ongoing basis on a timeline to be agreed upon by product and recorded in the TEA approved project plan.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 185,500.00	\$ 152,000.00	\$ 62,500.00	\$ -	\$ 400,000.00
5.3	Analyze CRIMSI Data	<p>Review of CRIMSI data at the unit, lesson, and assessment levels including User Survey Feedback, CRIMSI Student Data and student work samples in order to make recommendations on product revisions and/or roadmap. Work samples should also be reviewed for possible use and/or inclusion in score guides and unit/lesson level materials.</p> <p>TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item.</p>	<p>Excel, Word, PDF, Data Dashboard</p>	<p>CRIMSI Data reports follows TEA approved template; TEA must approve deliverable(s) prior to vendor invoicing.</p>	<p>Once quarterly at a minimum.</p> <p>Extensions may be approved in writing by TEA.</p>	\$ 371,000.00	\$ 304,000.00	\$ 125,000.00	\$ -	\$ 800,000.00
<b>6. Third-Party Review</b>										
						\$ 13,400.00	\$ 43,700.00	\$ 31,700.00	\$ 1,200.00	\$ 90,000.00

6.1	Product Specific Training to Support 3rd party review	Design and deliver product-specific training with a focus on setting 3rd party review team up to launch strong product reviews.  TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item. This price list represents the price for a newly developed item. If the deliverable exists and only needs to be revised, TEA and vendor will agree upon percent of deliverable being updated prior to starting revisions. Vendor may request adjustments to this percent during the revision process but TEA must approve. The price list amount will be prorated based on the agreed upon percentage improvement needed.	Webinar, PowerPoint, excel, word/or PDF	Review rubric training follows TEA approved adult learning professional development model; TEA must approve deliverable(s) prior to vendor invoicing.  Final deliverable(s) must be print ready and meet TEA accessibility requirements. Accessibility information can be found via the "accessibility" section of the URL <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">tea4avcastro.tea.state.tx.us/websites/requirements.html</a> .  •Texas Administrative Code (TAC) rules in Chapter 206, Chapter 213 •Federal Section 508 standards and •Web Content Accessibility Guidelines (WCAG) 2.0 II •All websites will have to include a VPAT once it is completed that shows the vendor tested the website and the contents of the site for accessibility.  For other resources regarding accessibility of documents, testing, or training visit the link: <a href="http://tea4avcastro.tea.state.tx.us/websites/requirements.html">http://tea4avcastro.tea.state.tx.us/websites/requirements.html</a>	Once per product and review rubric per TEA approved project plan.  Extensions may be approved in writing by TEA.	\$ 13,400.00	\$ 43,700.00	\$ 31,700.00	\$ 1,200.00	\$ 90,000.00
<b>7. Content Migration</b>						\$ 358,515.00	\$ 1,351,260.00	\$ 1,121,805.00	\$ 75,420.00	\$ 2,907,000.00
7.1	LCMS Content migration and File Management	Conduct content migration into the LCMS for each edition of each product and execute an LCMS quality check of each product to ensure the instructional materials live/work as expected in the platform (by product edition). Support and plan for LCMS version control, file management, file upload, QA including sharing ideas for product enhancements in LCMS system in quarterly executive summary.  TEA will pay vendors based on the approved price for this item by product, listed in Appendix A: Price List, up to the amount allocated for this line item.	Word, unlocked PDFs, Excel, PowerPoint and LCMS compatible software	LCMS content migration follow TEA technology systems requirements; Vendor submits a comprehensive file inventory list by product; Vendor develops a quality check rubric to be approved by TEA and submits completed rubric as evidence of quality ingestion; TEA must approve and sign off on deliverable(s) prior to vendor invoicing.	Each time a product edition is final per TEA approved project plan.  Extensions may be approved in writing by TEA.	\$ 358,515.00	\$ 1,351,260.00	\$ 1,121,805.00	\$ 75,420.00	\$ 2,907,000.00
<b>8. Product Accessibility</b>						\$ -	\$ -	\$ -	\$ -	\$ -
8.1	Product Accessibility: Digital	Submit report demonstrating that all materials meet all accessibility requirements and WCAG 2.1 (or the most recent WCAG version).	Word, PDF	Evidence provided that product meets accessibility requirements and WCAG 2.1 (or most recent version). TEA must review and sign off that report indicates product meets accessibility criteria.	Each time a product edition is final per TEA approved project plan.  Extensions may be approved in writing by TEA.	\$ -	\$ -	\$ -	\$ -	\$ -
8.2	Product Accessibility: Braille, large print, and audio	All final instructional materials will need to be submitted in a format conducive to TEA's braille, large print and audio accessibility requirement.	High-quality accessible PDF, NIMAS files, blackline masters, NIMAC Validation Wizard reports/screenshots, side-by-side list of changes	TEA must approve and sign off on deliverable(s) prior to vendor invoicing.  Initial deliverables needed to start the work of creating braille masters: One high-quality accessible PDF, one copy of preliminary NIMAS files for student materials, blackline masters, and any other materials included in the teacher component that are intended for student use, and a screenshot from the NIMAC Validation Wizard showing that each file has passed validation are due to designated braille producer.  Final deliverables: •Three final complete copies of adopted print student materials, blackline masters, and any other materials included in the teacher component(s) that are intended for student use. If changes were made to instructional materials between Monday, February 5, and Monday, March 25, one high-quality accessible PDF, one copy of final NIMAS files, a side-by-side list of changes, and a screenshot from the NIMAC Validation Wizard showing that each file has passed validation due to the designated braille producer. If no changes were made, notice must be provided to the designated braille producer. •One copy of adopted print student materials, blackline masters, and any other materials included in the teacher component(s) that are intended for student use; one high-quality accessible PDF; one copy of NIMAS files; and a screenshot from NIMAC Validation Wizard showing that the file passed validation are due to the designated audio producer. • One copy of adopted print student materials, blackline masters, and any other materials included in the teacher component(s) that are intended for student use; one high-quality accessible PDF; one copy of NIMAS files; and a screenshot from NIMAC Validation Wizard showing that the file passed validation are due to the designated large-print producer.	Each time a product edition is final per TEA approved project plan.  Extensions may be approved in writing by TEA.	\$ -	\$ -	\$ -	\$ -	\$ -
8.3	Delivery of final source file	Submit all final source files for each product and edition to TEA.	InDesign, Word, unlocked PDFs, PowerPoint, Excel	Comprehensive file inventory list by product; all source documents including but not limited to unlocked PDFs and original, source files (i.e., Word, InDesign, Illustrator, etc.). TEA must approve and sign off on deliverable(s) prior to vendor invoicing	Each time a product edition is final per TEA approved project plan.  Extensions may be approved in writing by TEA.	\$ -	\$ -	\$ -	\$ -	\$ -

**Total: \$ 84,288,602.00**







**Appendix B: Cost Examples**

Purpose	The tab provides an explanation of some of the pricing structures presented in the form of TEA-provided scenarios/examples and rationale from the vendor. To this end, the following examples use the price list and definitions to calculate product costs.			
Example #	Examples	Total Cost	Justification   Breakdown of costs <u>using the Price List</u>	Notes
1.1	TEA needs a new K-5 RLA unit of 30 instructional days (25 lessons plus 3 pause points and 2 days for assessment). This unit will be a 3rd grade knowledge unit with a science domain focus and will need to be transadapted into Spanish. What is the cost/invoice breakdown per our pricing chart?	\$185,000.00	<p>This is a new unit which includes 20-25 lessons and the standard rate for a new unit (\$175,000) would apply.</p> <p>The Spanish transadapted/translated version cost would be determined after completion of the unit. We estimate that a full unit is approximately \$10,000. The cost is based on actual word count that needs transadaptation or translation.</p>	
1.2	A new K-5 Science Unit of 16 instructional days (10 lessons plus 3 pause points and 3 days for assessment) in English with the same unit translated to Spanish. What is the cost/invoice breakdown per our pricing chart?	\$141,250.00	<p>The new unit is less than the standard 20-25 lessons, therefore we would apply the 25% max reduction to the standard new unit price, making the price for this example \$131,250.</p> <p>The Spanish transadapted/translated version cost would be determined after completion of the unit. We estimate that a full unit is approximately \$10,000.</p>	
1.3	TEA has asked PCG for a new K-5 Science Unit of 40 instructional days (35 lessons plus 3 pause points and 2 days for assessment). What is the cost/invoice breakdown per our pricing chart?	\$255,000.00	<p>This unit would be 40% higher than the standard unit of 25 lessons. Therefore, the standard unit cost of \$175,000 is multiplied by 1.4 equal to \$245,000. The cost of 3rd party licensing and translation (as appropriate) would be additional.</p> <p>The Spanish transadapted/translated version cost would be determined after completion of the unit. We estimate that a full unit is approximately \$10,000.</p> <p>The third party licensing cost will be determined during curriculum mapping and the cost approved by TEA.</p>	
2.1	TEA has asked for 7 new MC Assessments (1 per unit) of between 20-25 questions with warm-text passages for English I grade 9. Assuming all corresponding units are 20-25 lessons, what is the cost/invoice breakdown per our pricing chart?	\$122,500.00	<p>Using the price list, 4.C.1.iii "Unit Assessment" we see the cost max cost is \$17,500 for one assessment. <math>\\$17.5K * 7 = \\$122,500</math></p> <p>This pricing assumes the development of 25 items, score guides for each item, and QTI development. PCG will attempt to secure items and passages with no additional licensing cost.</p> <p>If licensing is required, PCG and TEA will negotiate the final maximum cost.</p>	This assumes units are 20-25 lessons. This would increase for units above 25 lessons and would decrease for units below 25 lessons. TEA also assumes the assessment answer key is included per the price list.

<p>3.1</p>	<p>TEA has determined that we need to replace 4 different texts in an Amplify grade 3 knowledge unit that is 15 instructional days long. We would like to minimize change within the unit, outside of changing these 4 texts.</p> <p>a) What is the cost/invoice breakdown for this work for the English Unit?</p> <p>b) What is the cost for the Spanish version of the unit assuming that we can transadapt the text?</p> <p>c) use the price breakdown in 4.C Unit development (rows 40 - 54)</p>	<p>\$112,576.00</p>	<p>We would negotiate a percentage of the total new unit cost of \$131,250 (based on a 15 lesson unit). The negotiated percentage would be based on an estimated percentage of the texts and lessons that would require change. If we assume we would be replacing all texts in the unit but the TEKS are the same and we can reuse instructional routines, we would estimate this effort at 50% change to the unit plan, 100% for projectibles, 75% for end of unit assessment, and 75% of 15 lessons. We would estimate text licensing at \$5,000 and translation at \$7,500.</p> <p>Calculation:                  4.C.1:Unit = \$175,000 * 75% (15 lessons) = \$131,250 base cost for new                  4.C.1.i: Unit Plan = \$131,250 * 10% = \$13,125 * 50% = \$6,562                  4.C.1.ii: PPTs = \$131,250 * 15% = \$19,687 (all new)                  4.C.1.iii: End of Unit Assess. = \$131,250 * 10% = \$13,125 * 75% = \$9,843                  4.C.1.iv: Lessons = \$131,250 * 65% = \$85,312.50 * 75% = \$63,984                  4.C.1.vi: Licensing = \$5,000                  4.C.1.v: Translation = \$7,500</p>	<p>Note that TEA's number is \$112,578.13; differs from PCG due to rounding.</p> <p>Calculations use a per-lesson price greater than \$4,550. Should the lesson price be \$4,550, or should it be 65% of the base unit price, divided by the number of lessons? At what point do we assume a lesson price of \$4,550?</p> <p>The lesson price is based on 65% of the unit price.</p> <p>We can assume \$4,550 for lessons in a standard base unit.</p>
<p>3.2</p>	<p>TEA has determined that we need to replace 2 different texts in an Amplify grade 3 knowledge unit that is 15 instructional days long (12 lessons, 2 pause points, and 1 assessment). There are 5 texts in the unit, so 2 of 5 texts will need to be replaced. Both of the texts are considered 'core' to the lessons they appear in. In total, 9 lessons would need to be updated but only 2 of those need major updates. The other 7 just need a title swap out.</p> <p>a) What is the cost/invoice breakdown for this work for the English Unit?</p> <p>b) What is the cost for the Spanish version of the unit assuming that we can transadapt the text?</p>	<p>\$61,638.00</p>	<p>The factors that determine the total unit revision cost include:</p> <ol style="list-style-type: none"> <li>Whether TEA provides a pre-approved text replacement (lower cost) or PCG needs to make recommendations for replacement and obtain approval from TEA (higher cost).</li> <li>The number of lessons impacted by the text replacements and the percentage of lessons that require full rewrite versus update.</li> <li>The extent to which the activities in the unit can be reused with the new text.</li> <li>Whether the texts being replaced are core or supplemental to the unit.</li> </ol> <p>During the road-mapping and requirements gathering process, PCG and TEA would work collaboratively through process and determine the extent of the work.</p> <p>If we assume we would be replacing 2 of 5 texts in the unit but the TEKS are the same and we can reuse instructional routines, we would estimate this effort at 50% change to the unit plan, 100% for projectibles, 50% for end of unit assessment, and 100% of 2 lessons and 25% of 7 lessons. We would estimate text licensing at \$2,500 and translation at \$5,000.</p> <p>a) Calculation:                  4.C.1: Unit = \$175,000 * 75% (12 lessons priced at 15 lessons due to agreed upon floor) = \$131,250 base cost for new-This price was adjusted to the minimum cost for a unit (max reduction of 25%)                  4.C.1.i: Unit Plan = \$131,250 * 10% = \$13,125 * 50% = \$6,562                  4.C.1.ii: PPTs = \$131,250 * 15% = \$19,687 (all new)                  4.C.1.iii: End of Unit Assess. = \$131,250 * 10% = \$13,125 * 50% = \$6,562                  4.C.1.iv: Lessons = \$131,250 * 65% = \$85,312/15 = \$5,687 * 2 * 100% (new)= \$11,374                  4.C.1.iv: Lessons = \$131,250 * 65% = \$85,312/15 = \$5,687 * 7 * 25% (revised) = \$9,953                  4.C.1.vi: Licensing = Approximately \$2,500                  4.C.1.v: Translation =Approximately \$5,000</p> <p>b) The Spanish transadapted/translated version cost would be determined after completion of the unit. We estimate that a full unit is approximately \$10,000.</p>	<p>Note that final cost for Spanish transadapted/ translated and licensing would be determined during the road mapping stage.</p>



4	TEA needs a K – 5 Math Scope & Sequence that leverages the current materials, but gives pacing guidance for use on a 210 School Day Calendar. What is the cost/invoice breakdown per our pricing chart?	\$120,000.00	Per 4.B.2, the pricing to create a 210 day pacing guide for K-5 is \$20,000 per grade level.	
5	A focus group conducted with one of the SS pilot lessons for 5th grade provided feedback that requires revision of the lesson. There are three spots in the unit that are impacted by this feedback and it will impact the student-facing resources, activity guide and unit assessment. What are the costs?	\$43,750.00	We would need to determine the number of lessons and assessments that require revision and the approximate percentage of revision to determine the overall percentage of change in the unit. Other factors that impact the cost are whether the changes require content development and operations costs (such as copyedit) or just operations costs. Additionally, the cost is impacted by where the unit is in the development process (first draft, published, etc.). Based on the limited details in the example, we would estimate a 25% change based on the overall unit cost of \$175,000.	
6.1	Creation of text rationales completed for the trade books used to support new units, total of 12 one pagers. What is the cost?	\$ -	This activity is factored into the base unit cost as part of the text approval process.	
7	TEA needs five text rationales developed for units that have already been released. Text rationales are typically one page and highlight information about a text and author with the purpose of helping teachers, students, and families understand why this text has been selected for use. TEA needs a text rationale for two different 9th grade novels, one 10th grade novel, one 11th grade novel and one 12th grade novel. What would be the cost?	\$ -	There is no cost for this activity.	

8	<p>An Odell unit that is currently 35 lessons requires up to 10% revision to all 35 lessons (e.g. each lesson needs approx. 10% revision) and 5 new lessons to make the unit lesson total = 40 lessons. In addition to 10 student-facing videos aligned to 10 lessons and 1 teacher-facing internalization video. Assuming no texts need to be replaced, what is the cost breakdown?</p>	\$180,175.00	<p>There would be a 4% increase in base unit cost for each lesson over 25. This would place the base unit cost at \$245,000 for a 35 lesson unit (4.C.1).</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson. If we take the flat rate of \$245,000 per unit, the new lesson cost (4.C.1.iv) is <math>\\$4550 \times 5 \text{ lessons} = \\$22,750</math>. If we estimate 10% revision to the remaining 35 lessons, the per lesson cost is <math>\\$4550 \times .10 \times 35 \text{ lessons} = \\$15,925</math>. If we assume a 25% change to the unit plan (4.C.1.i), the cost is <math>\\$24,500 \times .25 = \\$6125</math>. If we also assume a 25% revision to the end of unit assessment (4.C.1.iii), the cost is <math>\\$24,500 \times .25 = \\$6125</math>.</p> <p>Projectibles cost (4.C.1.ii) = <math>\\$245,000 \times .15 = \\$36,750</math>.</p> <p>The Spanish transadapted/translated version (4.C.1.v) cost would be determined after completion of the unit. We estimate that a full unit is approximately \$10,000.</p> <p>10 student facing videos (4.C.1.vii) = <math>\\$7500 \times 10 = \\$75,000</math></p> <p>1 teacher video (4.C.1.viii) = <math>\\$7500 \times 1 = \\$7500</math></p>	
9.1	<p>An Odell unit requires 1 additional lessons to the current 25 lessons (total = 26 lessons, 25 to be revised and 1 new lesson to be created). What is the cost breakdown?</p>	\$67,987.50	<p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson. If we take the base unit cost of \$175,000 per unit (4.C.1), the new lesson cost (4.C.1.iv) is <math>\\$4550 \times 1 \text{ lesson} = \\$4550</math>. If we estimate 25% revision to the remaining 25 lessons, the per lesson cost (4.C.1.iv) is <math>\\$4550 \times .25 \times 25 \text{ lessons} = \\$28,437.50</math>. If we assume a 25% change to the unit plan, the cost (4.C.1.i) is <math>\\$17,500 \times .25 = \\$4375</math>. If we also assume a 25% revision to the end of unit assessment, the cost (4.C.1.iii) is <math>\\$17,500 \times .25 = \\$4375</math>.</p> <p>Daily projectible (4.C.1.ii) = <math>\\$175,000 \times .15 = \\$26,250</math></p>	
9.2	<p>A Eureka Math unit of 34 lessons needs the following:</p> <ul style="list-style-type: none"> <li>• 2 additional (new) lessons to make the unit total 36 lessons</li> <li>• 30% revision of 15 of the lessons</li> <li>• 20% revision of 10 of the lessons</li> <li>• 5% revision of 3 of the lessons</li> </ul> <p>We need to make these changes to both the English and Spanish units. What is the cost breakdown and total?</p>	\$92,257.50	<p>There would be a 4% increase in base unit cost (4.C.1) for each lesson over 25. This would place the base unit cost at \$238,000 for a 34 lesson unit.</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson, assessment, and unit plan.</p> <p>4.C.1: Unit = <math>\\$175,000 \times 1.36 = \\$238,000</math> base cost  4.C.1.i: Unit Plan = <math>\\$238,000 \times 10\% = \\$23,800</math> * <math>50\% = \\$11,900</math>  4.C.1.ii: PPTs = <math>\\$238,000 \times 15\% = \\$35,700</math> (all new)  4.C.1.iii: End of Unit Assess. = <math>\\$238,000 \times 10\% = \\$23,800</math> * <math>50\% = \\$11,900</math>  4.C.1.iv: Lessons = <math>\\$4550 \times 30\% \times 15 \text{ lessons} = \\$20,475</math>  4.C.1.iv: Lessons = <math>\\$4550 \times 20\% \times 10 \text{ lessons} = \\$9100</math>  4.C.1.iv: Lessons = <math>\\$4550 \times 5\% \times 3 \text{ lessons} = \\$682.50</math>  4.C.1.v: Translation = Approximately \$2,500</p>	

10	An Odell unit requires 5 lessons to be replaced out of the current 30 lessons (total = 30 lessons, 5 to be replaced). What is the cost breakdown?	\$61,687.50	<p>There would be a 4% increase in base unit cost (4.C.1) for each lesson over 25. This would place the base unit cost at \$210,000 for a 30 lesson unit.</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson. If we take the flat rate of \$210,000 per unit, the new lesson cost (4.C.1.iv) is <math>\\$4550 \times 5 \text{ lessons} = \\$22,750</math>. If we estimate 25% revision to the remaining 25 lessons, the per lesson cost (4.C.1.iv) is <math>\\$4550 \times .25 \times 25 \text{ lessons} = \\$28,437.50</math>. If we assume a 25% change to the unit plan, the cost (4.C.1.i) is <math>\\$21,000 \times .25 = \\$5250</math>. If we also assume a 25% revision to the end of unit assessment, the cost (4.C.1.iii) is <math>\\$21,000 \times .25 = \\$5250</math>.</p>	<p>Please note that projectables were not listed as a deliverable in the example. If TEA would like projectables, they can be added and the calculation would be:</p> <p><math>\\$210,000 \times .15 = \\$31,500.00</math> for projectables</p> <p>Total cost would then be \$93,187.50.</p>
11	A new unit with 12 lessons	\$131,250	The new unit is less than the standard 20-25 lessons, therefore we would apply the 25% max reduction to the standard base unit price (4.C.1), making the price for this example \$131,250.	
12	A new unit with 45 lessons	\$315,000	This unit would be 80% higher than the standard unit of 25 lessons. Therefore, the base unit cost of \$175,000 is multiplied by 1.8. The cost of 3rd party licensing and translation (as appropriate) would be additional.	
13	TEA needs lesson rewrites for 3/18 lessons in a 5th grade Social Studies unit: Student Edition content revisions to expand certain content while deleting other content across 6 pages; rewriting lesson activities for students in the Activity Book that correlate to the content revisions; rewrite certain activities listed in the Teacher Guide for student conversations or in-class assignments; addition of more scaffolding and differentiation; addition of supplemental materials such as visuals for vocabulary word wall, audio files, research cards for students to utilize instead of open online research with little guidance. Equates to changing roughly 60% of each of the 3 lessons. Succeeding lessons following the rewritten lessons will need tweaking to ensure alignment with preceding lesson rewrites. We would then need to translate these changes for the Spanish unit. Assume no text or image licensing is needed.	\$61,300.00	<p>There would be a 5% decrease in the base unit cost for each lesson under 20. This would place the base unit cost at \$157,500 for an 18 lesson unit.</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson, assessment, and unit plan.</p> <p>4.C.1: Unit = <math>\\$175,000 \times .90 = \\$157,500</math> base cost  4.C.1.i: Unit Plan = <math>\\$157,500 \times 10\% = \\$15,750 \times 25\% = \\$3937.50</math>  4.C.1.ii: PPTs = <math>\\$157,500 \times 15\% = \\$23,625</math> (all new)  4.C.1.iii: End of Unit Assess. = <math>\\$157,500 \times 10\% = \\$15,750 \times 25\% = \\$3937.50</math>  4.C.1.iv: Lessons = <math>\\$157,500 \times .65 = \\$102,375 / 18 = \\$5,687.50 \times 60\% \times 3 \text{ lessons} = \\$10,237.50</math>  4.C.1.iv: Lessons = <math>\\$157,500 \times .65 = \\$102,375 / 18 = \\$5,687.50 \times 20\% \times 15 \text{ lessons} = \\$17,062.50</math>  4.C.1.v: Translation = Approximately \$2,500</p>	

14	<p>Rewrite Inquiry Project (IP) for 6/36 total units across all grades K-5 in Social Studies. IPs are culminating 5-day collaborative projects at the end of each unit that usually allow students to investigate their choice of topics and create something with it. Included in each IP are Day 1-5 instructions for teachers in how to get students started and guide them, Activity Book pages for students to use for documenting their notes and ideas, a pacing guide, differentiation strategies for ELLs each day, a rubric for evaluating student work, and a wrap-up script for teachers. These would be full rewrites (100% of material).</p>	\$210,000.00	<p>Without seeing these in advance, we would assume this is equivalent to writing a new 5 day mini-unit. Recommendation would be to price this at \$35,000 per unit, since this represents approximately 20% of a full 25 lesson unit.</p>	
15	<p>A 10th grade English II unit with a total of 49 lessons, 1 core text (trade book), 18 supplemental texts (digital or unit reader), 3 section diagnostics (formative assessments), and 1 culminating task (summative assessment) requires the following: 3 supplemental texts to be replaced; the five lessons connected to the 3 replaced supplemental texts revised (25% revision for four of the lessons, and 33% revision for the fifth lesson); 100% revision of one lesson, and 100% revision to the prompt of one section diagnostic, 100% revision of the scoring notes in the evaluation plan for the revised section diagnostic prompt, and the removal (and no replacement of) three optional lessons. Lesson revision impacts: Teacher facing lesson and teacher notes, student facing lesson, Text Overview (if relevant), Text List (if relevant), Family Guide (English and Spanish), Unit Alignment, relevant Question Set, any other relevant lesson materials.</p>	To be determined in product road mapping	<p>There would be a 4% increase in base unit cost (4.C.1) for each lesson over 25. This would place the base unit cost at \$343,000 for a 49 lesson unit.</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson, assessment, and unit plan.</p> <p>4.C.1: Unit = \$175,000 * 1.96 = \$343,000 base cost          4.C.1.i: Unit Plan = \$343,000 * 10% = \$34,300 * 25% = \$8575          4.C.1.ii: PPTs = \$343,000 * 15% = \$51,450 (all new)          4.C.1.iii: Unit Assessments = \$343,000 * 10% = \$34,300 * 25% = \$8575          4.C.1.iv: Lessons = \$4550 * 25% * 4 lessons = \$4550          4.C.1.iv: Lessons = \$4550 * 33% * 1 lessons=\$1501.50          4.C.1.v: Translation =Approximately \$2,500          4.C.1.vi: Third Party Licensing = \$1,500</p> <p>We would need further clarification to estimate the additional items requested. Question: Is this how the TEA team arrived at the 25% and 33% revision to the 5 lessons? Given new supplemental texts, we would estimate significantly greater revision costs to the affected lessons. These costs will also be impacted by the need to identify 3 new texts or whether these were already identified by TEA.</p>	<p>Given the multiple nuances, the final cost should be determined in the product roadmap stage with TEA being the final approver.</p>

16	<p>An 11th grade English III unit of 34 lessons, 1 core text (trade book), 10 supplemental texts (digital or unit readers), 4 sections diagnostics (formative assessments) and 1 culminating task (summative assessment) requires the following:</p> <p>Addition of unit-level text sensitivity guidance (unit overview, family guide, text overview, unit alignment doc, and five section-level notes in the unit plan - approx. 15% total revision to unit-level materials), as well as the addition of lesson-specific text-sensitivity notes in three lessons - approx. 5% revision to each of three lessons. In addition, it requires 100% revision of six lessons (including the replacement of three supplemental texts, which appear in three of the six revised lessons). Lesson revision impacts: Teacher facing lesson and teacher notes, student facing lesson, Text Overview (if relevant), Text List (if relevant), Family Guide (English and Spanish), Unit Alignment, relevant Question Set, any other relevant lesson materials.</p>	To be determined in product road mapping	<p>There would be a 4% increase in base unit cost (4.C.1) for each lesson over 25. This would place the base unit cost at \$238,000 for a 49 lesson unit.</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson, assessment, and unit plan.</p> <p>4.C.1: Unit = \$175,000 * 1.36 = \$238,000 base cost  4.C.1.i: Unit Plan = \$238,000 * 10% = \$23,800 * 15% = \$3570  4.C.1.ii: PPTs = \$238,000 * 15% = \$35,700 (all new)  4.C.1.iv: Lessons = \$4550 * 100% * 6 lessons=\$27,300  4.C.1.iv: Lessons = \$4550 * 5% * 3 lessons=\$682.50  4.C.1.v: Translation =Approximately \$2,500  4.C.1.vi: Third Party Licensing = \$1,500</p> <p>We would need further clarification to estimate the additional items requested. Question: Is this how the TEA team arrived at the 5% and 100% revision to the 9 lessons? Given new supplemental texts, we would estimate significantly greater revision costs to the affected lessons. These costs will also be impacted by the need to identify 3 new texts or whether these were already identified by TEA.</p>	Given the multiple nuances, the final cost should be determined in the product roadmap stage with TEA being the final approver.
17	<p>TEA needs Unit and Lesson updates in K-5 RLA to integrate more authentic Spanish texts into program. Third grade example: Replace lessons 8-13 in the first unit with lessons focused on an authentic classic text in Spanish. Requires identifying an open source Spanish "classic text", building a series of lessons around the new text and integrating those lessons into the existing unit. Integrating new lessons into the unit requires updating the teacher guide introduction and table of contents, the teacher resources, as well as the actual lesson plans. In addition, the student reader needs to be updated with new artwork and chapters, and the activity book pages for these lessons need to be changed (with changes flowing through to the editable PDF and Word doc versions). The artwork in the image cards and flip book needs to be updated and the digital projections aligned to the changed lessons likely need to be revised. Finally any references to the removed story excerpts (El viento en los sauces) across third grade or any units in 4th and 5th grade should be changed to reflect the new text.</p>	To be determined in product road mapping	<p>We would need to determine the number of lessons and assessments that require revision and the approximate percentage of revision to determine the overall percentage of change in the unit. Other factors that impact the cost are whether the changes require content development and operations costs (such as copyedit) or just operations costs.</p> <p>This example requires further discussion.</p>	Given the multiple nuances, the final cost should be determined in the product roadmap stage with TEA being the final approver.

18	TEA would like to add an Bilingual Guide and an Assessment Guide to Amplify K-5 ELP. Neither of these documents exist currently. We would like them both in English and in Spanish. Per TAP, assume each guide will be approximately 50 pages or less.	\$70,000	4.A.1.i Bilingual Program Guide= \$25,000 4.A.1.ii Assessment Guide= \$25,000 4.A.1.vi Transadapt Program Level Materials= Estimated at \$10,000 for each document.	
19	<p>A 3rd grade Math unit of 36 lessons, a mid-unit assessment and an end of unit assessment requires the following:</p> <ul style="list-style-type: none"> <li>• the need for 2 new lessons on financial literacy</li> <li>• a 10% revision to 6 lessons to update teacher notes that financial literacy has been added to unit and student are building to that</li> <li>• update the unit plan to account for the new lessons</li> <li>• Addition of 2 MC and 1 open ended question (total of 3 questions) on the end of unit assessment to address financial literacy (mid-unit assessment won't need changes)</li> </ul> <p>Assumptions:</p> <ul style="list-style-type: none"> <li>• We will need this in English and Spanish</li> <li>• We will want PowerPoints for each new lesson in addition to each existing lesson as those do not previously exist</li> </ul>	\$64,730.00	<p>There would be a 4% increase in base unit cost (4.C.1) for each lesson over 25. This would place the base unit cost at \$252,000 for a 36 lesson unit.</p> <p>PCG would need to understand the specific revisions that were needed to estimate the level of revisions to each lesson, assessment, and unit plan.</p> <p>4.C.1: Unit = \$175,000 * 1.44 = \$252,000 base cost  4.C.1.i: Unit Plan = \$252,000 * 10% = \$25,200 * 25% = \$6300  4.C.1.ii: PPTs = \$252,000 * 15% = \$37,800  4.C.1.iii: End of unit Assessment = \$252,000 * 10% = \$25,200 * .25 = \$6,300  4.C.1.iv: Lessons = \$4550 * 100% * 2 lessons = \$9,100  4.C.1.iv: Lessons = \$4550 * 10% * 6 lessons = \$2730  4.C.1.v: Translation = Approximately \$2,500</p>	

Payment will be made monthly upon completion of designated tasks/activities outlined in this Task, Activity, Deliverable and Budget Plan. Contractor must submit invoices, meeting the requirements outlined in the Standard TEA Term and Conditions, electronically to [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov), [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and to Jennifer Aguirre, at [Jennifer.Aguirre@tea.texas.gov](mailto:Jennifer.Aguirre@tea.texas.gov). Invoices will be reviewed and approved based upon project progress, task/subtask completion, and reasonable use of project funds; payment is based on performance of services being satisfactory to TEA. The final invoice is due within forty-five days of project completion.

Purchases of food are generally prohibited and must be preapproved by the TEA Project Manager. Food purchases must be in accordance with Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200, Subpart E, §200.432. Purchases must be necessary and reasonable for the successful performance of the Contract. This applies to both federal and state funded contracts. Website to view the regulations:

[http://www.ecfr.gov/cgi-bin/text-idx?SID=f61b41b94d57ed256eb46811a14d243d&mc=true&node=se2.1.200\\_1432&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=f61b41b94d57ed256eb46811a14d243d&mc=true&node=se2.1.200_1432&rgn=div8)

Contractor will make a good faith effort to comply with the State of Texas Travel Guidelines. TEA may at its discretion approve requests for reimbursement of travel which exceed the State of Texas Travel Guidelines. Contractor shall maintain receipts in accordance with Paragraphs 12 and 13 of the Standard TEA Terms and Conditions. The Comptroller's website for travel rules and regulations – textravel: <https://fmx.cpa.state.tx.us/fmx/travel/textravel/index.php>. Receipts must be made available for programmatic or financial audit, by TEA and by others authorized by law or regulation to make such an audit, for a period of not less than seven (7) years.

State travel expense reimbursement is not a per diem. Contractors must claim the actual expenses incurred for meals and lodging not to exceed the maximum allowable rates. The maximum should not be claimed unless the actual expenditures equal or exceed the maximum allowable rate. Effective January 1, 2022, the mileage rate is 58.5¢.

**Attachment B**  
**Standard TEA Terms and Conditions**



**ATTACHMENT B****CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS**

1. **Defined Terms:** As used in this Attachment B, the following capitalized terms have the meanings specified below.

- (a) *Authorized User* shall mean (i) TEA, (ii) any Texas Local Education Agency ("LEA"), school district staff member, private school, private school staff member, teacher, tutor, parent, student and/or resident (whether currently in-state or temporarily outside the state), and (iii) any other third-party and its or their staff or personnel serving or acting on behalf of any of the Authorized Users named in (i) or (ii) above.
- (b) *Cloud Computing* means, in accordance with Section 2054.0593 of the Texas Government Code, a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.
- (c) *Commercial* shall mean selling or reselling (whether directly or indirectly, via outright sale, license or otherwise) for financial consideration, access to the Contractor Materials or the Technology Platform.
- (d) *Comptroller* means the Texas Comptroller of Public Accounts.
- (e) *Contract* means the document entered into between TEA and Contractor, including all attachments (for the avoidance of doubt, including, but not limited to, the Standard TEA Terms and Conditions and any Special Terms and Conditions), annexes, exhibits, schedules, amendments, renewals and extensions of or to the Contract.
- (f) *Contract Manager* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project.
- (g) *Contract Project* means the purpose intended to be achieved through the Contract.
- (h) *Contractor* means the party to this Contract who is providing the contracted goods or services to TEA, provided that, prior to contract award, Contractor means the person or entity who provides a Response (i.e., a "Respondent").
- (i) *Contractor Materials* means, collectively, the pre-existing, complete, standalone materials or products of Contractor marketed and offered by Contractor to third parties prior to provision to TEA that Contractor can document as such, and all Intellectual Property Rights embodied therein, and any derivatives thereof other than those created by TEA, that are created during the term of this Contract, and includes any Third Party Materials (as defined below).
- (j) *EIR* means electronic and information resources as defined in 1 TAC (as defined below) § 206.1, as may be amended from time to time.
- (k) *FERPA* means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), the regulations issued pursuant thereto, and any amendments thereto.
- (l) *HSP* means a HUB subcontracting plan.
- (m) *HUB* means an entity certified by the Comptroller as a Historically Underutilized Business as defined in Texas Government Code Section 2161.001.
- (n) *Intellectual Property Rights* means the legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations, social media pages and associated handles and hashtags; and (v) any other similar rights. The Intellectual Property Rights of a party include all legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (o) *Non-Commercial* means any activity other than Commercial activities.
- (p) *Personally Identifiable Information* means information that alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's: name; Social Security number; date of birth; driver's license number; government-issued identification number; mother's maiden name; unique biometric data (including, but not limited to, the individual's fingerprint, voice print, retina or iris image, or a record of hand or face geometry); unique electronic identification number; address or routing code; telecommunication access device; account number or credit or debit card number in combination with

any required security code, access code, or password that would permit access to an individual's financial account; and/or identity and relates to the physical or mental health or condition of the individual, the provision of health care to the individual; or payment for the provision of health care to the individual.

With regard to information relating to students, the term also includes:

- (i) The student's name;
- (ii) The name of the student's parents or other family members;
- (iii) The address of the student's parent or other family members;
- (iv) A personal identifier, such as the student's social security number, student number, or [biometric record](#);
- (v) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (vi) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (vii) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(q) *Protected Data* means the data, in electronic and physical form, that

- (i) is collected by and through any Technology Platform provided or operated by Contractor,
- (ii) may be input by Authorized Users, and/or
- (iii) is generated by Authorized Users or their devices by interacting with any Technology Platform provided by or through Contractor,

including, without limitation, Personally Identifiable Information pertaining to students as well as to their parents or legal guardian and all grades, scorings, rankings, percentage comparisons, answers and responses to questions and assignments, and "educational records" as that term is defined by FERPA. *Protected Data* shall also include all versions and portions of any part of the Protected Data, all files and databases containing such Protected Data, as well as any information derived or generated therefrom through database hygiene, database management or otherwise. As between TEA and Contractor, Protected Data shall be deemed to be owned by TEA, provided that Protected Data applicable to Authorized Users other than TEA, shall be owned by the applicable Authorized User to whom it applies, unless TEA acquires ownership thereof in another agreement.

(r) *Response* is what a Contractor submits in response to the following specific competitive solicitations: an invitation for bids; a request for offers; a request for proposals; a request for qualifications; or a statement of work solicitation under a Department of Information Resources contract.

(s) *Service Credit* means any applicable credit or any refund for inadequate performance of a Technology Platform that could be construed as liquidated damages and has been incorporated into this Contract as a valid pre-estimate of damages TEA will sustain which will not be capable of precise determination; such credit is therefore considered to be agreed-upon costs incurred as a result of Contractor's failure to meet the contracted-for requirements, and is not a penalty.

(t) *Special Terms and Conditions* means any provisions contained in an Attachment to this Contract labeled "Special Terms and Conditions of this Contract."

(u) *Standard TEA Terms and Conditions* or *Standard Terms* means the provisions contained in this Attachment B.

(v) *State* means the State of Texas.

(w) *TAC* means the Texas Administrative Code.

(x) *TEA* means the Texas Education Agency.

(y) *TEA Confidential Information* means information that is confidential under the provisions of the FERPA, the Texas Public Information Act, or other applicable State or federal laws, that is provided to Contractor by TEA, that Contractor collects on behalf of TEA, that Contractor obtains in connection with the provision of goods and services hereunder and/or that is otherwise designated by TEA as non-public TEA confidential information including, without limitation, Protected Data. Examples of TEA Confidential Information include: (i) Personally Identifiable Information (ii) criminal background checks; (iii) an e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (iv) certain personnel information concerning a TEA employee including, but not limited to, home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (v) information about security vulnerabilities in TEA systems; (vi) dataset extracted

from confidential sources (e.g., SAS data sets); and (vii) Student IDs (FERPA protected) and some Government IDs. *TEA Confidential Information* also includes, without limitation, all cookies and metadata associated with TEA's webpages and online content.

(z) *TEA Trademarks License* has the meaning assigned to such term in Clause 18 of this Attachment B.

(aa) *Technology Platform* means the software and infrastructure (including but not limited to Contractor's software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements, and modifications) in a hosted environment provided by Contractor to which TEA and/or Any Authorized User is being granted access under this Contract via a web site, designated IP address(es), or APIs, as described more fully in Attachment G to the Contract.

(bb) *Term* means the period of time between the execution of the Contract and the expiration of the Contract.

(cc) *Third-Party Materials* means any licensed third-party materials, and derivatives thereof, provided by Contractor to TEA.

(dd) *WCAG* means web content accessibility guidelines, version 2.1 of June 5, 2018, from the World Wide Web Consortium, which are incorporated herein by reference, as amended.

(ee) *Working Day* means any day, Monday-Friday, other than a national holiday or state holiday, each as defined by Texas Government Code, §662.003(a), the Friday after Thanksgiving Day, December 24<sup>th</sup>, December 26<sup>th</sup> and any other day that the TEA is closed. Use in these Standard Terms of the term "day" or "calendar day" rather than "working day" shall mean a calendar day.

(ff) *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract. "Works" includes but is not limited to computer software, data, metadata, source code, concepts, systems, methodologies, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc. "Works" excludes any Contractor Materials, as defined above.

**2. Excess Obligations Prohibited:** This Contract is subject to termination or cancellation, without penalty to TEA, either in whole or in part, subject to the availability of State funds. TEA is a State agency whose authority and appropriations are subject to actions of the Texas Legislature. If TEA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TEA's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this provision, TEA will not be liable to Contractor for any damages that arise out of or are related to such termination or cancellation, and TEA will not be required to give prior notice of such termination or cancellation. Termination under this section shall not affect TEA's right to use previously paid licensed software through the term of each such license, or any maintenance or support paid prior to such termination.

**3. Indemnification:** For the avoidance of doubt, TEA shall not indemnify Contractor or any other entity under the Contract because TEA is prohibited by law from indemnifying third parties.

#### General

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RELATING TO 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 TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### Intellectual Property

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, 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, ARISING OUT OF OR RELATING TO: (A) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (B) ANY DELIVERABLE, WORKS, DERIVATIVES OF SUCH DELIVERABLES AND WORKS, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (C) TEA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TEA BY CONTRACTOR OR OTHERWISE TO WHICH TEA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF

ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES. 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. IN ADDITION, CONTRACTOR WILL REIMBURSE TEA AND THE STATE 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 TEA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TEA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TEA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TEA'S COUNSEL.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, 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.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE 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, ARISING OUT OF OR RELATING TO 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 IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4. **Signature Authority and Binding Effect:** By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Contractor. By executing the Contract, Contractor represents and warrants that the individual signing the Contract and any documents made part of the Contract is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under the Contract. The Contract shall be binding upon and shall inure to the benefit of TEA and Contractor and to their respective permitted successors, and assigns.
5. **Responsibility for Actions and Limitation on Authority:** Contractor is solely responsible for its actions and those of its agents, employees or subcontractors. Contractor and its agents, employees or subcontractors shall have no authority to act for or on behalf of TEA or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Contractor and its agents, employees and subcontractors may not incur any debt, obligation, expenses, or liability of any kind on behalf of TEA or the State.
6. **Final Expression, and Superseding Document:** The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties and any documents referenced via URLs, "click-through" license agreements, end-user licenses, subscription agreements, terms of use or other terms that may be presented on, through or by the Technology Platform provided or operated by Contractor (whether presented before or after contract signing) (collectively, "Supplemental Terms"). Such Supplemental Terms shall have no force and effect with respect to the Parties or any Authorized Users except with respect to the Creative Commons and open source licenses specified in Attachment E to the Contract. Contractor hereby represents and warrants that no Creative Commons licenses or open source licenses are applicable to any Works or Contractor Materials except as provided in Attachment E to the Contract, and if no Attachment E is attached to the Contract, no such Supplemental Terms apply to this Contract. Subject to the foregoing, any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended as provided in Clause 7 or Clause 30 below.
7. **Amendments:** All modifications, amendments or extensions to this Contract are subject to Clause 2 of these Standard TEA Terms and Conditions, will be executed on standard TEA forms, and will follow TEA's internal contracting process. All modifications, amendments or extensions will be initiated by TEA Contract and Purchasing staff. A modification, amendment, or extension to this Contract will become effective on the date of signature by TEA or the effective date shown on such, modification, amendment or extension document, whichever is later. All modifications, amendments, or extensions (other than a renewal as provided for in the Contract) must be in writing and signed by both parties. Notwithstanding the foregoing, TEA may make technical amendments in order to correct manifest errors in the Contract, provided such technical amendments would not have a materially adverse effect on Contractor and that Contractor does not contest in writing the amendments within 30 days after TEA provides written notice to Contractor of such technical amendments.

- (a) Written amendments are required for the following Contract changes:
- i. Any revision which would result in the need for additional funding;
  - ii. Revisions or additions to the scope of work, deliverables, or objectives of the Contract, other than revisions permitted by paragraph (b) of this Clause 7;
  - iii. Any extension of the period of the Contract other than a renewal as provided for in the Contract;
  - iv. Any reduction of funds or reduction in the scope of work, other than revisions permitted by paragraph (b) of this Clause 7;
  - v. Any change to the Standard TEA Terms and Conditions; and
- (b) Informal budget revisions signed by Contract Managers shall be permitted for the following contract changes:
- i. Reallocating funds among existing contract tasks/deliverables (up to 25% increase/decrease per specified task/deliverable);
  - ii. Reallocating funds across TEA fiscal years and State bienniums; and
  - iii. Revisions to the scope of work consisting of a reduction to specified tasks that would decrease the total contract value (up to 25% decrease in total contract value).

Updates to Standard TEA Terms and Conditions

TEA updates the TEA Standard Terms and Conditions on a regular basis to account for changes to laws and evolving agency needs. Contractor agrees that updated Standard TEA Terms and Conditions may be included in any amendment, renewal, or other document altering this Contract and that any negotiations regarding such updated Standard TEA Terms and Conditions will be limited to terms that have changed since the most recent Standard TEA Terms and Conditions attached to the Contract.

- 8. Subcontracting:** Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TEA. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.
- 9. Personnel Assignments, Transfers, HUB Subcontracting, Substitutions and Reporting:** TEA reserves the right to request changes in personnel assigned to the project. The TEA Contract Manager must pre-approve any changes in key personnel throughout the contract term. Pursuant to 34 TAC §201.281-298 and Texas Government Code, Chapter 2161, Contractor shall maintain business records documenting compliance with the HSP and shall submit compliance reports to TEA. Any changes to the HSP must be approved by TEA HUB Coordinator before subcontracting changes are initiated. Substitutions are not permitted without written approval of TEA Contract Manager. If Contractor subcontracts any of the work without prior authorization and without complying with this Clause, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable State law. Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. Contractor shall also report all 2<sup>nd</sup> and 3<sup>rd</sup> Tier subcontracting in the monthly PAR. PAR's are due no later than the 10<sup>th</sup> day of the following month. The PAR is required to be submitted monthly, even if no reportable activity occurred for the month. Reports shall be submitted electronically to the [HUBOffice@tea.texas.gov](mailto:HUBOffice@tea.texas.gov). In addition to the PAR, Contractor shall also create and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 10. Interpretation:** The terms, conditions, and assurances, which are stated in the competitive solicitation, in response to which Contractor submitted a Response, are incorporated herein by reference. Contractor's Response that was furnished to TEA in response to the competitive solicitation is incorporated herein by reference. In the event of a conflict between or among the various documents comprising the Contract, the order of precedence set forth in the Contract shall apply. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- 11. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- 12. Proof of Financial Stability, Records Retention and the Right to Audit:** TEA may require Contractor to provide proof of financial stability prior to or at any time during the Contract term.

Contractor shall maintain and retain all records relating to the performance of the Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State requirements. These records will be maintained and retained by Contractor for a period of seven years after (a) the Contract expiration date or (b) the resolution of all audit, claim, and litigation matters related to the Contract, whichever is later.

**13. State Auditor's Right to Audit:** Pursuant to Section 2262.154 of the Texas Government Code, the State auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the State directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State auditor, 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, Contractor or other entity that is the subject of an audit or investigation by the State auditor must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit. Contractor will ensure that this Clause concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards.

Contractor further agrees that acceptance of funds under this Contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this Contract shall cooperate fully with TEA in the conduct of the audit or investigation, including making available at reasonable times and upon reasonable notice, and for a reasonable period, work papers, reports, books, records, supporting documents and any other records kept current by them pertaining to the Contract for purposes of inspecting, monitoring, auditing or evaluating by TEA and the State of Texas.

#### 14. Technology Platform (SaaS) License

- (a) **License to Access and Use Technology Platform** Contractor hereby grants to TEA, exercisable by TEA and by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable, transferable and sublicensable (pursuant to Clause 15) right and license throughout the world during the Term and such additional periods, if any, as Contractor is required to provide any Technology Platform, to: (i) access and use the Technology Platform, including in operation with other software, hardware, systems, networks, and Technology Platform, for TEA's permitted uses; (ii) generate, print, copy, upload, download, store and otherwise process all graphical user interfaces, audio, visual, digital, and other output, displays, and content as may result from any access to or use of the Technology Platform; (iii) prepare, reproduce, print, download and use as many copies of the documentation as may be necessary or useful for any use of the Technology Platform under this Contract; (iv) access and use the Technology Platform for all such non-production uses and applications as may be necessary or useful for the effective use of the Technology Platform as permitted hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support, and repair, which access and use will be without charge and shall not be included for any purpose in any calculation of TEA's or its Authorized Users' use of the Technology Platform, including for purposes of assessing any fees or other consideration payable to Contractor or determining any excess use of the Technology Platform as described in an order; and (v) perform, display, execute, reproduce, and modify (including to create improvements and derivative works of), and distribute and otherwise make available to Authorized Users, any Technology Platform solely to the extent necessary to access or use the Technology Platform in accordance with the terms and conditions of this Contract.
- (b) **Technology Platform Service Levels and Service Credits:** Contractor shall make the Technology Platform available to Authorized Users in accordance with Attachment F to the Contract and provide the Service Credits set forth in Attachment F to the Contract for any failure to meet the agreed upon service levels.
- (c) **Technical Support Service Levels:** Contractor shall provide Authorized Users with technical support in accordance with Attachment F to the Contract.
- (d) **No Indemnities for Authorized Users:** The Parties hereby acknowledge and agree that since (i) Contractor controls the means of access to the Technology Platform, and (ii) because TEA is prohibited by law from indemnifying third parties, TEA shall have no responsibility or liability for: (1) verifying or enforcing whether an Authorized User is a bona fide Authorized User; (2) creating, distributing or enforcing login credentials; (3) controlling whether or not access to the Technology Platform is limited to Authorized Users; (4) enforcing or controlling Authorized Users' use of the Contractor Materials or the Technology Platform; (5) limiting Authorized Users' use of the Contractor Materials and the Technology Platform to Non-Commercial uses; (6) use of Contractor Materials, or the Technology Platform by Authorized Users; (7) any other failures of, or actions by, any Authorized User in connection with this Contract, other than the willful actions of TEA or its employees; or (8) adherence to any Technology Platform user agreement provisions.

#### 15. Intellectual Property

- (a) **Ownership and License to Works Components**

Contractor agrees that all Works (as defined above) are, upon creation, works made for hire and the sole property of TEA. Contractor and its officers, directors, employees, agents, representatives and subcontractors shall have no rights therein. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including, but not limited to, the Intellectual Property Rights, in the Works, all works based upon, derived from or incorporating the Works, all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, all causes of action, either in law or in equity for past, present, or future infringement based on the Intellectual Property Rights, and all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other actions, as TEA may deem necessary to secure for TEA or its designee the rights herein assigned, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by

Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

In the event that Contractor has any rights in and to the Works that cannot be assigned to TEA, Contractor hereby grants to TEA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, publicly perform and publicly display the Works, prepare derivative works to the Works, and to make, have made, use, sell and offer for sale any products developed by practicing such license rights, and to otherwise use such license rights, with the right to sublicense such rights through multiple levels of sublicenses.

If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor represents and warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest in the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any Intellectual Property Rights of any other person or entity. These representations and warranties will survive the termination of the Contract.

**(b) License to Contractor Materials**

Contractor hereby grants to TEA and Authorized Users a nonexclusive, worldwide, royalty-free, fully paid-up, irrevocable, perpetual, unlimited, assignable and transferable right and license to the Contractor Materials, and any updates, revisions, additions thereto, or derivative works thereof, to directly and indirectly: (i) use, access, execute, reproduce, copy, modify, adapt, publicly display, publicly perform, provide access to, distribute copies of, transmit and otherwise use and exploit; and (ii) authorize others to do any or all of the foregoing in a sublicense, subcontractor agreement, sub-grant or otherwise, for or on behalf of TEA, in order to further the purposes of TEA (collectively "Materials License"). The Materials License includes the right for TEA and Authorized Users to create derivative works of the Contractor Materials and authorize others to do so in order to further the purposes of TEA and/or Authorized Users. The authors of such derivative works shall have and retain ownership of such derivative works.

**16. Social Security Numbers (SSNs) Withheld:** TEA will not provide SSNs to any Contractor under this Contract unless specifically stated as part of the Contract Project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA and will destroy or return all student-identifying information in accordance with the terms in Clause 19 on Confidential Information, FERPA, and Information Security Requirements hereof.

**17. Nondisclosure and Press Releases:** Contractor shall not use TEA's name, logo, or other likeness in any press release, marketing material, or other announcement without TEA's prior written approval and in the event of such approval, Contractor shall comply with the TEA Trademarks License set forth below. TEA does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response, the Contract, or the services to which any of the foregoing relate without TEA's prior written consent, and then only in accordance with explicit written instructions from TEA. All information gathered, produced, derived, obtained, analyzed, controlled or accessed by Contractor in connection with this Contract shall be and remain confidential and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the information, data, or materials requested and the audience for the release of information.

**18. Trademark License for Contractor's Use of TEA's Logo and Other Trademarks**

Contractor hereby acknowledges and agrees that all trademarks and service marks adopted, used, registered, and/or owned by TEA ("TEA Trademarks," as shown in the TEA Brand Book, which is available upon request) remain the exclusive property of TEA, that all right, title and interest in and to the TEA Trademarks are exclusively held by TEA and all goodwill associated with such trademarks inures solely to TEA. TEA hereby grants to Contractor, and any approved subcontractors pursuant to Clause 8 hereof, for the term of this Contract, a limited, non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce TEA Trademarks on published materials, in print and digital form, solely for purposes in connection with the performance of this Contract ("TEA Trademarks License"), provided that such TEA Trademarks License is expressly conditional upon and subject to, the following:

- (a) Contractor is in compliance with all provisions of, and laws applicable to, this Contract;
- (b) Contractor is in compliance with all rules, requirements, formats and depictions as set forth in the TEA Brand Book.
- (c) Contractor's use of the TEA Trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in the TEA Brand Book or as otherwise communicated by TEA, and used as directed by TEA;
- (d) Contractor takes no action to damage the goodwill associated with the TEA Trademarks, and does not directly or indirectly contest, attack, dispute, challenge, cancel and/or oppose TEA's right, title and interest in the TEA Trademarks or their validity;
- (e) Contractor makes no attempt to sublicense, assign or transfer any rights under this TEA Trademarks License;

- (f) Contractor makes no use of the TEA Trademarks to advertise, market, or sell its goods or services to any third parties;
- (g) Contractor complies with any marking requests TEA may make in relation to the TEA Trademarks, including without limitation to use the phrase "Registered Trademark," the symbol "™", and/or the registered trademark symbol "®", as directed by TEA, and
- (h) Contractor shall, upon TEA's request, provide examples of proposed usage of the TEA Trademarks for review and approval by TEA.

Contractor represents and warrants that all materials produced for and/or procured by TEA will align with the requirements and content expectations detailed in the TEA Brand Book. All materials delivered by Contractor that do not meet the requirements contained in the TEA Brand Book shall be deemed not accepted for purposes of Clause 48 (Payment) of these Standard TEA Terms and Conditions. To the extent that Contractor has any questions about content in the TEA Brand Book or TEA appearance and style guidelines, they should email [Communications@tea.texas.gov](mailto:Communications@tea.texas.gov).

If TEA discovers that Contractor's uses of the TEA Trademarks are not of a high quality, as determined by TEA, TEA may give Contractor five working days' written notice within which to change its operations to conform to TEA's requirements. After the five working day period, should Contractor fail to meet the quality requirements of TEA, TEA, may at its sole discretion, terminate this Contract and/or Contractor's license to use TEA Trademarks.

Contractor further agrees that it is critical that the goodwill associated with the TEA Trademarks is protected and enhanced and, toward this end, Contractor shall not during the term of this Contract or thereafter: (i) attack the title or any rights of TEA in or to the TEA Trademarks; (ii) attack the validity of this Contract; (iii) do anything either by an act of omission or commission which might impair, violate or infringe the TEA Trademarks; (iv) claim (adversely to TEA or anyone claiming rights through TEA) any right, title or interest in or to the TEA Trademarks; (v) misuse or harm the TEA Trademarks or bring the TEA Trademarks into disrepute; (vi) for its benefit, directly or indirectly, register or apply for registration of the TEA Trademarks or any mark which is, in TEA's reasonable opinion, the same as or confusingly similar to any of the TEA Trademarks; and/or (vii) for its benefit, directly or indirectly, register, maintain or apply for registration of a domain name which is, in TEA's reasonable opinion, the same as, confusingly similar to or incorporates any of the TEA Trademarks.

#### **19. Confidential Information, FERPA, and Information Security Requirements:**

##### **(a) Ownership of TEA Confidential Information.**

As between TEA and Contractor, Contractor acknowledges and agrees that all TEA Confidential Information, including any Protected Data, is owned by TEA.

##### **(b) Access to and Use of TEA Confidential Information**

Contractor represents and warrants that it will take all necessary and appropriate action to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA Confidential Information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of TEA Confidential Information, additional TEA confidentiality forms will need to be signed by the Contractor who requires access to or may be exposed to that information. Contractor shall access TEA's systems or TEA Confidential Information only for the purposes for which it is authorized under this Contract. Contractor shall have a policy and process in place that ensures the same level of protection of TEA Confidential Information by all employees and subcontractors who require access to or may be exposed to that information.

Contractor shall at all times cause an Authorized User's Protected Data to be accessible solely by such Authorized User and its related or otherwise authorized persons and entities, including applicable teachers and tutors, and applicable school, school district and TEA personnel. Contractor shall allow each Authorized User and its related persons and entities, at any time, to export such Authorized User's Protected Data in a standard electronic format as mutually agreed by TEA and Contractor throughout and until the expiration of the term of this contract.

Contractor shall not: (i) anonymize or de-identify any part of TEA Confidential Information or create statistics or analysis of TEA Confidential Information for any Contractor purpose, marketing or otherwise, except as necessary to meet its obligations to TEA under the Contract; (ii) use or distribute any part of TEA Confidential Information by or to any third-party, except as necessary to meet its obligations to TEA under the Contract and subject to Clause 19(c) below; and/or (iii) use such data for any other purpose not specifically set forth herein or as otherwise authorized in writing by the owner of the Protected Data.

For the avoidance of doubt, all Contractor's representations, warranties and covenants herein including, but not limited to, access to TEA Confidential Information, FERPA compliance, information security compliance, and disclosure of security breaches, apply to all Protected Data.

##### **(c) Release of TEA Confidential Information**

Contractor may not release or disclose TEA Confidential Information to any third-party except as described in this Clause. TEA Confidential Information may only be released or disclosed to any third-party if: (i) the release or disclosure is necessary for Contractor to meet its obligations to TEA under the Contract, (ii) Contractor keeps a record of all individuals that will have access to the TEA Confidential Information, (iii) Contractor requires TEA confidentiality forms be signed by all individuals who



will or may access the TEA Confidential Information and (iv) Contractor obtains express, written consent from the Contract Manager to release the TEA Confidential Information. Such consent shall be required in all circumstances notwithstanding any other provision of this Contract. The record of individuals with access to the TEA Confidential Information must be made available to TEA immediately upon request.

(d) **Notice of Order or Request for Release; Notice of Release**

Contractor shall immediately notify TEA upon its receipt of an order or request for the release of TEA Confidential Information.

Contractor shall immediately notify TEA upon its release of TEA Confidential Information.

(e) **FERPA**

Contractor, its employees and subcontractors, agree that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of applicable law and regulations, including without limitation, FERPA.

(f) **Return and Destruction of TEA Confidential Information.**

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any TEA Confidential Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- i. Date and time of sanitization/destruction;
- ii. Description of the item(s) and serial number(s) if applicable;
- iii. Inventory number(s); and
- iv. Procedures and tools used for sanitization/destruction.

Subject to Clause 57(g), no later than 30 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of all TEA Confidential Information, including all copies thereof and materials incorporating such TEA Confidential Information, whether in physical or electronic form, and provide to the TEA Contract Manager documentation that the sanitization has been completed. An authorized agent of Contractor must certify the completion of the destruction of data and sanitization.

## **20. Information Security Requirements**

Contractor shall: (a) use appropriate legal, organizational, physical, administrative and technical measures, and security procedures, including, without limitation, ensuring TEA Confidential Information will be encrypted at rest and in motion, to safeguard and ensure the security of TEA Confidential Information and to protect TEA Confidential Information from unauthorized access, hacking, disclosure, duplication, theft, use, modification and/or loss; (b) comply with all applicable laws and regulations governing the handling of TEA data, including TEA Confidential Information; (c) process all TEA Confidential Information solely within the contiguous United States and limit access to the TEA Confidential Information to employees, subcontractors and staff of Contractor who have passed reasonable security clearance checks; (d) implement physical security and access controls at any of its facilities (including any data centers) that house TEA Confidential Information; (e) leverage one or more of the following authentication controls: multi-factor authentication (MFA), privileged access management (PAM), and/or 14 character minimum passphrases on systems that will store, process, or transmit TEA Confidential Information; (f) enable endpoint detection and response (EDR) technology on systems that will store, process, or transmit TEA Confidential Information; (g) evidence of an established vulnerability and patch management program; and (h) backups of all TEA data, including TEA Confidential Information, shall be stored on a separate network from production.

Contractor shall implement an adequate cybersecurity framework based on one of the nationally recognized standards such as: NIST Cybersecurity Framework Version 1.1, NIST SP 800-53, NIST SP 800-171, NIST Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), ISO 27000 series, or CIS Critical Security Controls (CSC, CIS Top 18). The adopted cybersecurity framework may not conflict with the [information security standards of institutions of higher education](#) adopted by the Department of Information Resources under Chapters 2054 and 2059 of the Texas Government Code.

TEA shall have the right to review Contractor's security measures to ensure that any data that is in Contractor's possession is secure. For any Contractor or subcontractor that transmits, processes, or stores TEA Confidential Information, TEA may require Contractor or subcontractor to periodically provide evidence of its information security policies, procedures, controls, and third party certifications. Contractor shall cooperate fully by providing such evidence and by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s), if requested by TEA. TEA shall also have the right to immediately terminate network and system connections that do not meet the requirements herein. For any information security risks of the Contractor identified by TEA throughout the Term of this Contract, TEA may require an action plan to mitigate or remediate the security risk and Contractor agrees to provide such action plan promptly upon request.

In accordance with Texas Government Code, Sec. 2054.516, Contractor shall conduct and provide results of penetration tests, at Contractor's sole expense, of Contractor developed websites and/or mobile applications for specific TEA use that process, transmit, or store TEA Confidential Information prior to launch and annually thereafter. TEA shall have the right to conduct a penetration scan and/or vulnerability testing through a third party periodically during the Term of the Contract without prior warning. Contractor shall resolve all identified issues to TEA's satisfaction in a timely manner not to exceed 30 days from the date such issues are identified, provided that for any issues which cannot be resolved within 30 days, Contractor and TEA shall agree upon a plan for resolving such issues as promptly as practical, not to exceed three months.

Websites that process, transmit, or store TEA Confidential Information shall be accessible through a secure connection (HTTPS-only, with HTTP Strict Transport Security (HSTS)), utilizing Transport Layer Security (TLS) version 1.2 or higher.

If Contractor is providing TEA software goods or services and/or data processing goods or services, Contractor agrees to provide secure configuration guidelines that fully describe all security relevant configuration options and their implications for the overall security of the software. The guideline shall include a full description of dependencies on the supporting platform, including operating system, web server, and application server, and how they should be configured for security.

**a. Access to Internal TEA Network and Systems**

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures and must complete the TEA security awareness training within 30 days of obtaining access to TEA networks and systems, and within 30 days of each contract renewal. TEA's remote access request procedures will require Contractor to submit applicable TEA access request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Chief Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. The off-site downloading, transfer, and/or storage of TEA Confidential Information is strictly prohibited unless such acts are specifically allowed in the Contract's scope of work. Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States.

**b. Cybersecurity Training**

Contractor shall ensure that any Contractor employee or subcontractor employee who has access to any TEA Confidential Information shall complete a [cybersecurity training program](#) certified under Section 2054.519 of the Texas Government Code. Such training is required annually. Contractor shall provide TEA with verification of the completion of the requisite training. Completion of the TEA security awareness training described in Clause 20(a) above satisfies this requirement.

**c. Data Management and Security Controls**

In accordance with [Section 2054.138 of the Texas Government Code](#), Contractor certifies that it will comply with the security controls required under this Contract and will maintain records and make them available to TEA as evidence of Contractor's compliance with the required controls.

**21. Cloud Computing State Risk and Authorization Management Program:** If this Contract involves Cloud Computing services subjected to the Cloud Computing state risk and authorization management program ("TxRAMP"), pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to TxRAMP, Contractor represents and warrants that it complies with the requirements of the state risk and authorization management program and Contractor agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the Contract. Additionally, any third-party Cloud Computing services the Contractor will leverage to store, process, or transmit any TEA data shall be disclosed in writing to TEA prior to use with any TEA data and shall be subject to TxRAMP requirements.

**22. Disclosure of and Response to Security Breach or Security Vulnerability**

Contractor shall provide notice to TEA's Contract Manager and TEA's Chief Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive data or TEA Confidential Information or any breach, denial of service attack and/or inaccessible data due to ransomware or other type of malware (each such event being a "Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Chief Information Security Officer at [Cybersecurity@tea.texas.gov](mailto:Cybersecurity@tea.texas.gov). The report shall include the following information, to the extent known by Contractor:

- a. Description of the nature of the Security Incident;
- b. The type of TEA information involved;
- c. Who may have obtained the information;
- d. The specific malware variant used to perform the attack, if any;
- e. What steps Contractor has taken or will take to investigate the Security Incident (Including external resources leveraged);
- f. Whether law enforcement was notified and, if so, written confirmation and verification from the law enforcement agency that there is an active investigation into the breach;
- g. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- h. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.
- i. A point of contact for additional information.

After submission of the initial report, if Contractor discovers additional responsive information, Contractor shall notify TEA's Chief Information Security Officer immediately. If no additional information is discovered, Contractor must provide a report to TEA's Chief Information Security Officer on at least a weekly basis providing the status of the investigation and confirming no additional information has been discovered. The TEA Chief Information Security Officer may request update reports on a more frequent basis by sending a request in writing to Contractor and Contractor shall use best efforts to comply with that frequency request.

Contractor acknowledges and agrees that the determination as to whether TEA information was involved in the Security Incident is of paramount importance, and timely communication of the above information to TEA is essential to the performance of this Contract. Notwithstanding any other provision herein, Contractor shall fully cooperate with TEA in providing all such information requested by TEA in order for TEA to: (a) meet any applicable statutory notification requirements, as described by TEA and communicated to Contractor; and (b) mitigate the effects of any Security Incident. Failure to comply with any of the reporting requirements under this Clause is a material breach of the Contract.

Contractor will notify TEA within 12 hours of any new report of any security vulnerability that affects their platforms directly or indirectly, that is published in sources including, but not limited to, the Common Vulnerabilities and Exposures and publications of the Cybersecurity Infrastructure and Security Agency (each such event, a "Security Vulnerability").

Contractor will provide an action plan for final resolution of such Security Incident or Security Vulnerability within one week of the date of such Security Incident or Security Vulnerability and complete remediation of such Security Incident or Security Vulnerability must be completed at Contractor's expense.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Contractor is not permitted to issue a press release or otherwise publicly disclose the breach without TEA coordination and approval. Subject to review and approval of TEA's Chief Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident, regulatory agencies and other entities as required by law or contract.

Contractor shall reimburse and indemnify TEA or affected Authorized Users for any and all costs and expenses that TEA or affected Authorized Users incur in investigating and remediating the Security Incident, including but not limited to costs and expenses associated with: a) TEA or Authorized Users preparing and providing notice to individuals whose confidential data was compromised or likely compromised; (b) providing credit monitoring for a minimum of 18 months to individuals whose confidential data was compromised or likely compromised as a result of the security breach that a reasonable person would believe may impact the individual's credit or financial security; (c) legal fees, audit costs, fines, and any other fees or damages imposed against TEA or affected Authorized Users as a result of the security breach; and (d) providing any other notifications or fulfilling any other requirements under other State or Federal laws.

If Contractor does not reimburse such costs within 30 days of TEA's written request, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.

- 23. Load Testing:** Prior to delivery or as otherwise mutually agreed, the Contractor must conduct load testing of the Technology Platform with simulated usage commensurate with the expected usage of the Technology Platform and provide documentation to TEA that the Technology Platform has been successfully load tested.

Failed Load Testing: In its sole judgment, TEA may terminate the Contract for cause if the Technology Platform fails to successfully complete load testing, and Contractor shall refund all fees paid to TEA.

Without prejudice to TEA's right to terminate for cause for unsuccessful load testing, TEA may, in its sole determination:

- (a) give the Contractor the opportunity to extend the load testing period for up to 30 calendar days to allow the Contractor to diagnose and correct performance problems that may be caused by the Technology Platform or the configuration of the Technology Platform, or;
- (b) give the Contractor the opportunity to install additional hardware or platform components, at the Contractor's sole expense, to meet the performance requirements specified, or;
- (c) give the Contractor up to 30 calendar days following the diagnosis of any problem related to the Technology Platform to correct, at the Contractor's sole expense, the defects in the Technology Platform.

- 24. Electronic and Information Resources Accessibility Standards:** Contractor represents and warrants that the products and services that are the subject of this Contract comply with the State accessibility requirements for Electronic Information Resources (EIR) specified in 1 TAC 206 and 1 TAC Chapter 213 when such products or services are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accessibility mandated in TAC align with the federal regulations set forth in Section 508 of the Rehabilitation Act of 1973. All current and potential contractors that develop or maintain EIR for TEA shall follow the WCAG (also ISO/IEC standard 40500) as the technical accessibility standard.

Contractor shall provide credible evidence of its ability to produce EIR that complies with all rules and statutes and is acceptable to TEA in TEA's sole discretion.

A website Contractor shall arrange accessibility testing with a third-party company to evaluate the accessibility of the contracted site. The ideal third-party company shall have a proven track record in web accessibility testing and use real users with disabilities for manual testing. The third-party company will provide an accessibility conformance report (ACR) to the Contractor and any recommendations they suggest. The report must be submitted to the TEA Contract Manager for inclusion in the contract file.

- 25. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- 26. TEA Property:** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- 27. Use of State Property:** Contractor 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, TEA's office space, identification badges, TEA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TEA-issued software, and the TEA Virtual Private Network (VPN client)), and any other resources of TEA. Contractor will not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States. Contractor will 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 Contractor, Contractor will be responsible for all charges attributable to Contractor's use of State Property that exceeds the Contract Project. Contractor will fully reimburse such charges to TEA within 10 calendar days of Contractor's receipt of TEA's notice of amount due. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA. Use of State Property for a purpose not authorized by Contract will constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to TEA under Contract, at law, or in equity.
- 28. 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 TEA.
- 29. No Waiver:** Nothing in this Contract shall be construed as a waiver of TEA'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 TEA or the State. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TEA or the State 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. TEA does not waive any privileges, rights, defenses, or immunities available to TEA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.
- 30. Applicable Law and Conforming Amendments:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 31. Federal Rules, Laws, and Regulations that apply to all Federal Programs:** Contractor represents and warrants its compliance with all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
- (a) Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
  - (b) Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
  - (c) Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
  - (d) Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105;
  - (e) The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;

- (f) The Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments;
- (g) Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
- (h) Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
- (i) The Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended;
- (j) P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
- (k) General Education Provisions Act, as amended.

Contractor 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).

- 32. Equal Employment Opportunity:** Contractor represents and warrants its compliance with all applicable duly enacted State and federal laws governing equal employment opportunities.
- 33. E-Verify Program:** Contractor certifies that for contracts for services, 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:
- (a) All persons employed by Contractor to perform duties within Texas; and
  - (b) All persons, including subcontractors, assigned by Contractor to perform work pursuant to the contract within the United States of America.
- 34. Compliance with Laws:** Contractor shall comply with all federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Contractor represents and warrants that it has acquired all applicable licenses, certifications, permits and any other documentation to perform this Contract. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 35. Legal and Regulatory Actions:** Contractor 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 Contractor or any of the individuals or entities included in the Response within the five calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response including a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. In addition, Contractor represents and warrants that it shall notify TEA in writing within 5 working days of any changes to the representations or warranties in this Clause and understands that failure to so timely update TEA shall constitute a material breach of contract and may result in immediate termination of the Contract.
- 36. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure to so comply.
- 37. No Exclusivity:** The Contract is not exclusive to the Contractor. TEA may obtain products and related services from other sources during the term of the Contract. TEA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.
- 38. Antitrust:** By signing this Contract, Contractor represents and warrants that, in accordance with Texas Government Code Section 2155.005 neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution has, (a) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws; or (b) communicated directly or indirectly the Response to any competitor or any other person engaged in the same line of business as Contractor.
- 39. Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit. Contractor represents and warrants that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practices in an administrative hearing or court suit.

- 40. Child Support Obligation Affirmation:** Under Section 231.006 of the Texas Family Code, Contractor certifies that the individual or business entity named in this Contract or Response 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.
- 41. Public Information Act:** Contractor understands that TEA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State. Information, documentation, and other material in connection with this solicitation, this Response or any resulting Contract may be subject to public disclosure pursuant to the Texas 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.
- TEA Contract Manager will provide the specific format by which Contractor is required to make the information accessible by the public.
- TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to (a) the Response, (b) the goods or services provided under the Contract or (c) information provided to TEA under this Contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in (a) the Response, (b) the Contract, (c) provided under the Contract, or (d) otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided (a) in the Response, (b) under or in this Contract, or (c) otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act. Upon receipt of a request for information related to the goods or services provided under the Contract maintained by the Contractor, the TEA Contract Manager shall request the responsive information from the Contractor. The Contractor shall respond to TEA's request within five working days.
- 42. Lobbying Prohibition:** Contractor represents and warrants that TEA's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- 43. Prohibition of Text Messaging and Emailing while Driving during Official Federal Grant Business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.
- 44. Liability for and Payment of Taxes:** Purchases made for the State's use are exempt from the State Sales Tax and Federal Excise Tax. TEA will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- 45. Conformance:** Contractor represents and warrants that all goods and services furnished will conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and will be free from any defects in materials, workmanship, or design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- 46. Buy Texas Affirmation:** In accordance with Texas Government Code, Section 2155.4441, Contractor agrees that during the performance of a contract for services, Contractor 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. This provision does not apply if Contractor receives any federal funds under this Contract.
- 47. Pricing Certification, Best Pricing:** Contractor hereby represents and warrants that the fees and expenses charged for the work being conducted for TEA under this Contract are no less favorable than Contractor's standard pricing practices utilized for offers for similar work to similar organizations including, without limitation, any pricing provided pursuant to a contract with the Texas Department of Information Resources or any pricing previously provided to TEA. If Contractor enters into any subsequent agreement for similar work with any similar organization during the term of this Contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this Contract, Contractor shall notify TEA promptly of the existence of such more favorable benefits, pricing and/or hourly rates and TEA shall have the right to receive the more favorable contractual terms immediately. If requested in writing by TEA, Contractor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
- 48. Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late

payment and non-payment. Payment for goods or services purchased with State-appropriated funds will be issued by (a) State warrants or (b) electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>. Invoices must be submitted to [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov) and TEA Contract Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the latest of:

- (a) Date on which TEA received the goods;
- (b) Date the performance of the service under the Contract is completed; or
- (c) Date on which TEA received the complete and correct invoice for goods or services.

Payment for service(s) described in this Contract is contingent upon satisfactory completion of the deliverables or services. For the avoidance of doubt, Contractor must comply with all sections of Chapter 2251 applicable to Contractor, including but not limited to, provisions regarding payments to subcontractors.

Contractor shall submit one original copy of an itemized invoice including all required information detailed in 34 TAC § 20.487. Invoices must include, at a minimum, the following information:

- (a) the contractor's mailing and e-mail (if applicable) address,
- (b) the contractor's telephone number,
- (c) the name and telephone number of a person designated by the contractor to answer questions regarding the invoice,
- (d) the state agency's name, agency number, and delivery address,
- (e) the state agency's purchase order number, if applicable,
- (f) the contract number or other reference number, if applicable,
- (g) a valid Texas identification number (TIN) issued by the comptroller,
- (h) a description of the goods or services as outlined in the Contract, including relevant delivery dates and the service period,
- (i) unit numbers corresponding to the amount of the invoice,
- (j) if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor, and
- (k) other relevant information supporting and explaining the payment requested.

TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition provided by the TEA Contract Manager, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. TEA reserves the right to reject and withhold payment for deliverables found to be substandard or not in compliance with the deliverable definition, including test items developed under the Contract.

Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version. Additional costs incurred by Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by Contractor and not charged against the Contract or to TEA. This does not preclude an arrangement that allows Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by Contractor.

Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees must be stated in the competitive solicitation and documented in the Contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall be requested in the final invoice.

Unless otherwise stated, payment under this Contract will be made upon delivery of goods and performance of services based upon submission of an invoice, properly prepared and certified, outlining expenditures by deliverable as detailed above and required by 34 TAC § 20.487. The final invoice is due within 45 days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract. All costs must be reasonable, allowable and allocable to the project.

An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due.

**49. Debts and Delinquencies Affirmation.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State, any payments or other amounts Contractor is otherwise owed under the Contract may be applied toward any debt Contractor owes the State until the debt is paid in full, regardless of when the debt or delinquency was incurred. These provisions are effective at any time Contractor owes any such debt or delinquency. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the State by the Federal Government.



Contractor may verify its account status by accessing the Comptroller's website at [https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons\\_indebted](https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted)

- 50. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- 51. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- 52. Contractor Performance and Past Performance:** TEA is required to submit Contractor Performance reports under Texas Government Code, §2155.089, and 34 TAC, §20.509 and §20.115. The Comptroller's Vendor Performance Tracking System (VPTS) provides the State procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract awarding process. Historic reports submitted prior to February 10th, 2017 will be displayed as "Legacy Satisfactory" or "Legacy Unsatisfactory."

TEA may conduct reference checks with other entities regarding past performance of Contractor or its subcontractors. In addition to evaluating performance through the VPTS, TEA may examine other sources of Contractor performance, including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of Contractor performance may include any governmental entity, whether an agency or political subdivision of the State, another state, or the Federal government. Further, TEA may initiate such examinations of Contractor performance based upon media reports. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in a non-award to Contractor. The VPTS is located on Comptroller's website at: <http://www.txsmartbuy.com/vpts>.

- 53. Time Delays, Suspension, and Sanctions for Failure to Perform:**  
Time is of the Essence.

Contractor's timely performance is essential to this Contract.

Suspension

If this Contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of work.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes, but is not limited to, the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- 54. Abandonment or Default:** If Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by TEA based on the seriousness of the default.
- 55. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- 56. Protests:** Any actual or prospective Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this Contract by TEA may submit a formal protest to the Director of TEA's Purchasing and Contracts Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules (19 TAC Section 30.2002).

If the protest procedure results in a final determination by TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the Contract and no remedies under the law against TEA.

- 57. Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract.



- (a) **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 15 calendar days' advance written notice to Contractor. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for payments limited only to the portion of work TEA authorized in writing and which Contractor has completed, delivered to TEA, and which has been accepted by TEA. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TEA shall have no other liability, including no liability for any costs associated with the termination.
- (b) **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under the Contract. TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

Following any termination for cause/default, Contractor shall remain liable for all covenants and indemnities under the Contract and shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

- (c) **Termination Due to Changes in Law:** If federal or State laws or regulations or other federal or State requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this Contract.
- (d) **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all Works and associated documentation and materials obtained from Contractor under the Contract.
- (e) **Survival of Terms:** Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, ownership of intellectual property or other property rights, dispute resolution, rights and remedies upon termination, invoice and fees verification.
- (f) **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a new contractor, Contractor shall hand-over to the new contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the new contractor within 10 days of announcement of award at the new contractor's expense for data processing and production, packing and shipping. Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the new contractor. Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Contract Manager shall approve the transition plan prior to its implementation. The transition plan must minimize the impacts on continuity of operations and maintain communication with TEA Contract Manager and the new contractor.

- (g) **Return of Works and TEA Confidential Information:** Subject to paragraph (f) of this Clause above, upon the request of TEA, but in any event upon termination or expiration of this Contract or a statement of work, Contractor, at its sole expense, shall surrender to TEA all Works pertaining to the Contract Project, any and all documentation or other products or results of the services, and all other documents or materials (and copies of same) furnished by TEA to Contractor, including all materials embodying the Contract Project, regardless of form or whether complete or incomplete, and all TEA Confidential Information upon TEA's request. Failure to timely deliver such Works, information and any and all documentation or other products and results of the services will be considered a material breach of this Contract and TEA has the unrestricted right at any time during the term of this Contract to request the return of TEA Confidential Information and/or the return of Protected Data to all Authorized Users.

Following confirmation by TEA that the copies of such materials are acceptable and the completion of any Contract Project activities for which such materials are required, Contractor will sanitize or destroy all other copies of such material in Contractor's possession and cease using such materials and any information contained therein for any purpose. An authorized

officer of Contractor must certify that ALL records have either been properly cleared, purged, destroyed or returned to TEA in order to close out the Contract.

**58. Insurance:** Contractor represents and warrants that it maintains and will maintain the following insurance coverage during the term of this Contract:

<b>Minimum Required Amounts of Insurance Coverage</b>	
<b>Type of Insurance</b>	<b>Each Occurrence/Aggregate</b>
<i>Workers Compensation</i>	Statutory Limits
<i>Employers Liability</i> Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 each Accident \$1,000,000 each Employee \$1,000,000 Policy Limit
<i>Commercial General Liability</i> (Occurrence based)	Bodily Injury and Property Damage \$1,000,000 each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expenses each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented
<i>Automobile Liability</i> All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
<i>Umbrella/Excess Liability</i>	\$1,000,000 per Occurrence
<i>Technology/Professional Liability Insurance, and Intellectual Property Infringement, and Data Protection Liability Insurance (Cyber Liability)</i>	\$5,000,000 for each and every claim and in the aggregate, covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering the Contract Project, including: (i) intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets); (ii) breaches of security; (iii) a violation or infringement of any laws; and (iv) data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of Personally Identifiable Information or confidential corporate information, transmission of a computer virus or other type of malicious code, and participation in a denial of service attack on a third party. Such insurance must address all of the foregoing without limitation if caused by Contractor, its Affiliates or agents, or an independent contractor working on behalf of the Contractor in providing the Contract Project

All required insurance coverage must: (a) be in a form satisfactory to TEA; (b) be written on a primary and non-contributory basis with any other insurance coverages Contractor currently has in place; (c) include a Waiver of Subrogation Clause; and (d) issue from a company or companies that: (i) have a Financial Strength Rating of "A" or better from A.M. Best Company, Inc., (ii) have a Financial Size Category Class of "VII" or better from A.M. Best Company, Inc., and (iii) are authorized to do business under the laws of the State.

All required insurance coverage, other than workers compensation and professional liability, must name the State, TEA and its/their Officers, Directors, and Employees as additional insureds. Contractor shall provide to TEA certificates of insurance showing the State and TEA as named additional insureds as detailed below.

Contractor shall:

- (a) provide Certificates of Insurance to the TEA Contracts and Purchasing Division by email at [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and by U.S. First Class Mail within 30 days of the time Contractor submits its signed Contract and at least 30 calendar days prior to any material change of a required policy;
- (b) provide (a) notice to TEA Contracts and Purchasing Division by email at [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and by U.S. First Class Mail of any cancellation or non-renewal of a required policy at least 30 days prior to such cancellation or non-renewal and (b) Certificates of Insurance for any policy replacing such cancelled or non-renewed policy to TEA Contracts and Purchasing Division by email at [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and by U.S. First Class Mail at least 10 calendar days prior to such cancellation or non-renewal.
- (c) ensure that all required insurance policies are written to cover all products, services, and locations related to Contractor's performance under the Contract; and
- (d) within five working days of being requested by TEA, provide additional written proof, acceptable to TEA, of all policies and renewal policies. All policies and renewal policies must meet all terms set forth in the Contract.

Contractor further represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least 30 days prior written notice to TEA.

- 59. Force Majeure:** Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this 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, but force majeure events specifically exclude cyberattacks, intrusions and incidents of unauthorized access to any Contractor Technology Platform that is provided to TEA hereunder. Each party must inform the other in writing, with proof of receipt, within five working days of the existence of such force majeure, or otherwise waive this right as a defense. Contractor shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. In the event of a force majeure event, Contractor will not increase its charges under this Contract. If the delay or failure continues beyond 10 calendar days, TEA may terminate this Contract in whole or in part with no further liability and will receive a refund of any prepaid fees unearned as of the time of termination.
- 60. Drug Free Workplace Policy:** Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.
- 61. TEA No Smoking Policy:** The Texas Facilities Commission (TFC), in compliance with the City of Austin ordinances, prohibits smoking and the use of all tobacco products within 15 feet outside of public entrances to state-owned facilities. TFC has designated where outside smoking areas are located on state property. Smoking and other tobacco use are prohibited in all areas of the William B. Travis Building and any other building occupied by or under the control of TEA. This includes the use of e-cigarettes and vaping products per Texas Facilities Commissions regulations. Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of TEA.
- 62. Performance Measurement:** Contractor shall use OMB-approved standard information collections when providing financial and performance information. Contractor must be able to relate financial data to performance accomplishments of the project. Contractor must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). Contract performance should be measured in a way that will help to improve program outcomes, share lessons learned, and spread adoption of promising practices. Contractor must have effective control over, and accountability for, all funds, property, and other assets. The Contractor must adequately safeguard all assets and assure that they are used solely for authorized purposes.
- 63. Entities that Boycott Israel:** Contractor represents and warrants that: (a) it does not, and shall not for the duration of the Contract, boycott Israel or (b) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 64. Energy Company Boycotts:** Contractor represents and warrants that: (a) it does not, and will not for the duration of the Contract, boycott energy companies or (b) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 65. Firearm Entities and Trade Associations Discrimination:** Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify TEA.
- 66. COVID-19 Vaccine Passport Prohibition:** Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.
- 67. National Anthem Verification:** If Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, including a wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of a professional sports team that exists to make a profit, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State. TEA or the Attorney General may strictly enforce this provision.
- 68. Critical Infrastructure Affirmation:** If Contractor will be granted direct or remote access to or control of critical infrastructure in this state, as defined by Section 2274.0101 of the Texas Government Code, which includes cybersecurity systems, excluding access specifically allowed by the governmental entity for product warranty and support purposes, then 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.
- 69. Critical Infrastructure Subcontracts:** For purposes of this paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of

the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes, unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify TEA before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

- 70. Disaster Recovery Measures and Plan:** Contractor will maintain commercially reasonable business continuity and disaster recovery measures (including but not limited to adequate backups in the case of ransomware) to prevent or cure any resulting delay or failure and must execute such measures prior to being excused from performance due to force majeure. In accordance with 13 TAC Section 6.94(a)(9), Contractor must provide to TEA the descriptions of its business continuity and disaster recovery plan. Contractor shall provide TEA with a copy of updated versions of its business continuity and disaster recovery plan (and that of any subcontractor, including any third party hosting company, that it uses) within 30 days after changes are adopted, or within five days of TEA requesting a copy. Contractor must provide TEA the expected recovery time objective and recovery point objective in the event of major outage. TEA shall be free to share the disaster plan with any government agency with jurisdiction to request a copy from TEA and as otherwise required by court a court of competent jurisdiction, or any federal or State law, including without limitation the Public Information Act, in accordance Clause 41 hereof.
- 71. Computer Equipment Recycling Program:** If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in Compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
- 72. Television Equipment Recycling program:** If Contractor is submitting a Response for the purchase or lease of covered television equipment, then Contractor certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
- 73. Secure Erasure of Hard Disk Capability:** All equipment provided to TEA by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.
- 74. Electrical Items:** All electrical items purchased under this Contract 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).
- 75. Independent Contractor:** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor, Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers are not employees of TEA or the State. Contractor shall have no claim against TEA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and TEA.
- 76. Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 77. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees, agents or representatives, including any subcontractors and employees, agents or representative of such subcontractors assigned to TEA projects, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- 78. Criminal Background Checks:** If during the term of this Contract, Contractor and/or Contractor's staff, or subcontractor and/or subcontractor's staff have either (a) access to Texas public school campuses, or (b) access to TEA Confidential Information or TEA data systems, all Contractor and/or Contractor's staff and/or subcontractor and/or subcontractor's staff must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor, Contractor's staff, subcontractor or subcontractor's staff is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- (a) Contractor, Contractor's staff, subcontractor or subcontractor's staff will not meet eligibility standards and be permanently disqualified from serving on TEA assignments if an initial review of criminal history records indicates:
- i. Felony conviction or deferred adjudication;

- ii. Offense on conviction of which the defendant is required to register as a sex offender;
  - iii. Conviction or deferred adjudication of a Class A Misdemeanor; or
  - iv. Offense under the laws of another state or federal law that is equivalent to an offense specified above, or their criminal record indicates an unresolved Felony or Class A misdemeanor.
- (b) Educator Certification Required: If the individual is a certified educator, the educator's certificate(s) must currently be valid and in good standing. If the certificate(s) is/are not in good standing (inactive, invalid, revoked, suspended or surrendered) the individual is not eligible for TEA appointments, assignments, contract, or grant awards or to provide services to school entities on behalf of TEA.

- 79. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TEA or another State agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (a) the nature of the previous employment with TEA or the other State agency; (b) the date the employment was terminated; and (c) the annual rate of compensation for the employment at the time of its termination.
- 80. No Conflicts of Interest:** 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.
- 81. Collusion:** Contractor represents and warrants that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's Response is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- 82. Suspension and Debarment:** Contractor represents and warrants that it and its principals are not suspended or debarred from doing business with the State or federal government as listed on the State Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and/or the System for Award Management (SAM) maintained by the General Services Administration.
- 83. Financial Participation Prohibited:** Under Section 2155.004(b) of the Texas Government Code, 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 the contract may be terminated and payment withheld if this certification is inaccurate.
- 84. Foreign Terrorist Organizations:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 85. Former TEA Employees:** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of TEA during the 12 month period immediately prior to the date of execution of the Contract. In the case of professional services contracts as described by Chapter 2254 of the Texas Government Code, Contractor represents and warrants that if a former employee of TEA was employed by Contractor within one year of the employee's leaving TEA, then such employee will not perform services on projects with Contractor that the employee worked on while employed by TEA.
- 86. Restricted Employment of Certain State Personnel:** Pursuant to Section 572.069 of the Texas Government Code, Contractor represents and warrants that it has not employed and will not employ a former State officer or employee who participated in a procurement or contract negotiations for TEA involving Contractor within two years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former State officers or employees whose State service or employment ceased on or after September 1, 2015.
- 87. Dealings with Public Servants:** Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.
- 88. Prior Disaster Relief Contract Violation:** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit State agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, 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.
- 89. Ability to Conduct Business in Texas:** Contractor represents and warrants that it is, and will be for the duration of the Contract, duly organized, validly existing and duly authorized and in good standing with an active status to transact business under the laws of its state of organization. If Contractor is a foreign or out-of-state entity, Contractor represents and warrants that it is duly authorized and in good standing to do business with an active status in the State and is registered to transact business in the State under the process described in Texas Business Organizations Code, Title 1, Chapter 9 and any other State or federal statutes which require registration in order for Contractor to conduct business in the State under the Contract.

- 90. Headings:** The headings of articles, sections or clauses contained in this Attachment B and in the Contract, its attachments and annexes are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision hereof or thereof.
- 91. Assignment:** Contractor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of TEA, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. To seek consent for assignment of this Contract, Contractor should contact [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov).
- 92. Contracting Information Responsibilities:** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (a) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TEA for the duration of the Contract, (b) promptly provide to TEA any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TEA, and (c) on termination or expiration of the Contract, either provide at no cost to TEA all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TEA. 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.
- 93. Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, 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.
- 94. Executive Head of State Agency Affirmation:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.
- 95. Point of Contact, Responsiveness and Escalation:** All notices, reports, documents, correspondence or other data required by this Contract shall be in writing and delivered to the individuals listed below, their successors in office, or the TEA employee requesting such notice, report, document, correspondence or other data, on or before scheduled due dates or where no due date is specified within five working days of any request for such notice, report, document, correspondence or other data by TEA. Within 30 days of execution of this Contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Contract Manager level.

<b>TEA</b>	<b>Contractor</b>
Texas Education Agency	Public Consulting Group, Inc.
1701 North Congress Ave.	148 State Street, 10th Floor
Austin, TX 78701	Boston, MA 02109-2506
Attn: Jennifer Aguirre	Attn: Gerald Stefhon
Phone: 512-463-9546	Phone: 864-421-3925
Email: <a href="mailto:jennifer.aguirre@tea.texas.gov">jennifer.aguirre@tea.texas.gov</a>	Email: <a href="mailto:gstefhon@pcgus.com">gstefhon@pcgus.com</a>

- 96. False Statements:** Contractor represents and warrants that all statements and information contained herein are current, complete, true and accurate. Submitting a document 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 Response and any resulting Contract. During the term of the Contract, Contractor shall promptly disclose to TEA all changes that occur to the representations, warranties, and certifications contained herein. Contractor covenants to fully cooperate in the development and execution of any resulting documentation necessary to maintain accurate record of the representations, warranties and certifications.

The Texas Government Code and Family Code cites referenced in this document may be viewed at:

<http://www.statutes.legis.state.tx.us/>

The TAC cites referenced in this document may be viewed at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

**Attachment C**  
**Special Terms and Conditions of this Contract**

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The parties have agreed to exceptions to the Standard TEA Terms and Conditions contained in the Request for Proposal solicitation and this Contract. Each of the changes set forth below shall apply to this Contract notwithstanding anything to the contrary in any other provision of this Contract. As a result, the following Contract Terms and Conditions replace their corresponding provision(s) in the Standard TEA Terms and Conditions in their entirety, with modifications to such terms shown in bold, red and underlined font below.

1. **Defined Terms:** As used in this Attachment B, the following capitalized terms have the meanings specified below.

*(i) Contractor Materials* means, collectively, the pre-existing, complete, standalone, materials or products of Contractor marketed and offered by Contractor to third parties prior to provision to TEA or created for purposes and/or clients independent of this Contract that Contractor can document as such, and all Intellectual Property Rights embodied therein, and any derivatives thereof other than those created by TEA, that are created during the term of this Contract, and includes any Third Party Materials (as defined below).

3. **Indemnification:** For the avoidance of doubt, TEA shall not indemnify Contractor or any other entity under the Contract because TEA is prohibited by law from indemnifying third parties.

**General**

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RELATING TO 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 TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**Intellectual Property**

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, 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, ARISING OUT OF OR RELATING TO: (A) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (B) ANY DELIVERABLE, WORKS, DERIVATIVES OF SUCH DELIVERABLES AND WORKS, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (C) TEA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TEA BY CONTRACTOR OR OTHERWISE TO WHICH TEA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE



TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES. 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. IN ADDITION, CONTRACTOR WILL REIMBURSE TEA AND THE STATE 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 TEA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TEA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TEA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TEA'S COUNSEL. **THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE RESPONDENT TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TEA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TEA OR ITS EMPLOYEES.**

**Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, 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.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE 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, ARISING OUT OF OR RELATING TO 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 IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**15. Intellectual Property**

**(a) Ownership and License to Works Components**

Contractor agrees that all Works (as defined above) are, upon creation, works made for hire and the sole property of TEA. Contractor and its officers, directors, employees, agents, representatives and subcontractors shall have no rights therein. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including, but not limited to, the Intellectual Property Rights, in the Works, all works based upon, derived from or incorporating the Works, all income,

royalties, damages, claims and payments now or hereafter due or payable with respect thereto, all causes of action, either in law or in equity for past, present, or future infringement based on the Intellectual Property Rights, and all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other actions, as TEA may deem necessary to secure for TEA or its designee the rights herein assigned, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

In the event that Contractor has any rights in and to the Works that cannot be assigned to TEA ), Contractor hereby grants to TEA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, publicly perform and publicly display the Works, prepare derivative works to the Works, and to make, have made, use, sell and offer for sale any products developed by practicing such license rights, and to otherwise use such license rights, with the right to sublicense such rights through multiple levels of sublicenses.

If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

If any preexisting rights are embodied in the Works, **including, but not limited to, any Contractor Materials provided hereunder**, Contractor grants to TEA **the least restrictive of the following four licenses for which Contractor has the rights to provide: 1)** the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing; or one of the following Creative Commons licenses: **2) CC-BY, 3) CC-BY-NC, 4) CC-BY-NC-SA**. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights **and the license pursuant to which those pre-existing rights are being provided**. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor represents and warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest in the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any Intellectual Property Rights of any other person or entity. These representations and warranties will survive the termination of the Contract.

**(b) License to Contractor Materials**

Contractor hereby grants to TEA and Authorized Users a nonexclusive, worldwide, royalty-free, fully paid-up, irrevocable, perpetual, unlimited, assignable and transferable right and license to

the Contractor Materials, and any updates, revisions, additions thereto, or derivative works thereof, to directly and indirectly: (i) use, access, execute, reproduce, copy, modify, adapt, publicly display, publicly perform, provide access to, distribute copies of, transmit and otherwise use and exploit; and (ii) authorize others to do any or all of the foregoing in a sublicense, subcontractor agreement, sub-grant or otherwise, for or on behalf of TEA, in order to further the purposes of TEA (collectively "Materials License"). The Materials License includes the right for TEA and Authorized Users to create derivative works of the Contractor Materials and authorize others to do so in order to further the purposes of TEA and/or Authorized Users. The authors of such derivative works shall have and retain ownership of such derivative works.

**(c) Open Education Resources Material**

**The Texas Commissioner of Education shall license to third parties all materials provided under this Contract as Open Education Resources. The license may be a license commonly applied to open education resource material (including Creative Commons licenses, such as CC-BY and CC-BY-NC) in accordance with Chapter 31 of the Texas Education Code. Such license shall allow for free use, reuse, copying (including printing), modification, deletion of content, addition of content, combination of content, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge, delete, combine, or add content. The parties agree that Contractor, and not TEA, will be solely responsible for enforcement of such license with respect to Contractor Materials.**

**Attachment D**

**Request for Production - Instructional Materials Development and Revision**

## Instructional Materials Development and Revision

Dear Vendor,

You are invited to respond to the TEA Emergency Procurement for Instructional Materials Development and Revision by August 1, 2021. The Procurement Guidelines and Terms are attached.

We hope you will consider submitting a proposal for this important work. Please let me know if you have any questions. I will be populating [this](#) document with FAQs and answers.

Emma Catlett



**Emma Catlett**

Project Lead – Open Education Resources

Office of School Programs



[Emma.Catlett@TEA.Texas.gov](mailto:Emma.Catlett@TEA.Texas.gov)



TEA.Texas.gov

## BACKGROUND

In response to Covid-19 school closures, the Texas Education Agency (TEA) procured open education resources in the core contents of Reading Language Arts, Math, Science, Social Studies, and Integrated Prekindergarten as a contingency option for school districts in the 2020-2021 academic year. These resources are optional instructional materials to assist in delivering strong instruction during this public health crisis and may be delivered seamlessly between a student's home environment and in a traditional classroom setting. Instructional materials and additional information are available on [TexasHomeLearning.org](https://www.texaslearning.org). TEA seeks to continue to develop and refine these instructional materials and supporting implementation resources in the long term.

## PURPOSE

TEA seeks support in development and revision of Texas Essential Knowledge and Skills (TEKS) and Texas Prekindergarten Guidelines (TPG)-aligned instructional materials according to TEA-determined revision priorities and timelines. **Interested respondents are encouraged to visit [TexasHomeLearning.org](https://www.texaslearning.org) and internalize the products offered through THL to inform their responses.**

The purpose of this document is to provide the vendor community and marketplace with an understanding of the scope of work and requirements. TEA will use the criteria herein to evaluate and select one or more contractor(s) to undertake this complex, 3-5 year effort.

The awarded contractor(s) will be responsible for further developing and revising one or more of the following instructional materials products, as well as their supporting implementation resources and web platforms (note: all K-6 products are in both English and Spanish):

- Integrated Prekindergarten 3-4 (product currently under development)
- Foundational Literacy Skills K-2 (including *Amplify Elementary Literacy Program*)
- Language Arts and Reading (Core) K-5 (including *Amplify Elementary Literacy Program*)
- Language Arts and Reading 6-8 (product being solicited)
- English I-IV (including *Odell Texas High School Literacy Program*)
- Social Studies K-5 (product currently under development)
- Math K-5 (including *Eureka Math TEKS Edition*)
- Math 6-8, Accelerated Math 6-7, Algebra I, Geometry, Algebra II (including *Carnegie Texas Math Solution*)
- Science K-5 (including *PhD Science TEKS Edition*)
- Other Core and Supplementary Products, as needed

Awarded contractor(s) will partner with TEA THL Product Leads and other TEA stakeholders to develop and semiannually revise product roadmaps for each instructional materials product, prioritizing a subset of continuous improvement opportunities to be implemented and reviewed in time for annual or semiannual new edition release dates. The awarded contractor(s) will draft and implement the project plan to develop, revise, review, and publish instructional materials and their supporting implementation resources and web platforms in partnership with TEA. **The Continuous Improvement Overview includes a detailed, but non exhaustive, overview of the tasks and activities that might be undertaken.**

Awarded contractor(s) will be responsible for submitting revised instructional materials to a third-party review process (review vendor to be determined and secured by TEA) and implementing all third-party review vendor-identified revisions before submitting for TEA approval. Leveraging existing TEA quality review rubrics, the awarded contractor(s) will design detailed quality review rubrics for each product and its subcomponents and submit for TEA approval. The awarded contractor(s) will then train and retrain the third-party review vendor(s) on the content of

each rubric. Quality review rubrics specify the exact scope of the review vendor(s) work. Review vendors will be instructional experts in the content areas and grade bands they will be reviewing. All components of every product must undergo this third-party review and TEA approval process before publishing, including products that have been previously approved and later revised.

TEA expects that this will be a 3-5 year, highly complex effort.

## PROCUREMENT APPROACH AND TIMELINE

TEA seeks to continue to develop and refine full and partial sets of curricular materials (e.g., scope and sequence, unit plans, daily lesson plans, assessments) that are fully aligned to the Texas Essential Knowledge and Skills (TEKS) or Texas Prekindergarten Guidelines (TPG) and that include product-specific implementation supports and web platforms.

TEA is operating under the following accelerated procurement and development timeline:

- July 1, 2021: TEA releases the Guidelines and Criteria for Instructional Materials Development and Revision
- July 1 – July 27, 2021: Vendors may submit questions to TEA, which TEA will respond to on a weekly basis here beginning on July 12, 2021: <https://publish.smartsheet.com/7711166c3ec3483789ae8b641c772f70>
- July 2 – 9, 2021: TEA Contract Managers out of office and will not be responding to questions
- August 1, 2021: Vendor submissions must be received by 11:59 PM Central Time
- August 1 – September 2, 2021: TEA reviews submissions and sends follow-up questions
- September 2, 2021: Vendor(s) selected to enter into negotiations

## EVALUATION CRITERIA OVERVIEW

The following section provides additional information about how to understand the ideal guidelines and criteria. **Best value considerations will be taken into account in any evaluation as well.**

Vendors who display an ability to partner directly with instructional materials publishers of existing and future curricular resources offered through Texas Home Learning will be prioritized.

Vendors may choose to respond to a subset of the instructional materials products listed above.

### Evaluation Criteria

Vendors must demonstrate in their submissions how they plan to address each of the criteria and develop each of the components listed.

- **Project management** skills of vendor must include demonstration of ability to:
  - Develop contracts, with THL instructional materials publishers or other entities with product-specific expertise, to either consult on or undertake content development/revision
  - Collaborate with TEA to design and revise product roadmaps
  - Oversee implementation of product roadmaps for multiple instructional materials products each year
  - Design and convene focus groups, in partnership with TEA, for each product to inform product roadmaps (including teacher, administrator, family/caregiver, higher education, and subject-specific consortia groups)
  - Rapidly scale-up at peak times and scale-down at non-peak times

- Measure and monitor the success of the project and each product, including quantitative and qualitative data collection and analysis of usage and adoption rates, teacher and administrator feedback, student growth, net promoter scores, fidelity of implementation, etc.
- **Content expertise** of vendor (or subcontractors) must include demonstration of:
  - Texas Essential Knowledge and Skills (TEKS) and Texas Prekindergarten Guidelines (TPG) expertise for all content areas and grade bands to which the vendor is applying to develop and edit
  - Deep understanding of the instructional materials products offered through Texas Home Learning to which the vendor is applying to develop and revise (e.g., Eureka Math, Amplify, Odell Education)
  - Understanding of research-based instructional strategies and high-quality curricular materials
  - Ability to meet the needs of English Learners, students with disabilities, and/or students identified as gifted and talented with instructional materials
  - Adherence to the review process designed by TEA and collaboration with the instructional materials review vendor(s) identified by TEA
- **Deliverables-Based, High-Level Budget** that is broken down to demonstrate:
  - Annual minimum project management costs
  - Fixed price deliverables
  - Variable price deliverables
  - Hourly rates for (at least):
    - Copy Editors
    - Content Writers
    - Production Designers
    - Web developers
  - For work that will be subcontracted with THL instructional materials vendors, cost plus margin proposal
  - Recommended payment schedule to enable TEA to ensure materials have met quality bar before payment
- **Vendor team** that is broken down to demonstrate:
  - Team organizational chart demonstrating:
    - Project leadership/oversight
    - Product/Project Management leads (likely for each content area/grade band, e.g., K-5 RLA, K-5 Social Studies, 6-12 Math)
    - Content/subject area leads
    - Special populations leads (English Learners, Students with Disabilities, and Gifted and Talented)
    - Content Writers by content/grade band
    - Production Leads and Designers
    - Art Director and Illustrators
    - Research Lead and Analysts
    - Web developers
    - Other technical (support Question & Test Interoperable Assessment Item QTI development and Learning Management System (LMS) integration, for example)
  - Clear proposal of team management roles and responsibilities
  - Full or part time dedicated staff and contract/consultative staff



## NEXT STEPS FOR SUBMISSION

Vendors interested in submitting a response should email a proposal of less than or equal to 20 pages (not including Title Page, Executive Summary, Table of Contents, or Sample Work) to [Jennifer.Aguirre@tea.texas.gov](mailto:Jennifer.Aguirre@tea.texas.gov). Submissions must be received by **August 1, 2021 at 11:59pm Central Time**. **Submissions must** include the following information:

- Title Page** with vendor name, primary point of contact, proposal date, and products, content areas, and/or courses for which the vendor is proposing to develop and revise
- Table of Contents** that outlines sections of the proposal and provides an overview of any attachments included as a part of the submission process
- Executive Summary** that provides an overview of proposal components included as a part of Vendor's submission, including which content areas and courses for which the vendor is proposing to develop and revise
- Statement of Qualifications, Quality of Management, and Ability to Complete Work on Designated Timeline**, including:
  - Relevant project experiences and outcomes
  - The organization's structure, experience, and leadership, including the team(s) intended to be working directly on the project and the personnel qualifications of proposed team members as it relates to the tasks
  - Evidence of the capacity of the organization to meet all requirements and deliver requested services on the timeline needed
  - The methodology for carrying out the objectives and requirements of the project
- Budget Proposal** for the tasks and activities proposed as a part of this procurement
- Terms and Conditions Statement** – Acknowledge review of TEA's Contract Terms, Conditions, and Affirmations document (included as a separate attachment) and highlight any exceptions the vendor is requesting as a part of the submission



#	Tasks and Activities	Category
6.14	Integrating learning acceleration strategies at the lesson level	Lesson / Unit /Course Revisions
7	Develop or enhance assessment items and assessments, including associated answer keys, item rationale guides, SAQ/writing task rubrics, and writing task scoring guides with scored sample student answers and scoring rationale	Assessment Development and Revision
7.01	Revisions of existing assessment items	Assessment Development and Revision
7.02	Development of STAAR aligned assessment items within existing assessments	Assessment Development and Revision
7.03	Development of entirely new summative assessments and end of course projects within existing courses	Assessment Development and Revision
7.04	Development or enhancement of scoring rubrics, item rationale guides, and writing task scoring guides with scored sample student answers and scoring rationale for assessments	Assessment Development and Revision
7.05	Development of Question and Test Interoperable (QTI) items	Assessment Development and Revision
8	Thoroughly customize existing, but not customized-for-Texas, lessons and associated assessments, unit plans, and course-level materials not currently in the Texas Home Learning portfolio, including all student and teacher-facing materials, to meet Texas quality rubric criteria, e.g., customizing a national product for Texas	Lesson Customization
9	Develop new (never before existing) lessons and associated assessments, unit plans, and course-level materials, including all student and teacher-facing materials	Lesson Development
10	Develop or enhance Teacher-facing, programmatic materials, including implementation guides, assessment guides, progress monitoring guides, pacing guides for diverse school models	Course Implementation Revisions and Development
10.01	Development of new scopes and sequences for existing K-5 courses, particularly to ensure products to support three Additional Days School Year (ADSY) Pathways	Course Implementation Revisions and Development
10.02	Development or enhancement of Assessment Guides	Course Implementation Revisions and Development
10.03	Development or enhancement of product-specific guidance for how to analyze and respond to formative and summative assessment data (including but not limited to guidance around when and why to reteach vs review vs spiral content back in)	Course Implementation Revisions and Development
10.04	Development or enhancement of unit and lesson internalization guides and protocols including guidance for unpacking standards, assessments, etc.	Course Implementation Revisions and Development
10.05	Development or enhancement of traditional in-person and remote/hybrid classroom observation tools to be leveraged by coaches	Course Implementation Revisions and Development
10.06	Development or enhancement of learning acceleration strategies at the course level	Course Implementation Revisions and Development
10.07	Development or enhancement of product-specific Overviews including Scopes and Sequences, instructional approach and philosophy, program components, required materials, print instructions, etc.	Course Implementation Revisions and Development
10.08	Development of K-5 full year pacing guide that considers LEA use of full suite of OER resources or partial OER resources, models consider assessment cadence, flextime for special events (e.g., career day, field day, presentations/assembly, community engagement activities etc.)	Course Implementation Revisions and Development

#	Tasks and Activities	Category
10.09	Development of K-5 daily and weekly schedule guidance/model that considers LEA use of full suite of OER resources or partial OER resources: model consider small group instruction time, flextime for campus specific courses/activities, transition time (e.g., breakfast in the classroom, library, computer lab, health and wellness block, innovation courses, other language courses (weekly French, German lesson etc.) specials classes (e.g., PE, Art, Music))	Course Implementation Revisions and Development
10.1	Development or enhancement of guidance or recommendations on how programs could be applied within multiple schedules and models (e.g., bilingual programs)	Course Implementation Revisions and Development
10.11	Development or enhancement of sample TEKS or TPG-level Pacing Guide mapped against a districts schedule	Course Implementation Revisions and Development
10.12	Development or enhancement of stakeholder and/or change management tools such as a materials adoption playbook and school board engagement strategies	Course Implementation Revisions and Development
10.13	Development or enhancement of initial Implementation Planning Tools for Leaders	Course Implementation Revisions and Development
10.14	Development or enhancement of remote learning guidance for how the materials can be used by families and students in an independent environment with minimal teacher interaction and/or intervention, if necessary, in order to support equitable learning experiences (e.g., unit plan guiding parents and caregivers through the work, highlighting the learning targets and prioritized activities, readings, problem-sets, etc. in the unit or course)	Course Implementation Revisions and Development
11	Thoroughly customize existing courses not currently in the Texas Home Learning portfolio, including all student and teacher-facing materials, e.g., courses available to other States but not currently customized for Texas and aligned to Texas standards	Course Customization
12	Develop new (never-before existing) lessons and associated assessments, unit plans, and course-level materials, including all student and teacher-facing materials	Course Development
13	Customize existing digital and interactive tools	Digital Development
14	Develop new (never-before existing) digital and interactive tools	Digital Development
14.01	Develop student-facing interactive tools (e.g., quizlets, games, flashcards)	Digital Development
14.02	Develop student and/or parent/caregiver-facing short (3-10 minute) videos	Digital Development
	Develop microsite to host products according to user-centered design principles, branded for Texas/TEA, meeting WCAG 2.1 compliance, and enabling at-home printing of Teacher and Student-facing materials	Digital Development
	troubleshooting Develop Learning Tools Interoperable (LTI) integrations for Canvas, Schoology, and Google Classroom for each product (excluding PreK)	Digital Development
18	Develop easily downloadable, print-production versions of Teacher and Student facing materials	Digital Development
19	Acquire sufficient licensing rights for third party content, including text and images	Other
20	Trans-adapt student and teacher-facing instructional materials into Spanish for PK-6 courses	Other
21	Provide print production versions of teacher and student-facing content (PDF documents) to the National Instructional Materials Access Center (NIMAC) each year	Other
22	Create new or significantly revised illustrations, e.g., in student readers	Other
23	Submit products to the Texas Resource Review	Other
24	Coordinate printing and shipping of materials to LEAs	Print Materials



**ATTACHMENT B****CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS, RESPONSE PREFERENCES AND EXECUTION OF OFFER**

1. **Defined Terms:** As used in this Attachment B, the following capitalized terms have the meanings specified below.
- (a) *Authorized User* shall mean (i) TEA, (ii) any Texas Local Education Agency (“LEA”), school district staff member, private school, private school staff member, teacher, tutor, parent, student and/or resident (whether currently in-state or temporarily outside the state), and (iii) any other third-party and its or their staff or personnel serving or acting on behalf of any of the Authorized Users named in (i) or (ii) above.
  - (b) *Commercial* shall mean selling or reselling (whether directly or indirectly, via outright sale, license or otherwise) for financial consideration, access to the Contractor Materials or the Technology Platform.
  - (c) *Comptroller* means the Texas Comptroller of Public Accounts.
  - (d) *Contract* means the document entered into between TEA and Contractor, including all attachments (for the avoidance of doubt, including, but not limited to, the Standard TEA Terms and Conditions and any Special Terms and Conditions), annexes, exhibits, schedules, amendments, renewals and extensions of or to the Contract.
  - (e) *Contract Manager* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project.
  - (f) *Contract Project* means the purpose intended to be achieved through the Contract.
  - (g) *Contractor* means the party to this Contract who is providing the contracted goods or services to TEA, provided that, prior to contract award, Contractor means the person or entity who provides a Response (i.e., a “Respondent”).
  - (h) *Contractor Materials* means, collectively, the pre-existing, complete, standalone materials or products of Contractor marketed and offered by Contractor to third parties prior to provision to TEA that Contractor can document as such, and all Intellectual Property Rights embodied therein, and any derivatives thereof other than those created by TEA, that are created during the term of this Contract, and includes any Third Party Materials (as defined below).
  - (i) *EIR* means electronic and information resources as defined in 1 TAC (as defined below) § 206.1, as may be amended from time to time.
  - (j) *FERPA* means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), the regulations issued pursuant thereto, and any amendments thereto.
  - (k) *HSP* means a HUB subcontracting plan.
  - (l) *HUB* means an entity certified by the Comptroller as a Historically Underutilized Business as defined in Texas Government Code Section 2161.001.
  - (m) *Intellectual Property Rights* means the legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations, social media pages and associated handles and hashtags; and (v) any other similar rights. The Intellectual Property Rights of a party include all legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
  - (n) *Non-Commercial* means any activity other than Commercial activities.
  - (o) *Personally Identifiable Information* means information that alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's: name; Social Security number; date of birth; driver's license number; government-issued identification number; mother's maiden name; unique biometric data (including, but not limited to, the individual's fingerprint, voice print, and retina or iris image); unique electronic identification number; address or routing code; telecommunication access device; account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; and/or identity and relates to the physical or mental health or condition of the individual, the provision of health care to the individual; or payment for the provision of health care to the individual.

- (p) *Protected Data* means the data, in electronic and physical form, that
- (i) is collected by and through any Technology Platform provided or operated by Contractor,
  - (ii) may be input by Authorized Users, and/or
  - (iii) is generated by Authorized Users or their devices by interacting with any Technology Platform provided by or through Contractor,
- including, without limitation, Personally Identifiable Information pertaining to students as well as to their parents or legal guardian and all grades, scorings, rankings, percentage comparisons, answers and responses to questions and assignments, and “educational records” as that term is defined by FERPA. *Protected Data* shall also include all versions and portions of any part of the Protected Data, all files and databases containing such Protected Data, as well as any information derived or generated therefrom through database hygiene, database management or otherwise. As between TEA and Contractor, Protected Data shall be deemed to be owned by TEA, provided that Protected Data applicable to Authorized Users other than TEA, shall be owned by the applicable Authorized User to whom it applies, unless TEA acquires ownership thereof in another agreement.
- (q) *Response* is what a Contractor submits in response to the following specific competitive solicitations: an invitation for bids; a request for offers; a request for proposals; a request for qualifications; or a statement of work solicitation under a Department of Information Resources contract.
- (r) *Service Credit* means any applicable credit or any refund for inadequate performance of a Technology Platform that could be construed as liquidated damages and has been incorporated into this Contract as a valid pre-estimate of damages TEA will sustain which will not be capable of precise determination; such credit is therefore considered to be agreed-upon costs incurred as a result of Contractor’s failure to meet the contracted-for requirements, and is not a penalty.
- (s) *Special Terms and Conditions* means any provisions contained in an Attachment to this Contract labeled “Special Terms and Conditions of this Contract.”
- (t) *Standard TEA Terms and Conditions* or *Standard Terms* means the provisions contained in this Attachment B.
- (u) *State* means the State of Texas.
- (v) *TAC* means the Texas Administrative Code.
- (w) *TEA* means the Texas Education Agency.
- (x) *TEA Confidential Information* means information that is confidential under the provisions of the FERPA, the Texas Public Information Act, or other applicable State or federal laws, that is provided to Contractor by TEA, that Contractor collects on behalf of TEA, that Contractor obtains in connection with the provision of goods and services hereunder and/or that is otherwise designated by TEA as non-public TEA confidential information including, without limitation, Protected Data. Examples of TEA Confidential Information include: (i) Personally Identifiable Information (ii) criminal background checks; (iii) an e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (iv) certain personnel information concerning a TEA employee including, but not limited to, home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee’s choice of insurance carrier or choice to contribute money to a 401(k); (v) information about security vulnerabilities in TEA systems; (vi) dataset extracted from confidential sources (e.g., SAS data sets); and (vii) Student IDs (FERPA protected) and some Government IDs. *TEA Confidential Information* also includes, without limitation, all cookies and metadata associated with TEA’s webpages and online content.
- (y) *TEA Trademarks License* has the meaning assigned to such term in Clause 18 of this attachment B.
- (z) *Technology Platform* means the software and infrastructure (including but not limited to Contractor’s software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements, and modifications) in a hosted environment provided by Contractor to which TEA and/or Any Authorized User is being granted access under this Contract via a web site, designated IP address(es), or APIs, as described more fully in Attachment G.
- (aa) *Term* means the period of time between the execution of the Contract and the expiration of the Contract.
- (bb) *Third-Party Materials* means any licensed third-party materials, and derivatives thereof, provided by Contractor to TEA.
- (cc) *WCAG* means web content accessibility guidelines, version 2.1 of June 5, 2018, from the World Wide Web Consortium, which are incorporated herein by reference, as amended.

(dd) *Working Day* means any day, Monday-Friday, other than a national holiday or state holiday, each as defined by Texas Government Code, §662.003(a), the Friday after Thanksgiving Day, December 24<sup>th</sup>, December 26<sup>th</sup> and any other day that the TEA is closed. Use in these Standard Terms of the term “day” or “calendar day” rather than “working day” shall mean a calendar day.

(ee) *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract. “Works” includes but is not limited to computer software, data, metadata, source code, concepts, systems, methodologies, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc. “Works” excludes any Contractor Materials, as defined above.

2. **Excess Obligations Prohibited:** This Contract is subject to termination or cancellation, without penalty to TEA, either in whole or in part, subject to the availability of State funds. TEA is a State agency whose authority and appropriations are subject to actions of the Texas Legislature. If TEA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TEA's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this provision, TEA will not be liable to Contractor for any damages that arise out of or are related to such termination or cancellation, and TEA will not be required to give prior notice of such termination or cancellation.
3. **Indemnification:** For the avoidance of doubt, TEA shall not indemnify Contractor or any other entity under the Contract because TEA is prohibited by law from indemnifying third parties.

#### General

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RELATING TO 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 TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### Intellectual Property

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, 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, ARISING OUT OF OR RELATING TO: (A) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (B) ANY DELIVERABLE, WORKS, DERIVATIVES OF SUCH DELIVERABLES AND WORKS, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (C) TEA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TEA BY CONTRACTOR OR OTHERWISE TO WHICH TEA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES. 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. IN ADDITION, CONTRACTOR WILL REIMBURSE TEA AND THE STATE 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 TEA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TEA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TEA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TEA'S COUNSEL.

#### Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, 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.



CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE 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, ARISING OUT OF OR RELATING TO 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 IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4. **Signature Authority and Binding Effect:** By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Contractor. By executing the Contract, Contractor represents and warrants that the individual signing the Contract and any documents made part of the Contract is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under the Contract. The Contract shall be binding upon and shall inure to the benefit of TEA and Contractor and to their respective permitted successors, and assigns.
5. **Responsibility for Actions and Limitation on Authority:** Contractor is solely responsible for its actions and those of its agents, employees or subcontractors. Contractor and its agents, employees or subcontractors shall have no authority to act for or on behalf of TEA or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Contractor and its agents, employees and subcontractors may not incur any debt, obligation, expenses, or liability of any kind on behalf of TEA or the State.
6. **Final Expression, and Superseding Document:** The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties and any documents referenced via URLs, "click-through" license agreements, end-user licenses, subscription agreements, terms of use or other terms that may be presented on, through or by the Technology Platform provided or operated by Contractor (whether presented before or after contract signing) (collectively, "Supplemental Terms"). Such Supplemental Terms shall have no force and effect with respect to the Parties or any Authorized Users except with respect to the Creative Commons and open source licenses specified in Attachment E. Contractor hereby represents and warrants that no Creative Commons licenses or open source licenses are applicable to any Works or Contractor Materials except as provided in Attachment E, and if no Attachment E is attached hereto, no such Supplemental Terms apply to this Contract. Subject to the foregoing, any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended as provided in Clause 7 or Clause 28 below.
7. **Amendments:** All modifications, amendments or extensions to this Contract are subject to Clause 2 of these Standard TEA Terms and Conditions, will be executed on standard TEA forms, and will follow TEA's internal contracting process. All modifications, amendments or extensions will be initiated by TEA Contract and Purchasing staff. A modification, amendment, or extension to this Contract will become effective on the date of signature by TEA or the effective date shown on such, modification, amendment or extension document, whichever is later. All modifications, amendments, or extensions (other than a renewal as provided for in the Contract) must be in writing and signed by both parties. Notwithstanding the foregoing, TEA may make technical amendments in order to correct manifest errors in the Contract, provided such technical amendments would not have a materially adverse effect on Contractor and that Contractor does not contest in writing the amendments within 30 days after TEA provides written notice to Contractor of such technical amendments.
  - (a) Written amendments are required for the following Contract changes:
    - i. Any revision which would result in the need for additional funding;
    - ii. Revisions or additions to the scope of work, deliverables, or objectives of the Contract, other than revisions permitted by paragraph (b) of this Clause 7;
    - iii. Any extension of the period of the Contract other than a renewal as provided for in the Contract;
    - iv. Any reduction of funds or reduction in the scope of work, other than revisions permitted by paragraph (b) of this Clause 7;
    - v. Any change to the Standard TEA Terms and Conditions; and
  - (b) Informal budget revisions signed by Contract Managers shall be permitted for the following contract changes:
    - i. Reallocating funds among existing contract tasks/deliverables (up to 25% increase/decrease per specified task/deliverable);
    - ii. Reallocating funds across TEA fiscal years and State bienniums; and
    - iii. Revisions to the scope of work consisting of a reduction to specified tasks that would decrease the total contract value (up to 25% decrease in total contract value).

Updates to Standard TEA Terms and Conditions

TEA updates the TEA Standard Terms and Conditions on a regular basis to account for changes to laws and evolving agency needs. Contractor agrees that updated Standard TEA Terms and Conditions may be included in any amendment, renewal, or

other document altering this Contract and that any negotiations regarding such updated Standard TEA Terms and Conditions will be limited to terms that have changed since the most recent Standard TEA Terms and Conditions attached to the Contract.

- 8. Subcontracting:** Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TEA. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.
- 9. Personnel Assignments, Transfers, HUB Subcontracting, Substitutions and Reporting:** TEA reserves the right to request changes in personnel assigned to the project. The TEA Contract Manager must pre-approve any changes in key personnel throughout the contract term. Pursuant to 34 TAC §201.281-298 and Texas Government Code, Chapter 2161, Contractor shall maintain business records documenting compliance with the HSP and shall submit compliance reports to TEA. Any changes to the HSP must be approved by TEA HUB Coordinator before subcontracting changes are initiated. Substitutions are not permitted without written approval of TEA Contract Manager. If Contractor subcontracts any of the work without prior authorization and without complying with this Clause, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable State law. Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. Contractor shall also report all 2<sup>nd</sup> and 3<sup>rd</sup> Tier subcontracting in the monthly PAR. PAR's are due no later than the 10<sup>th</sup> day of the following month. The PAR is required to be submitted monthly, even if no reportable activity occurred for the month. Reports shall be submitted electronically to the [HUBOffice@tea.texas.gov](mailto:HUBOffice@tea.texas.gov). In addition to the PAR, Contractor shall also create and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 10. Interpretation:** The terms, conditions, and assurances, which are stated in the competitive solicitation, in response to which Contractor submitted a Response, are incorporated herein by reference. Contractor's Response that was furnished to TEA in response to the competitive solicitation is incorporated herein by reference. In the event of a conflict between or among the various documents comprising the Contract, the order of precedence set forth in the Contract shall apply. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- 11. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- 12. Proof of Financial Stability, Records Retention and the Right to Audit:** TEA may require Contractor to provide proof of financial stability prior to or at any time during the Contract term.

Contractor shall maintain and retain all records relating to the performance of the Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State requirements. These records will be maintained and retained by Contractor for a period of seven years after (a) the Contract expiration date or (b) the resolution of all audit, claim, and litigation matters related to the Contract, whichever is later.

- 13. State Auditor's Right to Audit:** Pursuant to Section 2262.154 of the Texas Government Code, the State auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the State directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State auditor, 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, Contractor or other entity that is the subject of an audit or investigation by the State auditor must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards.

Contractor further agrees that acceptance of funds under this Contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this Contract shall cooperate fully with TEA in the conduct of the audit or investigation, including making available at reasonable times and upon reasonable notice, and for a reasonable period, work papers, reports, books, records, supporting documents and any other records kept current by them pertaining to the Contract.

#### 14. Technology Platform (SaaS) License

- (a) **License to Access and Use Technology Platform** Contractor hereby grants to TEA, exercisable by TEA and by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable, transferable and sublicensable (pursuant to Clause 15) right and license throughout the world during the Term and such additional periods, if any, as Contractor is required to provide any Technology Platform, to: (i) access and use the Technology Platform, including in operation with other software, hardware, systems, networks, and Technology Platform, for TEA's permitted uses; (ii) generate, print, copy, upload, download, store and otherwise process all graphical user interfaces, audio, visual, digital, and other output, displays, and content as may result from any access to or use of the Technology Platform; (iii) prepare, reproduce, print, download and use as many copies of the documentation as may be necessary or useful for any use of the Technology Platform under this Contract; (iv) access and use the Technology Platform for all such non-production uses and applications as may be necessary or useful for the effective use of the Technology Platform as permitted hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support, and repair, which access and use will be without charge and shall not be included for any purpose in any calculation of TEA's or its Authorized Users' use of the Technology Platform, including for purposes of assessing any fees or other consideration payable to Contractor or determining any excess use of the Technology Platform as described in an order; and (v) perform, display, execute, reproduce, and modify (including to create improvements and derivative works of), and distribute and otherwise make available to Authorized Users, any Technology Platform solely to the extent necessary to access or use the Technology Platform in accordance with the terms and conditions of this Contract.
- (b) **Technology Platform Service Levels and Service Credits:** Contractor shall make the Technology Platform available to Authorized Users in accordance with Attachment F and provide the Service Credits set forth in Attachment F for any failure to meet the agreed upon service levels.
- (c) **Technical Support Service Levels:** Contractor shall provide Authorized Users with technical support in accordance with Attachment F.
- (d) **No Indemnities for Authorized Users:** The Parties hereby acknowledge and agree that since (i) Contractor controls the means of access to the Technology Platform, and (ii) because TEA is prohibited by law from indemnifying third parties, TEA shall have no responsibility or liability for: (1) verifying or enforcing whether an Authorized User is a bona fide Authorized User; (2) creating, distributing or enforcing login credentials; (3) controlling whether or not access to the Technology Platform is limited to Authorized Users; (4) enforcing or controlling Authorized Users' use of the Contractor Materials or the Technology Platform; (5) limiting Authorized Users' use of the Contractor Materials and the Technology Platform to Non-Commercial uses; (6) use of Contractor Materials, or the Technology Platform by Authorized Users; (7) any other failures of, or actions by, any Authorized User in connection with this Contract, other than the willful actions of TEA or its employees; or (8) adherence to any Technology Platform user agreement provisions.

#### 15. Intellectual Property

(a) **Ownership and License to Works Components**

Contractor agrees that all Works (as defined above) are, upon creation, works made for hire and the sole property of TEA. Contractor and its officers, directors, employees, agents, representatives and subcontractors shall have no rights therein. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including, but not limited to, the Intellectual Property Rights, in the Works, all works based upon, derived from or incorporating the Works, all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, all causes of action, either in law or in equity for past, present, or future infringement based on the Intellectual Property Rights, and all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other actions, as TEA may deem necessary to secure for TEA or its designee the rights herein assigned, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

In the event that Contractor has any rights in and to the Works that cannot be assigned to TEA, Contractor hereby grants to TEA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, publicly perform and publicly display the Works, prepare derivative works to the Works, and to make, have made, use, sell and offer for sale any products developed by practicing such license rights, and to otherwise use such license rights, with the right to sublicense such rights through multiple levels of sublicenses.

If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor represents and warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest in the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any Intellectual Property Rights of any other person or entity. These representations and warranties will survive the termination of the Contract.

(b) **License to Contractor Materials**

Contractor hereby grants to TEA and Authorized Users a nonexclusive, worldwide, royalty-free, fully paid-up, irrevocable, perpetual, unlimited, assignable and transferable right and license to the Contractor Materials, and any updates, revisions, additions thereto, or derivative works thereof, to directly and indirectly: (i) use, access, execute, reproduce, copy, modify, adapt, publicly display, publicly perform, provide access to, distribute copies of, transmit and otherwise use and exploit; and (ii) authorize others to do any or all of the foregoing in a sublicense, subcontractor agreement, sub-grant or otherwise, for or on behalf of TEA, in order to further the purposes of TEA (collectively "Materials License"). The Materials License includes the right for TEA and Authorized Users to create derivative works of the Contractor Materials and authorize others to do so in order to further the purposes of TEA and/or Authorized Users. The authors of such derivative works shall have and retain ownership of such derivative works.

**16. Social Security Numbers (SSNs) Withheld:** TEA will not provide SSNs to any Contractor under this Contract unless specifically stated as part of the Contract Project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA and will destroy or return all student-identifying information in accordance with the terms in Clause 19 on Confidential Information, FERPA, and Information Security Requirements hereof.

**17. Nondisclosure and Press Releases:** Contractor shall not use TEA's name, logo, or other likeness in any press release, marketing material, or other announcement without TEA's prior written approval and in the event of such approval, Contractor shall comply with the TEA Trademarks License set forth below. TEA does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response, the Contract, or the services to which any of the foregoing relate without TEA's prior written consent, and then only in accordance with explicit written instructions from TEA. All information gathered, produced, derived, obtained, analyzed, controlled or accessed by Contractor in connection with this Contract shall be and remain confidential and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the information, data, or materials requested and the audience for the release of information.

**18. Trademark License for Contractor's Use of TEA's Logo and Other Trademarks**

Contractor hereby acknowledges and agrees that all trademarks and service marks adopted, used, registered, and/or owned by TEA ("TEA Trademarks," as shown in the TEA Brand Book, which is available upon request) remain the exclusive property of TEA, that all right, title and interest in and to the TEA Trademarks are exclusively held by TEA and all goodwill associated with such trademarks inures solely to TEA. TEA hereby grants to Contractor, and any approved subcontractors pursuant to Clause 8 hereof, for the term of this Contract, a limited, non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce TEA Trademarks on published materials, in print and digital form, solely for purposes in connection with the performance of this Contract ("TEA Trademarks License"), provided that such TEA Trademarks License is expressly conditional upon and subject to, the following:

- (a) Contractor is in compliance with all provisions of, and laws applicable to, this Contract;
- (b) Contractor is in compliance with all rules, requirements, formats and depictions as set forth in the TEA Brand Book.
- (c) Contractor's use of the TEA Trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in the TEA Brand Book or as otherwise communicated by TEA, and used as directed by TEA;
- (d) Contractor takes no action to damage the goodwill associated with the TEA Trademarks, and does not directly or indirectly contest, attack, dispute, challenge, cancel and/or oppose TEA's right, title and interest in the TEA Trademarks or their validity;
- (e) Contractor makes no attempt to sublicense, assign or transfer any rights under this TEA Trademarks License;
- (f) Contractor makes no use of the TEA Trademarks to advertise, market, or sell its goods or services to any third parties;
- (g) Contractor complies with any marking requests TEA may make in relation to the TEA Trademarks, including without limitation to use the phrase "Registered Trademark," the symbol "™", and/or the registered trademark symbol "®", as directed by TEA, and
- (h) Contractor shall, upon TEA's request, provide examples of proposed usage of the TEA Trademarks for review and approval by TEA.

Contractor represents and warrants that all materials produced for and/or procured by TEA will align with the requirements and content expectations detailed in the TEA Brand Book. All materials delivered by Contractor that do not meet the requirements contained in the TEA Brand Book shall be deemed not accepted for purposes of Clause 46 (Payment) of these Standard TEA Terms and Conditions. To the extent that Contractor has any questions about content in the TEA Brand Book or TEA appearance and style guidelines, they should email [Communications@tea.texas.gov](mailto:Communications@tea.texas.gov).

If TEA discovers that Contractor's uses of the TEA Trademarks are not of a high quality, as determined by TEA, TEA may give Contractor five working days' written notice within which to change its operations to conform to TEA's requirements. After the five working day period, should Contractor fail to meet the quality requirements of TEA, TEA, may at its sole discretion, terminate this Contract and/or Contractor's license to use TEA Trademarks.

Contractor further agrees that it is critical that the goodwill associated with the TEA Trademarks is protected and enhanced and, toward this end, Contractor shall not during the term of this Contract or thereafter: (i) attack the title or any rights of TEA in or to the TEA Trademarks; (ii) attack the validity of this Contract; (iii) do anything either by an act of omission or commission which might impair, violate or infringe the TEA Trademarks; (iv) claim (adversely to TEA or anyone claiming rights through TEA) any right, title or interest in or to the TEA Trademarks; (v) misuse or harm the TEA Trademarks or bring the TEA Trademarks into disrepute; (vi) for its benefit, directly or indirectly, register or apply for registration of the TEA Trademarks or any mark which is, in TEA's reasonable opinion, the same as or confusingly similar to any of the TEA Trademarks; and/or (vii) for its benefit, directly or indirectly, register, maintain or apply for registration of a domain name which is, in TEA's reasonable opinion, the same as, confusingly similar to or incorporates any of the TEA Trademarks.

**19. Confidential Information, FERPA, and Information Security Requirements:**

(a) **Ownership of TEA Confidential Information.**

As between TEA and Contractor, Contractor acknowledges and agrees that all TEA Confidential Information, including any Protected Data, is owned by TEA.

(b) **Access to and Use of TEA Confidential Information**

Contractor represents and warrants that it will take all necessary and appropriate action to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA Confidential Information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of TEA Confidential Information, additional TEA confidentiality forms will need to be signed by the Contractor who requires access to or may be exposed to that information. Contractor shall access TEA's systems or TEA Confidential Information only for the purposes for which it is authorized under this Contract. Contractor shall have a policy and process in place that ensures the same level of protection of TEA Confidential Information by all employees and subcontractors who require access to or may be exposed to that information.

Contractor shall at all times cause an Authorized User's Protected Data be accessible solely by such Authorized User and its related or otherwise authorized persons and entities, including applicable teachers and tutors, and applicable school, school district and TEA personnel. Contractor shall allow each Authorized User and its related persons and entities, at any time, to export such Authorized User's Protected Data in a standard electronic format as mutually agreed by TEA and Contractor throughout and until the expiration of the term of this contract.

Contractor shall not: (i) anonymize or de-identify any part of TEA Confidential Information or create statistics or analysis of TEA Confidential Information for any Contractor purpose, marketing or otherwise, except as necessary to meet its obligations to TEA under the Contract; (ii) use or distribute any part of TEA Confidential Information by or to any third-party, except as necessary to meet its obligations to TEA under the Contract; and/or (iii) use such data for any other purpose not specifically set forth herein or as otherwise authorized in writing by the owner of the Protected Data.

For the avoidance of doubt, all Contractor's representations, warranties and covenants herein including, but not limited to, access to TEA Confidential Information, FERPA compliance, information security compliance, and disclosure of security breaches, apply to all Protected Data.

(c) **FERPA**

Contractor, its employees and subcontractors, agree that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of applicable law and regulations, including without limitation, FERPA.

(d) **Return and Destruction of TEA Confidential Information.**

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any TEA Confidential Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

1. Date and time of sanitization/destruction;
2. Description of the item(s) and serial number(s) if applicable;
3. Inventory number(s); and
4. Procedures and tools used for sanitization/destruction.

Subject to Clause 55(g), no later than 30 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of all TEA Confidential Information, including all copies thereof and materials incorporating such TEA Confidential Information, whether in physical or electronic form, and provide to the TEA Contract Manager documentation that the sanitization has been completed. An authorized agent of Contractor must certify the completion of the destruction of data and sanitization.

**20. Information Security Requirements**

Contractor shall: (a) use appropriate legal, organizational, physical, administrative and technical measures, and security procedures, including, without limitation, ensuring TEA Confidential Information will be encrypted at rest and in motion, to safeguard and ensure the security of TEA Confidential Information and to protect TEA Confidential Information from unauthorized access, hacking, disclosure, duplication, theft, use, modification and/or loss; (b) comply with all applicable laws and regulations governing the handling of TEA Confidential Information; (c) process all TEA Confidential Information solely within the contiguous United States and limit access to the TEA Confidential Information to employees, subcontractors and staff of Contractor who have passed reasonable security clearance checks; and (d) implement physical security and access controls at any of its facilities (including any data centers) that house TEA Confidential Information.

Contractor shall comply with rules pertaining to information technology security standards found at 1 TAC, Chapter 202, as may be amended from time to time.

TEA shall have the right to review Contractor's security measures to ensure that any data that is in Contractor's possession is secure. For any Contractor or subcontractor that transmits, processes, or stores TEA Confidential Information, TEA may require Contractor or subcontractor to periodically provide evidence of its information security policies, procedures and controls. Contractor shall cooperate fully by providing such evidence and by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s), if requested by TEA. TEA shall have the right to scan Contractor websites and mobile applications for vulnerabilities and to audit the security measures in effect on Contractor's connected systems without prior warning. TEA shall also have the right to immediately terminate network and system connections that do not meet the requirements herein. For any information security risks of the Contractor identified by TEA throughout the Term of this Contract, TEA may require an action plan to mitigate or remediate the security risk and Contractor agrees to provide such action plan promptly upon request.

In accordance with Texas Government Code, Sec. 2054.516, Contractor shall conduct and provide results of penetration tests, at Contractor's sole expense, of Contractor developed websites and/or mobile applications for specific TEA use that process, transmit, or store TEA Confidential Information prior to launch and annually thereafter. TEA shall have the right to conduct a penetration scan and/or vulnerability testing through a third party periodically during the Term of the Contract without prior warning. Contractor shall resolve all identified issues to TEA's satisfaction in a timely manner not to exceed 30 days from the date such issues are identified, provided that for any issues which cannot be resolved within 30 days, Contractor and TEA shall agree upon a plan for resolving such issues as promptly as practical, not to exceed three months.

Websites that process, transmit, or store TEA Confidential Information shall be accessible through a secure connection (HTTPS-only, with HTTP Strict Transport Security (HSTS)), utilizing Transport Layer Security (TLS) version 1.2 or higher.

If Contractor is providing TEA software goods or services and/or data processing goods or services, Contractor agrees to provide secure configuration guidelines that fully describe all security relevant configuration options and their implications for the overall security of the software. The guideline shall include a full description of dependencies on the supporting platform, including operating system, web server, and application server, and how they should be configured for security.

**(a) Access to Internal TEA Network and Systems**

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures, more fully detailed in the security and awareness training that every contractor is required to complete prior to obtaining access to TEA networks and systems. TEA's remote access request procedures will require Contractor to submit applicable TEA access request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. The off-site downloading, transfer, and/or storage of TEA Confidential Information is strictly prohibited unless such acts are specifically allowed in the Contract's scope of work. Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States.

**(b) Cybersecurity Training**

Contractor shall ensure that any Contractor employee or subcontractor employee who has access to a State computer system or database shall complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code. Such training is required to occur during the contract term and the renewal period. Contractor shall provide TEA with verification of the completion of the requisite training.

**(c) Disclosure of Security Breach and Security Vulnerabilities**

Contractor shall provide notice to TEA's Contract Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise,

modification, or loss of sensitive data or TEA Confidential Information or any breach, denial of service attack and/or inaccessible data due to ransomware or other type of malware (each such event, a "Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

1. Description of the nature of the Security Incident;
2. The type of TEA information involved;
3. Who may have obtained the information;
4. What steps Contractor has taken or will take to investigate the Security Incident;
5. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
6. A point of contact for additional information.

Each day thereafter or as additional information becomes available, until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information:

1. Who is known or suspected to have gained unauthorized access to TEA information;
2. Whether there is any knowledge if TEA information has been abused or compromised;
3. What additional steps Contractor has taken or will take to investigate the Security Incident;
4. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
5. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Further, Contractor will notify TEA within 12 hours of any new report of any security vulnerability that affects their platforms directly or indirectly, that is published in sources including, but not limited to, the Common Vulnerabilities and Exposures and publications of the Cybersecurity Infrastructure and Security Agency (each such event, a "Security Vulnerability").

Furthermore, Contractor will provide an action plan for final resolution of such Security Incident or Security Vulnerability within one week of the date of such Security Incident or Security Vulnerability and complete remediation of such Security Incident or Security Vulnerability must be completed at Contractor's expense.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within 30 days of TEA's written request, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.

- 21. Load Testing:** Prior to delivery or as otherwise mutually agreed, the Contractor must conduct load testing of the Technology Platform with simulated usage commensurate with the expected usage of the Technology Platform and provide documentation to TEA that the Technology Platform has been successfully load tested.

Failed Load Testing: In its sole judgment, TEA may terminate the Contract for cause if the Technology Platform fails to successfully complete load testing, and Contractor shall refund all fees paid to TEA.

Without prejudice to TEA's right to terminate for cause for unsuccessful load testing, TEA may, in its sole determination:

- a. give the Contractor the opportunity to extend the load testing period for up to 30 calendar days to allow the Contractor to diagnose and correct performance problems that may be caused by the Technology Platform or the configuration of the Technology Platform, or;
- b. give the Contractor the opportunity to install additional hardware or platform components, at the Contractor's sole expense, to meet the performance requirements specified, or;
- c. give the Contractor up to 30 calendar days following the diagnosis of any problem related to the Technology Platform to correct, at the Contractor's sole expense, the defects in the Technology Platform.

- 22. Electronic and Information Resources Accessibility Standards:** Contractor represents and warrants that the products and services that are the subject of this Contract comply with the State accessibility requirements for Electronic Information Resources (EIR) specified in 1 TAC 206 and 1 TAC Chapter 213 when such products or services are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accessibility mandated in TAC align with the federal regulations set forth in Section 508 of the Rehabilitation Act of 1973. All current and potential contractors that develop or maintain EIR for TEA shall follow the WCAG (also ISO/IEC standard 40500) as the technical accessibility standard.

Contractor shall provide credible evidence of its ability to produce EIR that complies with all rules and statutes and is acceptable to TEA in TEA's sole discretion.

A website Contractor shall arrange accessibility testing with a third-party company to evaluate the accessibility of the contracted site. The ideal third-party company shall have a proven track record in web accessibility testing and use real users with disabilities for manual testing. The third-party company will provide an accessibility conformance report (ACR) to the Contractor and any recommendations they suggest. The report must be submitted to the TEA Contract Manager for inclusion in the contract file.

- 23. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- 24. TEA Property:** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- 25. Use of State Property:** Contractor 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, TEA's office space, identification badges, TEA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TEA-issued software, and the TEA Virtual Private Network (VPN client)), and any other resources of TEA. Contractor will not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States. Contractor will 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 Contractor, Contractor will be responsible for all charges attributable to Contractor's use of State Property that exceeds the Contract Project. Contractor will fully reimburse such charges to TEA within 10 calendar days of Contractor's receipt of TEA's notice of amount due. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA. Use of State Property for a purpose not authorized by Contract will constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to TEA under Contract, at law, or in equity.
- 26. 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 TEA.
- 27. No Waiver:** Nothing in this Contract shall be construed as a waiver of TEA'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 TEA or the State. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TEA or the State 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. TEA does not waive any privileges, rights, defenses, or immunities available to TEA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.
- 28. Applicable Law and Conforming Amendments:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 29. Federal Rules, Laws, and Regulations that apply to all Federal Programs:** Contractor represents and warrants its compliance with all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
  2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
  3. Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
  4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105;
  5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;



6. The Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments;
7. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
8. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
9. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
10. General Education Provisions Act, as amended.

Contractor 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).

30. **Equal Employment Opportunity:** Contractor represents and warrants its compliance with all applicable duly enacted State and federal laws governing equal employment opportunities.
31. **E-Verify Program:** Contractor certifies that for contracts for services, 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 Contractor to perform duties within Texas; and
  2. All persons, including subcontractors, assigned by Contractor to perform work pursuant to the contract within the United States of America.
32. **Compliance with Laws:** Contractor shall comply with all federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Contractor represents and warrants that it has acquired all applicable licenses, certifications, permits and any other documentation to perform this Contract. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
33. **Legal and Regulatory Actions:** Contractor 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 Contractor or any of the individuals or entities included in the Response within the five calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response including a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. In addition, Contractor represents and warrants that it shall notify TEA in writing within 5 working days of any changes to the representations or warranties in this clause and understands that failure to so timely update TEA shall constitute a material breach of contract and may result in immediate termination of the Contract.
34. **Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure to so comply.
35. **No Exclusivity:** The Contract is not exclusive to the Contractor. TEA may obtain products and related services from other sources during the term of the Contract. TEA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.
36. **Antitrust:** By signing this Contract, Contractor represents and warrants that, in accordance with Texas Government Code Section 2155.005 neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution has, (a) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws; or (b) communicated directly or indirectly the Response to any competitor or any other person engaged in the same line of business as Contractor.
37. **Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit. Contractor represents and warrants that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practices in an administrative hearing or court suit.

- 38. Child Support Obligation Affirmation:** Under Section 231.006 of the Texas Family Code, Contractor certifies that the individual or business entity named in this Contract or Response 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.
- 39. Public Information Act:** Contractor understands that TEA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State. Information, documentation, and other material in connection with this solicitation, this Response or any resulting Contract may be subject to public disclosure pursuant to the Texas 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.

TEA Contract Manager will provide the specific format by which Contractor is required to make the information accessible by the public.

TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to (a) the Response, (b) the goods or services provided under the Contract or (c) information provided to TEA under this Contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in (a) the Response, (b) the Contract, (c) provided under the Contract, or (d) otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided (a) in the Response, (b) under or in this Contract, or (c) otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act. Upon receipt of a request for information related to the goods or services provided under the Contract maintained by the Contractor, the TEA Contract Manager shall request the responsive information from the Contractor. The Contractor shall respond to TEA's request within five working days.

- 40. Lobbying Prohibition:** Contractor represents and warrants that TEA's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- 41. Prohibition of Text Messaging and Emailing while Driving during Official Federal Grant Business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.
- 42. Liability for and Payment of Taxes:** Purchases made for the State's use are exempt from the State Sales Tax and Federal Excise Tax. TEA will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- 43. Conformance:** Contractor represents and warrants that all goods and services furnished will conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and will be free from any defects in materials, workmanship, or design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- 44. Buy Texas Affirmation:** In accordance with Texas Government Code, Section 2155.4441, Contractor agrees that during the performance of a contract for services, Contractor 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. This provision does not apply if Contractor receives any federal funds under this Contract.
- 45. Pricing Certification, Best Pricing:** Contractor hereby represents and warrants that the fees and expenses charged for the work being conducted for TEA under this Contract are no less favorable than Contractor's standard pricing practices utilized for offers for similar work to similar organizations including, without limitation, any pricing provided pursuant to a contract with the Texas Department of Information Resources or any pricing previously provided to TEA. If Contractor enters into any subsequent agreement for similar work with any similar organization during the term of this Contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this Contract, Contractor shall notify TEA promptly of the existence of such more favorable benefits, pricing and/or hourly rates and TEA shall have the right to receive the more favorable contractual terms immediately. If requested in writing by TEA, Contractor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.

- 46. Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Payment for goods or services purchased with State-appropriated funds will be issued by (a) State warrants or (b) electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.x.cpa.state.tx.us/fm/payment/index.php>. Invoices must be submitted to [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov) and TEA Contract Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the latest of:
1. Date on which TEA received the goods;
  2. Date the performance of the service under the Contract is completed; or
  3. Date on which TEA received the complete and correct invoice for goods or services.

Payment for service(s) described in this Contract is contingent upon satisfactory completion of the deliverables or services. For the avoidance of doubt, Contractor must comply with all sections of Chapter 2251 applicable to Contractor, including but not limited to, provisions regarding payments to subcontractors.

TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition provided by the TEA Contract Manager, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. TEA reserves the right to reject and withhold payment for deliverables found to be substandard or not in compliance with the deliverable definition, including test items developed under the Contract.

Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version. Additional costs incurred by Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by Contractor and not charged against the Contract or to TEA. This does not preclude an arrangement that allows Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by Contractor.

Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees must be stated in the competitive solicitation and documented in the Contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall be requested in the final invoice.

Unless otherwise stated, payment under this Contract will be made upon delivery of goods and performance of services based upon submission of an invoice, properly prepared and certified, outlining expenditures by deliverable. Include the Contract number, purchase order number, and the Comptroller Texas Identification Number (TIN) on all invoices. The Deliverables / Tasks and Activities in the invoice must coincide with the Deliverables / Tasks and Activities detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the invoice. The final invoice is due within 45 days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract. All costs must be reasonable, allowable and allocable to the project.

An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due.

- 47. Debts and Delinquencies Affirmation.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State, any payments or other amounts Contractor is otherwise owed under the Contract may be applied toward any debt Contractor owes the State until the debt is paid in full, regardless of when the debt or delinquency was incurred. These provisions are effective at any time Contractor owes any such debt or delinquency. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the State by the Federal Government.

Contractor may verify its account status by accessing the Comptroller's website at [https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons\\_indebted](https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted)

- 48. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- 49. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including

but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.

- 50. Contractor Performance and Past Performance:** TEA is required to submit Contractor Performance reports under Texas Government Code, §2155.089, and 34 TAC, §20.509 and §20.115. The Comptroller's Vendor Performance Tracking System (VPTS) provides the State procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract awarding process. Historic reports submitted prior to February 10th, 2017 will be displayed as "Legacy Satisfactory" or "Legacy Unsatisfactory."

TEA may conduct reference checks with other entities regarding past performance of Contractor or its subcontractors. In addition to evaluating performance through the VPTS, TEA may examine other sources of Contractor performance, including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of Contractor performance may include any governmental entity, whether an agency or political subdivision of the State, another state, or the Federal government. Further, TEA may initiate such examinations of Contractor performance based upon media reports. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in a non-award to Contractor. The VPTS is located on Comptroller's website at: <http://www.txsmartbuy.com/vpts>.

- 51. Time Delays, Suspension, and Sanctions for Failure to Perform:**

Time is of the Essence.

Contractor's timely performance is essential to this Contract.

Suspension

If this Contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of work.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes, but is not limited to, the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- 52. Abandonment or Default:** If Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by TEA based on the seriousness of the default.
- 53. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- 54. Protests:** Any actual or prospective Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this Contract by TEA may submit a formal protest to the Director of TEA's Purchasing and Contracts Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules (19 TAC Section 30.2002).

If the protest procedure results in a final determination by TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the Contract and no remedies under the law against TEA.

- 55. Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract.
- (a) **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 15 calendar days' advance written notice to Contractor. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for payments limited only to the portion of work TEA authorized in writing and which Contractor has completed, delivered to TEA, and which has been accepted by TEA. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TEA shall have no other liability, including no liability for any costs associated with the termination.

(b) **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under the Contract. TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

Following any termination for cause/default, Contractor shall remain liable for all covenants and indemnities under the Contract and shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

(c) **Termination Due to Changes in Law:** If federal or State laws or regulations or other federal or State requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this Contract.

(d) **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all Works and associated documentation and materials obtained from Contractor under the Contract.

(e) **Survival of Terms:** Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, ownership of intellectual property or other property rights, dispute resolution, rights and remedies upon termination, invoice and fees verification.

(f) **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a new contractor, Contractor shall hand-over to the new contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the new contractor within 10 days of announcement of award at the new contractor's expense for data processing and production, packing and shipping. Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the new contractor. Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Contract Manager shall approve the transition plan prior to its implementation. The transition plan must minimize the impacts on continuity of operations and maintain communication with TEA Contract Manager and the new contractor.

(g) **Return of Works and TEA Confidential Information:** Subject to paragraph (f) of this Clause 55 above, upon the request of TEA, but in any event upon termination or expiration of this Contract or a statement of work, Contractor, at its sole expense, shall surrender to TEA all Works pertaining to the Contract Project, any and all documentation or other products or results of the services, and all other documents or materials (and copies of same) furnished by TEA to Contractor, including all materials embodying the Contract Project, regardless of form or whether complete or incomplete, and all TEA Confidential Information upon TEA's request. Failure to timely deliver such Works, information and any and all documentation or other products and results of the services will be considered a material breach of this Contract and TEA has the unrestricted right at any time during the term of this Contract to request the return of TEA Confidential Information and/or the return of Protected Data to all Authorized Users.

Following confirmation by TEA that the copies of such materials are acceptable and the completion of any Contract Project activities for which such materials are required, Contractor will sanitize or destroy all other copies of such material in Contractor's possession and cease using such materials and any information contained therein for any purpose. An authorized officer of Contractor must certify that ALL records have either been properly cleared, purged, destroyed or returned to TEA in order to close out the Contract.

**56. Insurance:** Contractor represents and warrants that it maintains and will maintain the following insurance coverage during the term of this Contract:

<b>Minimum Required Amounts of Insurance Coverage</b>	
<b>Type of Insurance</b>	<b>Each Occurrence/Aggregate</b>
<i>Workers Compensation</i>	Statutory Limits

<i>Employers Liability</i> Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 each Accident \$1,000,000 each Employee \$1,000,000 Policy Limit
<i>Commercial General Liability</i> (Occurrence based)	Bodily Injury and Property Damage \$1,000,000 each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expenses each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented
<i>Automobile Liability</i> All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
<i>Umbrella/Excess Liability</i>	\$1,000,000 per Occurrence
<i>Technology/Professional Liability Insurance, and Intellectual Property Infringement, and Data Protection Liability Insurance (Cyber Liability)</i>	Technology/Professional Liability Insurance, and Intellectual Property Infringement, and Data Protection Liability Insurance (Cyber Liability) with a minimum limit of \$5,000,000 for each and every claim and in the aggregate, covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering the Contractor Materials and Technology Platform, including: (i) intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets); (ii) breaches of security; (iii) a violation or infringement of any laws; and (iv) data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of Personally Identifiable Information or confidential corporate information, transmission of a computer virus or other type of malicious code, and participation in a denial of service attack on a third party. Such insurance must address all of the foregoing without limitation if caused by Contractor, its Affiliates or agents, or an independent contractor working on behalf of the Contractor in providing the Contractor Materials and Technology Platform.

All required insurance coverage must: (a) be in a form satisfactory to TEA; (b) be written on a primary and non-contributory basis with any other insurance coverages Contractor currently has in place; (c) include a Waiver of Subrogation Clause; and (d) issue from a company or companies that: (i) have a Financial Strength Rating of "A" or better from A.M. Best Company, Inc., (ii) have a Financial Size Category Class of "VII" or better from A.M. Best Company, Inc., and (iii) are authorized to do business under the laws of the State.

All required insurance coverage, other than workers compensation and professional liability, must name the State and its Officers, Directors, and Employees as additional insureds.

Contractor shall:

1. provide Certificates of Insurance to the TEA Contracts and Purchasing Division by email at [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and by U.S. First Class Mail within 30 days of the time Contractor submits its signed Contract and at least 30 calendar days prior to any material change of a required policy;
2. provide (a) notice to TEA Contracts and Purchasing Division by email at [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and by U.S. First Class Mail of any cancellation or non-renewal of a required policy at least 30 days prior to such cancellation or non-renewal and (b) Certificates of Insurance for any policy replacing such cancelled or non-renewed policy to TEA Contracts and Purchasing Division by email at [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov) and by U.S. First Class Mail at least 10 calendar days prior to such cancellation or non-renewal.
3. ensure that all required insurance policies are written to cover all products, services, and locations related to Contractor's performance under the Contract; and
4. within five working days of being requested by TEA, provide additional written proof, acceptable to TEA, of all policies and renewal policies. All policies and renewal policies must meet all terms set forth in the Contract.

Contractor further represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least 30 days prior written notice to TEA.

57. **Force Majeure:** Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this 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, but force majeure events specifically exclude cyberattacks, intrusions and incidents of unauthorized access to any Contractor Technology Platform that is provided to TEA hereunder. Each party must inform the other in writing, with proof of receipt, within five working days of the existence of such force majeure, or otherwise waive this right as a defense. Contractor shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. In the event of a force majeure event, Contractor will not increase its charges under this Contract. If the delay or failure continues beyond 10 calendar days, TEA may terminate this Contract in whole or in part with no further liability and will receive a refund of any prepaid fees unearned as of the time of termination.

- 58. Drug Free Workplace Policy:** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 59. TEA No Smoking Policy:** The Texas Facilities Commission (TFC), in compliance with the City of Austin ordinances, prohibits smoking and the use of all tobacco products within 15 feet outside of public entrances to state-owned facilities. TFC has designated where outside smoking areas are located on state property. Smoking and other tobacco use are prohibited in all areas of the William B. Travis Building and any other building occupied by or under the control of TEA. This includes the use of e-cigarettes and vaping products per Texas Facilities Commissions regulations. Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of TEA.
- 60. Performance Measurement:** Contractor shall use OMB-approved standard information collections when providing financial and performance information. Contractor must be able to relate financial data to performance accomplishments of the project. Contractor must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). Contract performance should be measured in a way that will help to improve program outcomes, share lessons learned, and spread adoption of promising practices. Contractor must have effective control over, and accountability for, all funds, property, and other assets. The Contractor must adequately safeguard all assets and assure that they are used solely for authorized purposes.
- 61. Entities that Boycott Israel:** Contractor represents and warrants that: (a) it does not, and shall not for the duration of the Contract, boycott Israel, or (b) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 62. Disaster Recovery Measures and Plan:** Contractor will maintain commercially reasonable business continuity and disaster recovery measures (including but not limited to adequate backups in the case of ransomware) to prevent or cure any resulting delay or failure and must execute such measures prior to being excused from performance due to force majeure. In accordance with 13 TAC Section 6.94(a)(9), Contractor must provide to TEA the descriptions of its business continuity and disaster recovery plan. Contractor shall provide TEA with a copy of updated versions of its business continuity and disaster recovery plan (and that of any subcontractor, including any third party hosting company, that it uses) within 30 days after changes are adopted, or within five days of TEA requesting a copy. Contractor must provide TEA the expected recovery time objective and recovery point objective in the event of major outage. TEA shall be free to share the disaster plan with any government agency with jurisdiction to request a copy from TEA and as otherwise required by court a court of competent jurisdiction, or any federal or State law, including without limitation the Public Information Act, in accordance Clause 39 hereof.
- 63. Computer Equipment Recycling Program:** If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in Compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
- 64. Television Equipment Recycling program:** If Contractor is submitting a Response for the purchase or lease of covered television equipment, then Contractor certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
- 65. Secure Erasure of Hard Disk Capability:** All equipment provided to TEA by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.
- 66. Electrical Items:** All electrical items purchased under this Contract 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).
- 67. Independent Contractor:** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor, Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers are not employees of TEA or the State. Contractor shall have no claim against TEA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and TEA.

- 68. Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 69. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees, agents or representatives, including any subcontractors and employees, agents or representative of such subcontractors assigned to TEA projects, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- 70. Criminal Background Checks:** If during the term of this Contract, Contractor and/or Contractor's staff, or subcontractor and/or subcontractor's staff have either (a) access to Texas public school campuses, or (b) access to TEA Confidential Information or TEA data systems, all Contractor and/or Contractor's staff and/or subcontractor and/or subcontractor's staff must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor, Contractor's staff, subcontractor or subcontractor's staff is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
1. Contractor, Contractor's staff, subcontractor or subcontractor's staff will not meet eligibility standards and be permanently disqualified from serving on TEA assignments if an initial review of criminal history records indicates:
    - a. Felony conviction or deferred adjudication;
    - b. Offense on conviction of which the defendant is required to register as a sex offender;
    - c. Conviction or deferred adjudication of a Class A Misdemeanor; or
    - d. Offense under the laws of another state or federal law that is equivalent to an offense specified above, or their criminal record indicates an unresolved Felony or Class A misdemeanor.
  2. Educator Certification Required: If the individual is a certified educator, the educator's certificate(s) must currently be valid and in good standing. If the certificate(s) is/are not in good standing (inactive, invalid, revoked, suspended or surrendered) the individual is not eligible for TEA appointments, assignments, contract, or grant awards or to provide services to school entities on behalf of TEA.
- 71. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TEA or another State agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (i) the nature of the previous employment with TEA or the other State agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- 72. No Conflicts of Interest:** 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.
- 73. Collusion:** Contractor represents and warrants that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's Response is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- 74. Suspension and Debarment:** Contractor represents and warrants that it and its principals are not suspended or debarred from doing business with the State or federal government as listed on the State Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
- 75. Financial Participation Prohibited:** Under Section 2155.004(b) of the Texas Government Code, 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 the contract may be terminated and payment withheld if this certification is inaccurate.
- 76. Foreign Terrorist Organizations:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 77. Former TEA Employees:** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of TEA during the 12 month period immediately prior to the date of execution of the Contract. In the case of professional services contracts as described by Chapter 2254 of the Texas Government Code, Contractor represents and warrants that if a former employee of TEA was employed by Contractor within one year of the employee's leaving TEA, then such employee will not perform services on projects with Contractor that the employee worked on while employed by TEA.
- 78. Restricted Employment of Certain State Personnel:** Pursuant to Section 572.069 of the Texas Government Code, Contractor represents and warrants that it has not employed and will not employ a former State officer or employee who participated in a



procurement or contract negotiations for TEA involving Contractor within two years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former State officers or employees whose State service or employment ceased on or after September 1, 2015.

- 79. **Dealings with Public Servants:** Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.
- 80. **Prior Disaster Relief Contract Violation:** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit State agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, 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.
- 81. **Ability to Conduct Business in Texas:** Contractor represents and warrants that it is duly organized, validly existing and in good standing under the laws of its state of organization and shall be authorized to do business in the State in accordance with Texas Business Organizations Code, Title 1, Chapter 9.
- 82. **Headings:** The headings of articles, sections or clauses contained in this Attachment B and in the Contract, its attachments and annexes are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision hereof or thereof.
- 83. **Assignment:** Contractor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of TEA, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. To seek consent for assignment of this Contract, Contractor should contact [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov).
- 84. **Contracting Information Responsibilities (effective January 1, 2020):** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (a) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TEA for the duration of the Contract, (b) promptly provide to TEA any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TEA, and (c) on termination or expiration of the Contract, either provide at no cost to TEA all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TEA. 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.
- 85. **Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, 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.
- 86. **Executive Head of State Agency Affirmation:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.
- 87. **Point of Contact, Responsiveness and Escalation:** All notices, reports, documents, correspondence or other data required by this Contract shall be in writing and delivered to the individuals listed below, their successors in office, or the TEA employee requesting such notice, report, document, correspondence or other data, on or before scheduled due dates or where no due date is specified within five working days of any request for such notice, report, document, correspondence or other data by TEA. Within 30 days of execution of this Contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Contract Manager level.

<u>TEA</u>	<u>Contractor</u>
Texas Education Agency	
1701 North Congress Ave.	
Austin, TX 78701	
Attn:	

- 88. **False Statements:** Contractor represents and warrants that all statements and information contained herein are current, complete, true and accurate. Submitting a document 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 Response and any resulting Contract. During the term of the Contract, Contractor shall promptly disclose to TEA all changes that occur to the representations, warranties, and certifications contained herein. Contractor covenants to fully cooperate in the development and execution of any resulting documentation necessary to maintain accurate record of the representations, warranties and certifications.

The Texas Government Code and Family Code cites referenced in this document may be viewed at:

<http://www.statutes.legis.state.tx.us/>

The TAC cites referenced in this document may be viewed at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

**Attachment E**  
**[Intentionally Omitted.]**

**Attachment F**  
**[Intentionally Omitted.]**

**Attachment G**  
**[Intentionally Omitted.]**

**ANNEX – A**  
**Certification Regarding Debarment, Ineligibility and Voluntary Exclusion**

(Required for all federally-funded contracts)

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). The regulations may be viewed and downloaded from the website: <http://www.sba.gov/sites/default/files/files/SBA%201624.pdf>

**READ INSTRUCTIONS ON NEXT PAGE BEFORE COMPLETING CERTIFICATION**

**CERTIFYING STATEMENT**

- (1) The prospective lower tier participant certifies, by submission of this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.

Public Consulting Group, LLC

*3-22-2022*

Contractor Name

Date

William S. Mosakowski, President and CEO

Title and Printed Name

  
Signature of Authorized Representative

SBA Form 1624 (12/92)

### Instructions for Certification

By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

- (1) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- (2) The prospective lower tier participant shall provide immediate written notice to the contracting director if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (3) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the agency's contracting office for assistance in obtaining a copy of those regulations (13CFR Part 145).
- (4) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (5) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (6) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not aware that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.
- (7) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (8) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**ANNEX – B**

**Part 1**

**Lobbying Certification**

**(Required for all federally-funded contracts greater than \$100,000)**

Submission of this certification is required by the U.S. Department of Education pursuant to 31 U.S.C. 1352. It is a prerequisite for making or entering into a contract or subcontract over \$100,000 with any entity. (See next page of this schedule for further instructions.)

**The undersigned certifies, to the best of his or her knowledge and belief, that:**

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, Annex B – Disclosure of Lobbying Activities Part 2, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

**This certification is a material representation of fact on which the U.S. Department of Education and the Texas Education Agency relied when it made or entered into this grant or Contract. Any organization that fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.**

Public Consulting Group, LLC

Contractor Name

William S. Mosakowski, President and CEO

Printed Name and Title

  
Signature

3-22-2022

Date



**General Instructions for Part 1  
Lobbying Certification  
(Required for all federally-funded contracts greater than \$100,000)**

This is a Congress of the United States and the U. S. Department of Education requirement. The Contractor must submit this schedule to TEA for a federal-funded contract(s) with an approved amount in excess of \$100,000. TEA will be unable to pay for any obligations established by the Contractor unless this schedule is submitted.

In addition, if the Contractor makes a subgrant or subcontract in excess of \$100,000 to another organization of any type, then the Contractor shall require this form to be filed with and retained by the Contractor. According to federal law, failure to obtain the certification subjects the Contractor to civil penalties.

- (1) This certification states that the Contractor is prohibited from using federal funds for influencing or attempting to influence any member of Congress or its employees or any federal agency employee concerning the making or awarding of a federal grant.
- (2) This certification also states that if the Contractor pays or has paid any funds other than federal funds to any one person or organization for influencing or attempting to influence any member of Congress or its employees, or any federal agency employee concerning the making or awarding of a federal grant, that the Contractor will disclose to whom payments were made, how much money was involved and the type of work involved. The Contractors must use Annex B – Disclosure of Lobbying Activities Part 2 for complying with this disclosure requirement. The Contractor shall require this form to be filed with the Contractor on any subgrants or subcontracts it makes in excess of \$100,000 if funds have been spent as stipulated in this paragraph. The Contractor will then forward a legible copy of Annex B – Disclosure of Lobbying Activities Part 2 to the Texas Education Agency.

Additionally, this certification requires the Contractor to incorporate the language of this certification into any award or Contract documents for awarding subgrants or subcontracts that exceed \$100,000 and that subgrantees and subcontractors shall certify and disclose accordingly.

**TEXAS EDUCATION AGENCY**  
**Disclosure of Lobbying Activities**  
**Part 2**

**Do not complete this disclosure form unless lobbying activities are being disclosed.**

Complete this form to disclose lobbying activities for lobbying services procured (pursuant to Title 31 U.S.C. §1352). This disclosure form is required for any federal grant/contract received in excess of \$100,000 and on any subgrant/subcontract made by the grantee/contractor. (Read the instructions for this schedule for further information.)

<p>1. Type of Federal Action:</p> <input type="checkbox"/> Contract <input type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Loan <input type="checkbox"/> Loan Guarantee <input type="checkbox"/> Loan Insurance	<p>2. Status of Federal Action</p> <input type="checkbox"/> Bid/Offer/Application <input type="checkbox"/> Initial Award <input type="checkbox"/> Post-award	<p>3. Report Type</p> <input type="checkbox"/> Initial Filing <input type="checkbox"/> Material Change For Material Change Only: Year _____ Quarter _____ Date of Last Report: _____
<p>4. Name and Address of Reporting Entity:</p> <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> :  Congressional District, if known: _____.	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p style="text-align: center;"><b>Texas Education Agency</b>  <b>1701 N. Congress Avenue</b>  <b>Austin, Texas 78701</b></p> Congressional District: 10	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p style="text-align: center;">CFDA Number, <i>if applicable</i>: _____</p>	
<p>8. Federal Action Number, <i>if known</i>:</p>	<p>9. Award Amount, <i>if known</i>:</p> <p style="text-align: center;">\$ _____</p>	
<p>10. A) Name and Address of Lobbying Entity</p> <p style="text-align: center;"><i>(If individual, Last name, First name, MI):</i></p>	<p>B) Individuals Performing Services (include address, if different from 10 A)</p> <p style="text-align: center;"><i>(Last name, First name, MI):</i></p>	
<p>11. Amount of Payment \$ _____</p> <p>12. Form of Payment _____</p> <p>13. Type of Payment <input type="checkbox"/> retainer <input type="checkbox"/> one-time fee  <input type="checkbox"/> commission</p>	<p>14. Brief Description of Services Performed</p>	
<p>15. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31 U.S.C. §1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>	
<p><b>Federal Use Only:</b></p>	<p>Authorized for Local Reproduction Standard Form—  LLL (Rev. 7-97)</p>	

**General Instructions for  
Disclosure of Lobbying Activities Part 2**

The filing of this form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report.

- (1) Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
- (2) Identify the status of the covered Federal action.
- (3) Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

Each organization shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such organization. An event that materially affects the accuracy of the information reported includes:

- (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (b) A change in the organization(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (c) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action.
- (4) Enter the full name, address, city, state, and zip code of the reporting entity. Include congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subawardee. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards, include but are not limited to, subcontracts, subgrants and contract awards under grants.
  - (5) If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include congressional district, if known.
  - (6) Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
  - (7) Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
  - (8) Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-701-18-054."
  - (9) For a covered Federal action where there has been an award by the Federal agency, enter the Federal amount of the award for the prime entity identified in item 4 or 5.
  - (10)
    - (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    - (b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

The certifying official shall sign and date the form, print his/her name, title, and telephone number.

**ANNEX - C**  
**[Intentionally Omitted.]**