

Purchase Order Terms and Conditions – Effective 9/1/2021

By accepting this Purchase Order (PO) and providing goods and/or services to the Texas Department of Insurance (TDI) or the Office of Injured Employee Counsel (OIEC), Contractor agrees to comply with these PO Terms and Conditions. In the event of any conflict or inconsistency between these PO Terms and Conditions and any other part of the PO, these terms and conditions shall prevail unless otherwise stated on the PO. TDI, or OIEC, as applicable, disclaims any terms and conditions provided by Contractor unless agreed upon in writing by both parties.

In the event of any conflict between these PO Terms and Conditions and any terms and conditions provided by Contractor, these TDI/OIEC terms and conditions prevail. POs that result from a formal solicitation shall be governed by the terms and conditions of the solicitation and resulting contract unless otherwise specified.

I. PO Requirements

1. The PO shall be governed, construed, and interpreted under the laws of the State of Texas.
2. Contractor shall comply with all rules, regulations, and statutes relating to purchasing in the State of Texas, in addition to the requirements of the PO.
3. Questions about POs must include the PO number and the PO issuance data or the PO Change Notice (POCN) date.

II. Specifications or Statement of Work

1. Contractor must comply with the specifications as outlined in the PO and any attachments to the PO.
2. Unless otherwise specified, goods/products shall be new and unused and of current production, as applicable.
3. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
4. TDI/OIEC will not be bound by any oral statement or representation contrary to the written specifications or the PO.
5. Manufacturer's standard warranty shall apply unless otherwise stated in the PO, as applicable to goods and products.

III. Shipment and Delivery

1. Contractor must provide or deliver the goods/products or services within the timeframes stated in the specifications or as indicated on the PO, and in accordance with the delivery timeframes quoted to TDI/OIEC. "Delivery Days" means calendar days unless otherwise specified. Failure to provide the goods/products or services within the timeframes stated may cause the PO to be canceled.
2. If a delay is foreseen, Contractor must give written notice to TDI/OIEC no later than five (5) business days in advance of the expected delivery date. Contractor must keep TDI/OIEC

- informed about the status of the order. Default on promised delivery without an accepted reason, or failure to meet specifications, authorizes TDI/OIEC to purchase the goods/products or services elsewhere and to charge the full increase, if any, in cost and handling to the defaulting Contractor.
3. The delivery location is listed in the "Ship To" block. Any change will be communicated through a POCN. The terms of the PO are "no arrival, no sale."
 4. Freight on Board (F.O.B.) Destination. Freight prepaid and allowed unless delivery terms are specified otherwise and accepted by TDI/OIEC. Transportation costs shall be included in the invoice, if applicable. If transportation costs are based on actual costs, a copy of the freight billing showing actual charges for the shipment must be attached to the invoice.
 5. Title and risk of loss of goods shall not pass to TDI/OIEC until TDI/OIEC actually receives and takes possession of the goods at the place of delivery.
 6. Contractor, at Contractor's cost, will package goods in accordance with commercial practice to secure the lowest appropriate transportation cost, with requirements of the common carrier and with applicable specifications. Each shipped package/container shall be clearly and permanently marked as follows:
 - a. Contractor's name and address;
 - b. Name and address of the place of delivery;
 - c. PO Number;
 - d. The package/container number and the total number of packages/containers (i.e. "box 1 of 4 boxes"); and
 - e. The package/container bearing the packing list.

Contractor's count or weight shall be conclusive on shipments not accompanied by a packing list.

TDI/OIEC will refuse packages that do not have the PO Number clearly marked on the shipping label.

7. No substitutions permitted without prior written approval of TDI/OIEC.
8. **Physical delivery** of goods/products must be made to the address below and only during the hours stated unless prior written approval has been obtained from TDI/OIEC:
 - a. **Physical Address**
7915 Cameron Road
Austin, Texas 78754
 - b. **Delivery Hours** – Only between 1pm and 4pm Central Time, Monday – Friday, excluding holidays.
9. **Electronic delivery** of software must be made to ITSLibrary@tdi.texas.gov.

IV. Inspections and Tests

1. All products and goods will be subject to inspection and test by TDI/OIEC. Tests may be performed on samples submitted with the bid, if requested, or on samples taken from regular shipment.
2. All costs shall be the responsibility of the Contractor if products or goods fail to meet all conditions and requirements specified in the PO or the specifications of the manufacturer.
3. Goods or products delivered and rejected in whole or in part may, at TDI/OIEC's option, be returned to Contractor or held for disposition at Contractor's expense.

4. Latent defects may result in revocation of acceptance, as applicable to products and goods.

V. Invoices and Payment

1. Payment will 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 governs remittance of payment and remedies for late payment and non-payment.
2. Payment will be made following satisfactory delivery and acceptance of goods/services and TDI/OIEC's receipt of a correct invoice. No invoice shall be paid in excess of the net amount on the PO.
3. Each invoice must include:
 - a. Contractor's name, address, and telephone number;
 - b. Contractor's Vendor Identification Number referenced on the PO;
 - c. PO number;
 - d. Description of goods/products or services, quantity(ies), applicable unit prices, extended pricing, and invoice total; and
 - e. Shipment data of goods/products.
4. All invoices must be sent to invoices@tdi.texas.gov.

VI. TDI/OIEC's Tax Exemption

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

VII. Price

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

VIII. Withholding/Recoupment of Payment

1. TDI/OIEC may withhold or recoup payments due or paid under the PO, in whole or in part, in the event of Contractor's noncompliance with any terms or provisions of the PO, any federal or state law or regulation, or any TDI/OIEC rules or standards including, but not limited to, the requirements specifically stated in the PO relating to Contractor's performance.
2. TDI/OIEC may withhold or recoup payment due to Contractor's failure to return materials or supplies given to Contractor for the sole purpose of carrying out the services required under a

PO and the withholding or recoupment of payment shall be for the replacement cost of such materials or supplies and not the original purchase price.

IX. Warranties

Contractor warrants and guarantees all of the following with respect to all requested items required under the PO:

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

X. Notices

1. Any written notices required under the PO will be by email, hand delivery to Contractor's office address specified on page 1 of the PO, or by U.S. Mail, certified, return receipt requested.
2. Notices must include the PO number and the PO issuance data or the PO Change Notice (POCN) date.
3. Notice to TDI must be delivered to:
Texas Department of Insurance
Purchasing and Contract Administration, MC AO-PGS
P.O. Box 12030
Austin, TX 78711-2030
Email: Purchasing@tdi.texas.gov
4. Notice will be effective on receipt by the affected party.
5. Either party may change the designated notice address by written notification to the other party.

XI. Vendor Performance

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

XII. Terms and Conditions Required by the Texas Procurement and Contract Management Guide

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

1. Antitrust

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

2. Assignment for Services

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

3. Buy Texas Affirmation

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

4. Child Support Obligation

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

5. Cloud Computing State Risk and Authorization Management Program (TX-RAMP)

Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Respondent represents and warrants that it complies with the requirements of the state risk and authorization management program and Respondent 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.

6. Computer Equipment Recycling (purchase or lease of computer equipment only)

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

7. Contracting Information Responsibilities

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TDI for the duration of the contract, (2) promptly provide to TDI any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TDI, and (3) on termination or expiration of the Contract, either provide at no cost to TDI all contracting information related to the Contract that is in the custody or possession of Contractor or preserve the contracting information related to the Contract as provided the records retention requirements applicable to TDI. 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 Contractor agrees that the Contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

8. 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.

9. Critical Infrastructure Affirmation

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

10. Cybersecurity Training

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

11. Dealings with Public Servant Affirmation

Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.

12. Debts and Delinquencies

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

13. Disaster Recovery Plan

In accordance with 13 TAC § 6.94(a)(9), Contractor shall provide to TDI/OIEC the descriptions of its business continuity and disaster recovery plans.

14. Disclosure of Prior State Employment (Consulting Services only)

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 TDI/OIEC or another agency at any time during the two years preceding the contract or, in the alternative, Contractor has disclosed to TDI/OIEC the following: (i) the nature of the previous employment with TDI/OIEC or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

15. Dispute Resolution

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

16. Energy Company Boycotts

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

17. Entities that Boycott Israel

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

18. E-Verify

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.

19. Excess Obligations

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

20. 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.

21. Executive Head of a State Agency Affirmation

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

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Contractor: _____

Date of Employment with Contractor: _____

22. False Statements

Contractor represents and warrants that all statements and information prepared and submitted in the bid document are current, complete, true, and accurate. Submitting a bid with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted bid and any resulting contract.

23. Firearm Entities and Trade Associations Discrimination

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

24. Financial Participation Prohibited Affirmation

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

25. 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.

26. Former TDI/OIEC Employees (Employment Contracts, Professional Services, or Consulting Services only)

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 TDI/OIEC during the twelve (12) month period immediately prior to the date of execution of the contract.

27. 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 TDI/OIEC.

28. Human Trafficking

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.

29. Indemnification (General)

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

30. Indemnification (Intellectual Property only)

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TDI/OIEC AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) TDI/OIEC'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TDI/OIEC BY CONTRACTOR OR OTHERWISE TO WHICH TDI/OIEC HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TDI/OIEC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE TDI/OIEC AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TDI/OIEC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TDI/OIEC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TDI/OIEC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TDI/OIEC'S COUNSEL.

31. National Anthem Verification

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. TDI or the Attorney General may strictly enforce this provision.

32. 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.

33. Prior Disaster Relief Contract Violation

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

34. Public Information Act

Information, documentation, and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from

disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

35. State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

36. Suspension and Debarment

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

37. Television Equipment Recycling Program (Purchase or lease of covered television equipment only)

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

XIII. Terms and Conditions Recommended by the Texas Procurement and Contract Management Guide

1. Assignment for Goods

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

2. Electronic and Information Resources (EIR) Accessibility Standards

- a) For all EIRs, Contractor shall provide all that apply:
 - 1) accessibility information for the purchased products or services, where applicable, through one of the following methods:
 - a. the URL to completed VPATs or equivalent reporting templates;
 - b. an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
 - c. the URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any products under contract; and
 - 2) credible evidence of Contractor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Contractor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

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

3. Force Majeure

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

4. Independent Contractor

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

5. Sovereign Immunity

Nothing in the contract shall be construed as a waiver of TDI/OIEC'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 TDI/OIEC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TDI/OIEC or the State of Texas under the contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TDI/OIEC does not waive any privileges, rights, defenses, or immunities available to TDI/OIEC by entering into the contract or by its conduct prior to or subsequent to entering into the contract.

6. Termination

a) TDI/OIEC may terminate or cancel the contract in any one of the following circumstances:

1) Termination for Convenience

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

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

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

3) Termination for Cause

TDI may terminate the Contract immediately, in whole or in part, for cause by providing written notice to Contractor of such termination if Contractor fails to provide the contracted goods or services according to the provisions of the Contract, fails to execute the work properly, performs work in an unsatisfactory manner, or fails to comply with any of the terms or conditions of the Contract. Termination is not an exclusive remedy but is in addition to any other rights and remedies provided in equity, by law, or under this Contract. In the event of termination for cause, Contractor will be held liable for all legal fees and other costs and expenses, including but not limited to attorney's fees and court costs, costs to re-solicit the contract, and any other damages to the State of Texas or TDI resulting from Contractor's default. 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 scope of work is significantly changed.

b) TDI/OIEC's Right to Recover

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

c) Notice of Termination or Cancellation Delivery

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

d) Termination or Cancellation Effectiveness

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

e) TDI/OIEC Not Liable Upon Termination

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