



Amendment Option No. 3  
TXDPS Contract No. 405-LES-14-41483  
to  
COA Contract No. 5800 16070800039  
for  
Criminal History Record Information Services  
between  
Idemia Identity & Security USA LLC and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective September 1, 2019 to August 31, 2021. Zero (0) options remain.
- 2.0 The total Contract amount is increased by \$116,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/17/16 – 08/31/17	\$58,000.00	\$58,000.00
Amendment No. 1 : Option 1 09/01/17 – 08/31/19	\$116,000.00	\$174,000.00
Amendment No. 2: Name change	0	0
Amendment No. 3: Option 2 09/01/2019 – 08/31/2021	\$116,000.00	\$290,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:  7.22.19

Printed Name: Pierre Chaboussant  
Authorized Representative

Signature & Date:  7-23-19

Brenita Selement, Procurement Specialist II  
City of Austin  
Purchasing Office

Idemia Identity & Security USA LLC  
296 Concord Road  
Suite 300  
Billerica, MA 01821



Amendment No. ~~X~~ 2  
to  
Contract No. 16070800039  
for  
Criminal History Record Information Services  
Between  
Morphotrust USA LLC. dba Morphotrust USA  
and the  
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor name as requested and documented by the vendor.

	From	To
Vendor Name	Morphotrust USA LLC. dba Morphotrust USA	Morpho USA INC. dba Idemia Identity & Security USA LLC.
Vendor Code	V00000927610	V00000920923
FEIN	[REDACTED]	[REDACTED]

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Beatrice Washington  
Beatrice Washington,  
Contract Management Specialist III  
City of Austin, Purchasing Office

5-25-18  
Date



Amendment Option No. 1  
**TXDPS Contract No. 405-LES-14-41483**  
to  
COA Contract No. 5800 16070800039  
for  
Criminal History Record Information Services  
between  
Morphotrust USA, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective September 1, 2017 to August 31, 2019. One 24 month option remain.
- 2.0 The total Contract amount is increased by \$116,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/17/16 – 08/31/17	\$58,000.00	\$58,000.00
Amendment No. 1 : Option 1 09/01/17 – 08/31/19	\$116,000.00	\$174,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

Printed Name: Robert Eckel  
Authorized Representative President & CEO

Signature & Date:

Linell Goodin-Brown, Contract Management Supervisor II  
City of Austin  
Purchasing Office

Morphotrust USA, LLC  
296 Concord Rd. Ste. 300  
Billerica, MA 01821

**CONTRACT BETWEEN THE CITY OF AUSTIN ("CITY")  
AND  
MORPHOTRUST USA, LLC ("CONTRACTOR")  
FOR  
CRIMINAL HISTORY RECORD INFORMATION SERVICES  
MA 5800 16070800039**

This Contract is between Morphotrust USA, LLC having offices at 296 Concord Road, Suite 300, Billerica, Massachusetts 01821 and the City, a home-rule municipality incorporated by the State of Texas, and is effective on the date executed by the City ("Effective Date"). Solicitation requirements are met by using the Contractor's Texas Department of Public Safety Contract No. 405-LES-14-41483 ("TXDPS Contract").

**1.1 This Contract is composed of the following documents:**

- 1.1.1 The TXDPS Contract
- 1.1.2 This document
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, the City's Non-Discrimination Certification
- 1.1.5 Exhibit C, the City's Non-Suspension & Debarment Certification.

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 The TXDPS Contract as referenced in Section 1.1.1
- 1.2.2 This document
- 1.2.3 Exhibit A as referenced in Section 1.1.3
- 1.2.4 Exhibit B as referenced in Section 1.1.4
- 1.2.5 Exhibit C as referenced in Section 1.1.5.

**1.3 Quantity.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities.

**1.4 Term of Contract.** The Contract shall be in effect until August 31, 2017 and may be extended thereafter for up to two 24 month extension options, subject to the extension of the TXDPS Contract, approval of the Contractor and the City Purchasing Officer or his designee. The City reserves the right to transfer this Contract by amendment to future Texas Department of Public Safety contract(s) that supersede the TXDPS Contract if the terms and conditions are favorable to the City.

**1.5 Compensation.** The Contractor shall be paid a total not-to-exceed amount of \$58,000 for the initial Contract term and \$116,000 for each extension option for a total amount not-to-exceed \$290,000.

This Contract (including all Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.



In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

MORPHOTRUST USA, LLC

ROBERT ECKEL

Printed Name of Authorized Person

Signature

CEO

Title:

10/17/16

Date:

CITY OF AUSTIN

TRACY FRANKLIN

Printed Name of Authorized Person

Signature

SENIOR BUYER SPECIALIST

Title:

10/17/16

Date:

Exhibit A - Supplemental Terms  
Exhibit B - Non-Discrimination Certification  
Exhibit C - Non-Suspension & Debarment Certification

**EXHIBIT A  
SUPPLEMENTAL TERMS**

1. **Invoices.** Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Additionally, invoices shall include, as applicable, the following information: A unique Purchase or Delivery Order Number, Equipment and/or parts numbers and descriptions, unit number, license plate number, or vehicle identification number (VIN), credit for core charge for core exchanges, documentation to support all parts charged to the City, the Contractor's business name, "remit to" name and address, and the taxpayer identification number. The, taxpayer identification number on the invoice must exactly match the information in the Vendor's registration with the City. Invoices received without all required information cannot be processed and will be returned to the Contractor. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

2. **Payment.**

2.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

2.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

2.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

2.3.1 delivery of defective or non-conforming deliverables by the Contractor;

2.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

2.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

2.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

2.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

2.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

2.3.7 failure of the Contractor to comply with any material provision of the Contract.

2.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

2.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds. Since all City departments will access to the services under this Contract, the Contractor shall allow multiple City accounts and/or credit cards to be utilized by the City for payments.

3. **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4. **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

4.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

4.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

4.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

5. **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

6. **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

6.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

6.2 The Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

6.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7. **Subcontractors.**

7.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any

Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

8. **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

**EXHIBIT B**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment*

advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this OCT day of 17, 2016

CONTRACTOR

MorphoTrust USA, LLC

Authorized Signature

Title

CEO



**EXHIBIT C**  
**City of Austin, Texas**

**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Contractor hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Dated this OCT day of 17, 2016

CONTRACTOR

MorphoTrust USA, LLC

Authorized Signature

Title

CEO

**SOLICITATION, OFFER, AND AWARD**

<b>1. CONTRACT NO.</b> 405-LES-14-41483	<b>2. SOLICITATION NO.</b> 405-LES-14-O41483	<b>3. TYPE OF SOLICITATION</b> <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFO) <input type="checkbox"/> NEGOTIATED (RFP)	<b>4. DATE ISSUED</b>  August 11, 2014
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**FAST Program Services**

5. Sealed offers will be received by the Department until 3:00 P.M. local time on September 9, 2014 and submitted to issuing office:  Texas Department of Public Safety Procurement and Contract Services Department 5805 North Lamar, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-LES-14-O41483	6. FOR INFORMATION CONTACT:  Ray D. Miller, CTPM, Contract Administrator  PHONE: (512) 424-2205 FAX: (512) 424-5419 E-MAIL: <a href="mailto:ray.miller@dps.texas.gov">ray.miller@dps.texas.gov</a>
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**OFFER (Must be fully completed by Respondent)**

<b>7. DISCOUNT FOR PROMPT PAYMENT:→</b>	<b>10 CALENDAR DAYS</b> 0%	<b>20 CALENDAR DAYS</b> 0%	<b>30 CALENDAR DAYS</b> 0%	<b>CALENDAR DAYS</b> 0%
<b>8. ACKNOWLEDGMENT OF AMENDMENTS:</b> (The Respondent acknowledges receipt of amendments to this Request for Offers and related documents numbered and dated:	<b>AMENDMENT NO.</b>	<b>DATE</b>	<b>AMENDMENT NO.</b>	<b>DATE</b>
	1	9/3/2014		
<b>9. NAME AND ADDRESS OF CONTRACTOR:→</b>	MorphoTrust USA, LLC 296 Concord Road, Suite 300 Billerica, Massachusetts 01821		<b>10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)</b> Robert Eckel, President and CEO	
<b>11. TELEPHONE NO. (Include area code)</b>  978-215-2400	<b>12. SIGNATURE</b>  On File		<b>13. OFFER DATE</b>  September 9, 2014	

**TO BE COMPLETED AT TIME OF AWARD**



Document Type: D

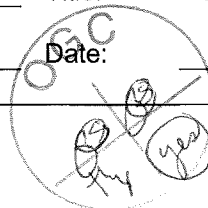
Statutory Cite: Texas Government Code, Section 2157.068

**NOTE TO RESPONDENTS:** The Department reserves the right, in its sole discretion, to modify this language prior to award. This award document consummates the Contract which consists of the following documents: (a) this Offer and Award document; (b) the solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Offer, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Offer and Award document; negotiated changes; BAFO; points of clarification; RFO as posted; Contractor's Offer.

This Contract will consist of a Base Period from Date of Award through August 31, 2017 with two (2) two (2) year Option Period Renewals: (September 1, 2017 through August 31, 2019; September 1, 2019 through August 31, 2021 ), as detailed within Section F.2, Contract Term.

By: <u></u> Name: Robert Eckel Title: President and CEO Date: <u>4/29/2015</u>	By: <u></u> Name: Steven C. McCraw Title: Director Date: <u>6/5/15</u>
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The following items are mutually agreed to by the Contractor and the Department and are hereby incorporated into this Contract.

1. The Solicitation, Offer and Award form has been revised to update the Contract Number, remove the offer preparation instructions, and to add the Contractor's name in the Contractor signature block.
2. Section A, Definitions, has been revised as follows:
  - Revise definition of "Contract" to include awarded firm;
  - Revise definition of "Contractor" to include awarded firm;
  - Delete definition of "Offer;"
  - Delete definition of "Best and Final Offer (BAFO)"; and
  - Delete definition of "Respondent".
  - Revise definition of "Service Commencement Date" to be September 1, 2015.
3. Section B.1.1, Fees are Sole Compensation, has been revised to clarify the status of value-added services.
4. Section B.1.4, Audited Financial Statements, has been revised to include contract language rather than solicitation language.
5. Section B.2, Fee Schedule, has been revised to include contract rather than solicitation language and to incorporate the Contractor's name and address and rates under this Contract.
6. Section B.2.1, FAST, has been revised to incorporate the fees that were in Exhibit J.6 and identify all FAST fees.
7. Section C, Statement of Work, has been revised throughout to include contract rather than solicitation language and reflect negotiations of the Department and the Contractor.
8. Section C.1, The Department Environment, has been revised to reflect contract language rather than solicitation language and reflect the updated Service Commencement Date.
9. Section C.2, Overview, has been deleted.
10. Section C.3, Scope of Work, has been revised to clarify the requirements in the event of federal and state legislative changes.
11. Section C.4.B, General Duties and Obligations, Out of State Coverage, has been revised to clarify status of out of state services and fees.
12. Section C.4.C, General Duties and Obligations, Out of Country Coverage, has been revised to clarify status of out of country services and fees.
13. Section C.5.1.1, Statewide Coverage, has been revised to include contract language rather than solicitation language.

14. Section C.5.1.2, Out of State Coverage, has been revised to update the requirements for the plan to address the fingerprint capture and submission for out of state applicants wishing to submit electronic fingerprints to the Department.
15. Section C.5.1.3, Out of Country Coverage, has been revised to update the requirements for the plan to address the fingerprint capture and submission for out of country applicants wishing to submit electronic fingerprints to the Department.
16. Section C.5.2, Hours of Operation, has been revised to reflect negotiations regarding mutual agreement upon adjustments to days and hours of operation.
17. Section C.5.2.C.ii, Hours of Operation, has been revised to clarify the fees.
18. Section C.5.3.3.A, FAST, Co-Locations, has been revised to include the Contractor's subcontractors.
19. Section C.5.3.3.C, FAST, Co-Locations, has been added to include the existing co-location facilities.
20. Section C.5.7.3.L, FAST Transactions, has been revised to add clarifying language.
21. Section C.6, Transition, has been revised to clarify the timelines in relation to Date of Award.
22. Section C.9, Customer Service Standards, has been revised to add the Department's dress code as an exhibit.
23. Section C.11.1, has been deleted because it was duplicated in Section I.17.3.
24. Section C.14.E, Department Records and Data Retention, has been added to detail the Contractor's duty to comply with Texas Government Code, Chapter 560, Biometric Identifiers.
25. Section C.15, Live Scan Device Workstation at Department Headquarters, has been added to include a Live Scan Device at the Department Headquarters.
26. Section F.2, Contract Term, has been revised to reflect the changes to the Base Period.
27. Section G.1.2, Contract Administrator, has been revised to include the name of the appropriate contact person for the Department.
28. Section G.1.5, Contractor's Project Manager, has been revised to include the Contractor's information.
29. Section, G.3, Payments, has been revised to include updated invoicing and payment language and to incorporate the Contractor's information.
30. Section H, Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.

31. Section H.18, Immigration, has been revised to include language regarding E-Verify as required by Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014.
32. Section H.34, Sales and Use Tax, has been revised to include language if any fees are subject to state sales tax or other taxes.
33. Section H.65, Rights to Data, Documents and Computer Software (State Ownership), has been modified to reflect negotiated language.
34. Section H.66, Note to Contractor, has been deleted.
35. Section I, Supplemental Terms and Conditions, has been revised to delete solicitation language under the header title for Section I.
36. Section I.3, Historically Underutilized Business (HUB) Participation, has been revised to reflect contract language rather than solicitation language.
37. Section I.6, Other Contracts, has been revised to delete the second paragraph.
38. Section I.7, Suspension of Work, has been revised to include the most updated language.
39. Section I.12, Secure Erasure of Hard Disk Capability, has been revised to include all equipment utilized by the Contractor for the performance of this Contract.
40. Section I.13, FBI CJIS Security Addendum, has been revised to clarify which employees of the Contractor shall sign the CJIS Security Addendum Certification.
40. Section I.15, Work Made for Hire, has been modified to reflect negotiated language.
41. Section I.13, FBI CJIS Security Addendum, has been revised to address who is required to sign a CJIS Security Addendum Certification.
42. Section I.17.3.H, Account Management, has been revised to update the password requirements.
43. Exhibit J.1, Template Amendment to Authorize Co-Location, has been revised to delete the dates listed throughout the Exhibit.
44. Exhibit J.4, Historically Underutilized Business Subcontracting Plan, is hereby incorporated into this Contract as completed by the Contractor.
45. Exhibit J.6, has been deleted and incorporated into Section B.2.1, FAST
46. Exhibit J.8, Direct Deposit Form, has been deleted as this document is on file with the Department.
47. Exhibit J.9, W-9 Form, has been deleted as this document is on file with the Department.

48. Exhibit J.17, Final Acceptance Document, has been revised to read "Final Acceptance Document for Each Location" and to include the most updated language.
49. Exhibit J.18, Live Scan Device Workstation, was added to provide a list of the equipment and related materials installed at the Department Headquarters.
50. Exhibit J.19, Employee Appearance – Dress Code, was added.
51. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by the Department has been deleted for purposes of this list of revisions; however, this Section, as completed by the Contractor, is part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.
52. Sections L and M of the solicitation as issued by the Department have been deleted for purposes of this list of revisions; however, these Sections are part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.
53. Changes have been made throughout the document to correct references to the solicitation and Respondent/Contractor and replace them as appropriate (e.g., "Respondent" has been replaced with "Contractor" and the article "the" has been placed before the words "Department" and "Contractor").
54. Minor conforming and clarifications changes have been made throughout the document.



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## SECTION A – DEFINITIONS

The following terms used in this Contract will, unless the context indicates otherwise, have the meanings set forth below:

“AFIS” means Automated Fingerprint Identification System

“Applicant” or “applicant” means the person required by an Authorized Entity to submit fingerprints and demographic information to the Department to obtain a copy of the applicant’s Texas and/or National Criminal History Record Information.

“Audit File” means an authorized entity required file that contains a listing of applicants that have been fingerprinted for the Authorized Entity. The Authorized Entity shall determine what information they want to receive from FAST and the frequency the audit file will be sent.

“Authorized Entity” means a criminal or non-criminal justice agency that has statutory authority and has been approved by the Department and/or the Federal Bureau of Investigation to receive Texas and/or National Criminal History Record Information from the Department.

“Authorized Representative” means the person designated in writing to act for and on behalf of a party of this Contract; whose designation has been furnished to the other party as described in Section G.1.

“Base Period” means the Date of Award through August 31, 2015.

“Business Days” means Monday through Friday except for federal, state and legal holidays observed by the State of Texas.

“Business Hours” means 8:00 a.m. to 5:00 p.m., Central Time.

“Call Center” means a centralized office used for the purpose of scheduling applicant fingerprint acquisitions via inbound calls.

“Card Scan Device” means a fingerprint card scanning device that meets the FBI’s quality certification requirements. Devices that meet the certification requirements can be found on the FBI approved product list at <https://www.fbibiospecs.org/IAFIS/Default.aspx>

“CISO” means the Department Chief Information Security Officer.

“CJIS” means Criminal Justice Information System maintained by the State and Federal.

“CJIS Security Addendum” means a document that describes the FBI security related requirements the Department applies to all contractors and subcontractors that work on this project. An executed copy of the CJIS Security Addendum is a required part of this Contract. A copy of this form may be found at: <http://www.txdps.state.tx.us/SecurityReview/documents.htm>.

“Classifiable Rate” means the percentage of fingerprints taken by the Contractor that can be successfully classified and searched by a fingerprint matching system (AFIS).

“Contract” means this Contract, the contract resulting from RFO 405-LES-14-O41483.

“Contract Administrator” means the representative of the Department’s Procurement & Contract Services Bureau who is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications of this Contract as referenced in Section G.1.2.

“Contract Monitor” means the employee within the Department who is responsible for the monitoring of this Contract as referenced in Section G.1.3.

“Contract Term” means the duration of this Contract as specified in Section F.2.

“Contractor” means MorphoTrust USA, LLC.

“Contractor Hosted Services” means a combination of traditional IT functions to be provided by the Contractor such as infrastructure, applications software (COTS Software Solution), security, monitoring, storage, web development, website hosting, provider of hardware and hardware maintenance, and e-mail, over the Internet or other Wide Area Networks (WAN).

“CPA” means the Texas Comptroller of Public Accounts.

“Customer Base” mean Texas residents who, as applicants, will utilize FAST locations and mobile locations.

“Date of Award” means the date this Contract is fully executed.

“Department” means the Texas Department of Public Safety and “TXDPS”.

“Department Policies” means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission and the Department, applicable to providing the deliverables/services specified under this Contract.

“Entity / Entities” means an individual, collection of individuals, organization, place or thing that is legislatively authorized to utilize FAST.

“Event of Default” means any of the events or circumstances described in Section E.1.F.

“FAST” means the Fingerprint Applicant Services of Texas Program, which includes fingerprint acquisition, fee collection, appointment scheduling, demographic collection and data submission to Department.

“FAST Service Representative” means person representing FAST at either a FAST fixed location and/or FAST mobile location who verifies an applicant’s identification and captures fingerprints electronically.

“FBI” means the Federal Bureau of Investigation.

“FBI EBTS” means the Federal Bureau of Investigation’s Electronic Biometric Telecommunications Specifications – see <https://www.fbibiospecs.org/>.

“FBI Image Quality Standards (IQS)”: Details can be located at <https://www.fbibiospecs.org/>.

“FBI Transaction Control Number (TCN)” means the Transaction Control Number assigned by the FBI, which is a unique control identifier assigned to each transaction. The TCN specifications can be found in the FBI EBTS located at <https://www.fbibiospecs.org/>.

“Fingerprint Acquisition” means the process of transacting the collection of fingerprints for an applicant.

“Fiscal Year” means any of the one (1) year periods beginning September 1 and ending August 31, which periods are used for annual budgetary purposes by the State of Texas.

“Government Issued Identification” means documents that are accepted for identification purposes. Reference Exhibit J.1, Acceptable Identification DL-17

“Hard Copy Fingerprint Card” means a printed copy of an applicant’s fingerprint images.

“Historically Underutilized Business (HUB) means a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American, an American woman, or a Service Related Disabled Veteran, (2) is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC § 20.23, and has its principal place of business in Texas, and (3) has an owner residing in Texas who has a proportionate interest in the business and who actively participates in the control, operations and management of the entity’s affairs. For further explanation, see the Texas Comptroller of Public Accounts HUB rule definitions at 34 TAC § 20.11.

“HUB Subcontracting Plan (HSP)” means the plan required by the Texas Government Code, Chapter 2161.

“Image Quality” means a prediction of a matcher performance for the image in question, e.g. a sample’s quality score reflects the predictive positive or negative contribution of an individual sample to the overall performance of a fingerprint matching system.

“Information Technology Division (ITD)” means the Department’s Division responsible for agency technology innovation, maintenance and support as applicable.

“Invoice” means Contractor’s invoice based upon number of authorized transactions per month.

“Legislative Budget Board (LBB)” means a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

“Live Scan Device” - means a device that electronically captures an applicant’s fingerprints. Live scan devices will meet the FBI’s quality certification requirements. Live scan devices that meet the certification requirements can be found on the FBI approved product list at <https://www.fbibiospecs.org/IAFIS/Default.aspx>.

“Near real-time” - The term implies that there are no significant delays.

“NFIQ” means NIST Fingerprint Image Quality. NFIQ’s 5 levels of quality (ranging from a high of “1” to a low of “5”) are intended to be predictive of the relative match performance confidence of an image in a minutia based fingerprint matching system.

“NIST” means the National Institute of Standards and Technology.

“Operational” means fully functional and having passed all stated test and acceptance criteria of the Department and documented as such.

“ORI” means Originating Agency Identification Number. ORIs are unique numbers assigned by the FBI that identify entities authorized to access CJIS systems.

“Payment(s)” means the amount(s) agreed to be paid by the Department to the Contractor for services rendered under this Contract.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

“Personally Identifying Information (PII)” means one or more pieces of information that, when considered together or in the context of how the information is presented or gathered, are sufficient to specify a unique individual. The pieces of information can be: (1) personal characteristics, for example, biometric records or dates of birth; (2) a unique set of numbers or character assigned to a specific individual, for example, social security numbers or name.

“Preventive Maintenance” means the care and services by personnel for the purpose of maintaining equipment and facilities in satisfactory operating condition by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects.

“Project Manager (PM)” means appointee, designee, or alternate designee as assigned by the Contractor and the Department as referenced in Section G.1.4 and G.1.5.

“Provisioning” means the transportation, delivery, testing, acceptance, and operational effectiveness of equipment.

“PSC” means the Public Safety Commission, the Department’s governing body.

“RFO” means Request for Offer.

“Service Commencement Date” means the date on which the Contractor is eligible to begin collecting fees for providing services pursuant to this Contract. For the purposes of this Contract, that date will be September 1, 2015.

“Support Services” means responding to end-user requests for assistance with FAST.

“System” means all hardware, software, network and communication devices connected to or part of the FAST system that impact operational performance.

“TXDPS” means the Texas Department of Public Safety - may also be referred to as “Department.”

“UAT” means User Acceptance Testing.

“Web Site” means a site on the World Wide Web provided by the FAST Contractor that allows applicants to schedule FAST appointments and obtain fixed location and mobile FAST site information.

“Work Breakdown Structure (WBS)” means a deliverable-oriented decomposition of a project into small components. A WBS element may be a product, data, service, or any combination thereof. A WBS also provides the necessary framework for detailed cost estimating and control along with providing guidance for schedule development and control.

## **SECTION B – FEES**

### **B.1 FEES**

#### **B.1.1 Fees are Sole Compensation**

The Contractor's sole compensation under this Contract is the authorized fingerprint capture fee charged to the applicant. The fingerprint capture fee is a firm fixed cost per applicant served and governed by Section 80.001, Texas Human Resources Code. These prices are inclusive of all costs, fees and expenses and represent the Contractor's sole compensation under this Contract.

This Contract does not preclude the Contractor from offering other FAST related value-added services to applicants for additional costs as identified in the Contractor's Offer in Volume One, Section 4, Cost and Pricing Proposal, Alternate and Additional Services. These FAST related value-added services include related services to applicants that are not specifically provided under Section 80.001, Texas Human Resources Code. The Contractor's provision of FAST related value-added services is solely between the applicant and the Contractor. The Contractor shall ensure that its provision of such services does not interfere with its performance of this Contract with the Department.

The Department will not pay the Contractor or any other entity or person any amounts for any other purpose under this Contract.

#### **B.1.2 Costs**

The Contractor is solely responsible for all costs associated with the performance of FAST Program services and necessary equipment, staffing, and support services to afford the services identified. The Contractor shall incur all of the following and other costs related to the Contractor's performance under this Contract:

- A. All startup costs;
- B. Cost of equipment;
- C. Cost of interface(s) development to ensure connectivity to the Department AFIS system for electronic submission of fingerprint-based criminal history checks;
- D. Software maintenance costs (for example, application, operating systems, and security);
- E. Application Hosting;
- F. Employees;
- G. Subcontractors; and
- H. FAST location rental or lease.

#### **B.1.3 Fees**

- A. The Contractor shall collect from the applicant all authorized fees associated with FAST for the Department and Texas.gov. The Contractor shall transmit all fees collected to the Comptroller for deposit in the Department's account and the Comptroller shall transmit to the Contractor the authorized fees payable to the Contractor.
- B. The Contractor shall also collect from the applicant, authorized fees associated with the Department's and or FBI criminal history check processing services, and any and all authorized federal fees for criminal history checks. The Department shall authorize any such fees.



- C. The Contractor shall accept fee payments at each FAST location and/or at time of appointment scheduling.
- D. The Contractor shall accept payment of all authorized fees via business check, money order or credit card.
- D. The Contractor shall only accept and transmit fees that are authorized in this Contract. The authorized fees are comprised of the FAST fees detailed within Section B.2.1 and those listed in Exhibit J.6.

#### **B.1.4 Audited Financial Statements**

Immediately prior to execution of this Contract and again no later than one hundred and twenty (120) calendar days prior to any renewal Option Period under this Contract, the Contractor shall provide the Department with the following:

- A. At least one rating from organizations such as Dun & Bradstreet and Fitch Ratings; and
- B. The following information:
  - i. Gross Revenues
  - ii. Net Income
  - iii. Current Ratio
  - iv. Contingent liabilities to the extent that they would materially affect gross revenues, materially affect net income, or reduce the current ratio below 1.0.

The Contractor shall provide information required by Section G.3.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.

#### **B.2 FEE SCHEDULE**

Contractor Name: MorphoTrust USA, LLC  
296 Concord Rd.  
Suite 300  
Billerica, MA 01821-6618

##### **B.2.1 FAST**

The Contractor has proposed a firm fixed fee for its performance under this Contract.

The Contractor will not charge a fee to exceed \$10.00 per transaction for each authorized fingerprint acquisition transaction fee per Section 80.001, Texas Human Resources Code.

As an agent of the Department, the Contractor shall also collect additional charges separate from FAST as detailed below. However, these charges are set and will not be factored into the FAST Fee Per Transaction below.

*The Contractor will not charge a fee related to transactions for Department business.*

<b>FAST Fee Per Transaction</b>		<b>Additional Fees Collected at Time of FAST Transaction</b>	
Service Commencement Date through August 31, 2015 and <u>any subsequent renewals</u>			
\$10.00	100% Remitted to Comptroller	Texas Criminal History Record Information Processing Fee - \$15.00*	100% Remitted to Comptroller
		National Criminal History Record Information Processing Fee - \$16.50*	100% Remitted to Comptroller
		State Board of Education Certification Fee - \$6.00**	100% Remitted to Comptroller
		Hazardous Material Endorsement Fee - \$34.00**	100% Remitted to Comptroller
		National Criminal History Volunteer Processing Fee - \$15.00*	100% Remitted to Comptroller
		Credit Card Processing Fee up to 2.25%	100% Remitted to Credit Card Processor

\* Fees are subject to change.

\*\* These fees, if applicable, are collected in addition to the Texas and National Criminal History Record Information processing fees and are subject to change.

## **SECTION C - STATEMENT OF WORK**

### **C.1 THE DEPARTMENT ENVIRONMENT**

State and Federal legislation requires a greater portion of the general public to be fingerprinted in order to conduct criminal history checks. The reasons for the checks are generally related to applications for employment, licensure and volunteer activity.

In order for these checks to be performed by the Department and possibly the FBI, the applicant's fingerprints must be captured and forwarded to the Department. The Department created FAST to provide fingerprinting services to the Texas applicant community. The objective of FAST is to provide all Texas applicants with high quality fingerprint acquisition through a professional and secure process at a single price, regardless of where the service is available.

Effective on the date of award of this Contract, the Contractor shall begin its performance under this Contract to facilitate commencement of the new FAST requirements effective as of the Service Commencement Date. As a result, the earliest date for the Contractor to begin receiving any compensation under this Contract is the Service Commencement Date since FAST fees are the sole compensation for the Contractor.

### **C.2 INTENTIONALLY LEFT BLANK**

### **C.3 SCOPE OF WORK**

The Department requires the Contractor to be responsive to the needs of the applicant community with regard to convenience, accessibility of location(s), timeliness, and secure submission of applicant fingerprints – all at the firm fixed cost identified within Section B.2.1. The Contractor shall ensure that FAST electronically interfaces with AFIS (See Exhibit J.7).

The Contractor shall deliver FAST and perform as provided under this Contract and as directed by the Department to address federal and state legislative changes and other changes directed by the Department within the scope of FAST services provided under this Contract and Section 80.001, Texas Human Resources Code consisting of less than 150 engineering man hours for every fiscal year of this Contract and any renewals. Except as authorized by the Texas legislature through statutory changes and authorized by the Department through a revision to this Contract, the Contractor will not receive any additional compensation for its performance under this Contract to address these changes.

### **C.4 GENERAL DUTIES AND OBLIGATIONS**

The Contractor shall provide FAST as provided in this Contract and meet or exceed the following requirements.

#### **A. STATEWIDE COVERAGE:**

The Contractor shall establish, operate and maintain a FAST location within a fifty (50) mile radius of the residence of all FAST customers. The Contractor shall coordinate with the Department and obtain the Department's prior written approval of all FAST locations. The Contractor shall establish, operate and maintain additional FAST locations as directed by the Department.

**B. OUT OF STATE COVERAGE:**

The Contractor shall provide FAST needs for out of state applicants wishing to submit fingerprints to the Department for an authorized purpose (as per Section C.5.1.2). Fingerprint acquisition that initiates outside of the State of Texas is not subject to the cost limitations contained in Section 80.001 of the Texas Human Resource Code. The part of the transaction that initiates outside of the State of Texas, including out of state card scan service, is not subject to this Contract and may include additional charges that are not a part of or included in this Contract. The Contractor is not precluded from providing services related to fingerprint acquisition that initiates outside the State of Texas. The Contractor's provision of such services outside of the State of Texas is solely between the applicant and the Contractor. The Contractor shall ensure that its provision of such services does not interfere with its performance of this Contract with the Department. When a fingerprint which is acquired out of state is introduced into FAST, the costs associated with ingesting and processing the out of state record is regulated by the provisions of Section 80.001 of the Human Resources Code.

**C. OUT OF COUNTRY COVERAGE:**

The Contractor shall provide FAST needs for out of country applicants wishing to submit fingerprints to the Department for an authorized purpose (as per Section C.5.1.3). Fingerprint acquisition that initiates outside of the State of Texas is not subject to the cost limitations contained in Section 80.001 of the Texas Human Resource Code. The part of the transaction that occurs outside of the State of Texas is not subject to this Contract and may include additional charges that are not a part of or included in this Contract. The Contractor is not precluded from providing services related to fingerprint acquisition that initiates outside of the State of Texas. The Contractor's provision of such services outside of the State of Texas is solely between the applicant and the Contractor. The Contractor shall ensure that its provision of such services does not interfere with its performance of this Contract with the Department. When a fingerprint which is acquired out of country is introduced into FAST, the costs associated with ingesting and processing the out of state record is regulated by the provisions of Section 80.001 of the Human Resources Code.

**D. FINGERPRINT ACQUISITION SCHEDULING and PROCESS:**

The Contractor shall provide applicants with the opportunity to schedule appointments for fingerprint acquisition.

**E. NO COST TO THE DEPARTMENT:**

See Section B.

**F. FEE COLLECTION:**

The Contractor shall have the capability, experience, and expertise and shall collect, transmit and account for all fees authorized under this Contract.

**G. TECHNICAL REQUIREMENTS:**

The Contractor shall interface with the State of Texas "Texas.gov" payment processing portal (<http://www.texas.gov/en/Solutions/Pages/Products.aspx>) and the Department's AFIS.

## **C.5 SPECIFIC DUTIES AND OBLIGATIONS**

The Contractor shall establish, operate and maintain FAST services and all resources to provide the requisite service levels under this Contract and as revised by the Department during the term of this Contract and any renewals.

### **C.5.1 Geographical Coverage**

#### **C.5.1.1 Statewide Coverage**

The Contractor shall provide statewide coverage to ensure FAST availability and shall comply with all of the following requirements. The Contractor shall comply with the written instructions of the Department relative to each of these requirements.

The Contractor shall comply with the Department approved allocation strategy to ensure the Contractor shall provide FAST to meet the stated statewide coverage requirements. Any modifications to the approved allocation strategy will be approved, in advance and in writing, by the Department's Project Manager. Ninety percent (90%) of the customer base will reside within twenty-five (25) miles direct travel distance of a FAST location and one-hundred percent (100%) of the customer base will reside within fifty (50) miles of a FAST location. To meet the statewide coverage requirements, the Contractor can provide FAST as fixed, mobile, and Department co-location sites, as defined in Section C.5.3 below, per the requirements herein.

The Contractor shall provide on-site FAST at each of the Department-approved locations for all applicants.

#### **C.5.1.2 Out of State Coverage**

The Contractor shall present to the Department a plan within fourteen (14) calendar days of the Date of Award of this Contract to address the fingerprint capture and submission needs for out of state applicants wishing to submit electronic fingerprints to the Department for an authorized purpose, while meeting the requirements defined herein. The Department shall review the plan and the Contractor shall receive the Department's approval of the plan before implementing. The Contractor shall comply with all provisions of the plan as approved by the Department throughout the term of this Contract.

#### **C.5.1.3 Out of Country Coverage**

The Contractor shall present to the Department a plan within fourteen (14) calendar days of the Date of Award of this Contract to address the fingerprint capture and submission needs for out of country applicants wishing to submit electronic fingerprints to the Department for an authorized purpose, while meeting the requirements defined herein. The Department shall review the plan and the Contractor shall receive the Department's approval of the plan before implementing. The Contractor shall comply with all provisions of the plan as approved by the Department throughout the term of this Contract.

### **C.5.2 Hours of Operation**

The Contractor shall obtain the prior written approval of the Department for all days and hours of operation at all FAST locations, whether fixed, mobile, or co-location sites. Any

adjustments to days and hours of operation at any of the Contractor's location will be mutually agreed upon by the parties.

- A. With the exception of state and federal holidays and locations hosted at state agencies, the Contractor shall operate all FAST fixed locations within the office hours of Monday through Friday 8:00 A.M. to 8:00 P.M. in its designated time zone, shall operate all FAST mobile locations at varying hours approved by the Department, and shall operate all Co-Location facilities at hours approved by the Department and Co-Location organization(s).
- B. The Contractor shall provide Saturday hours at fifty percent (50%) of its fixed locations. Saturday hours will be at least six (6) hours in duration between the hours of 8 A.M. and 8 P.M., in their designated time zones.
- C. The Contractor shall ensure all fixed and mobile locations adhere to the availability requirements of this Contract, including without limitation, Sections C.5.3.1 and C.5.3.2 and C.5.3.3, unless catastrophic events or severe weather dictate otherwise.
  - i. The Contractor shall promptly coordinate with Department's Project Manager to determine, validate, and document all catastrophic and / or severe weather events that may cause the location to deviate from availability or other operational requirements.
  - ii. In the event of a location closure not due to catastrophic events or severe weather, the Contractor shall reschedule FAST within forty-eight (48) hours to the affected area and waive the \$10.00 FAST fee to all applicants who were rescheduled for FAST due to such a location closure. All other fees will remain applicable.

*The Department will not recognize personnel unavailability as a reason for a location to be closed or otherwise for the location to deviate from availability or other operational requirements.*

### **C.5.3 FAST Locations**

#### **C.5.3.1 Fixed FAST Locations**

- A. The Contractor shall promptly notify the Department in writing of all anticipated closings of fixed locations.
- B. All fixed locations will provide the services identified within Section C of this Contract, with the exception of those services specifically associated with Mobile or Co-location sites.

#### **C.5.3.2 Mobile FAST Locations**

- A. The Contractor may provide Mobile fingerprinting locations to ensure compliance with the Statewide coverage requirements. The Contractor's identified mobile locations will be operational for a minimum of eight (8) hours a day, excluding Saturday hours.
- B. As a temporary measure, and with the prior written approval of the Department, the Contractor shall establish, operate and maintain a replacement, mobile location no later than five (5) business days after the closure for any reason of a fixed location to ensure compliance with the Statewide coverage requirements.
- C. The Contractor shall establish, operate and maintain the replacement mobile location during the hours of the previously closed fixed location until the Contractor establishes a new fixed location in the area serviced by the closed location.
- D. The Contractor shall promptly notify the Department in writing of all anticipated closings of mobile locations.

**C.5.3.3 FAST Co-Locations**

- A. With the prior written approval of the Department, the Contractor may partner with third-party entities for the hosting of FAST, provided that fifty percent (50%) or more of the fixed and mobile locations are owned and operated solely by the Contractor or its subcontractor(s).
- B. The Department anticipates authorizing up to two (2) co-location opportunities for the Contractor per calendar year at Department leased or owned sites as fixed site locations for the Contractor's provision of services under this Contract; however, the Contractor is not guaranteed any minimum number of co-location sites during the term of this Contract. The Department's authorization of any specific co-location sites will be accomplished via an amendment to this Contract (reference Exhibit J.2). These co-locations will be limited to providing only FAST services under this Contract. Operation hours will be limited to hours of the Department co-locations.
- C. The Parties acknowledge that there are two existing co-location facilities at Department leased or owned sites serving as a fixed site for FAST by the Contractor that will continue to exist under this Contract.
  - i. The Department continues to grant the non-exclusive use of the Department's office space at the locations identified below, referred to as "the Premises" as a co-location facility for the Contractor's provision of services under this Contract:
    - a. 216 E Wells Branch Parkway, Pflugerville, Texas 78660; and
    - b. 1413 Texoma Parkway, Sherman, Texas 75090.
  - ii. The Contractor shall:
    - a. Provide only FAST services or FAST related value-added services to applicants. Any other service or use by the Contractor related to the Premises under this Contract is strictly prohibited;
    - b. Provide, install, and maintain all equipment, including Live Scan Devices, supplies, furniture, workstations, and staff to facilitate providing the services as described herein, with no reimbursement from the Department;
    - c. Select all furniture and workstations, at its sole expense, from the Department-approved selections and receive pre-approval by the specified Department manager for that facility;
    - d. Provide its own telephone and internet service;
    - e. Provide any signage as required and approved by the specified Department manager for that facility;
    - f. Provide FAST services to applicants by appointment only during the Department's normal business hours, excluding holidays and other unforeseen closures;
    - g. Provide all personnel related to the on-site delivery of FAST services, and supervise and maintain responsibility for the Contractor's employees and ensure that each provides the same standards of confidentiality, security, and customer service as the Department requires of its employees. The Contractor shall promptly remove from performance of any services under this Contract any of its employees who are not meeting these standards and substitute the employee with a qualified and trained employee;

- h. Abide by all policies regarding professional work attire in the specified Department facility;
  - i. Separately obtain, collect, process, secure, and account for its processing fees for each applicant transaction that the Contractor performs in accordance with this Contract;
  - j. Keep the Premises in good repair and condition. Upon termination of this Contract, the Contractor shall leave the Premises in the same condition, minus normal wear and tear. If at any time during this Contract, the Contractor causes damage to the Premises beyond normal wear and tear, then the Contractor shall pay for those repairs.
  - k. Receive prior written approval from the specific Department facility management of the Contractor's implementation plan before installation of any equipment or technology; and
  - l. Not use any Department equipment or resources other than those specifically identified herein.
- iii. The Department shall:
  - a. Provide office space measuring 7' x 7' per Live Scan Device workstation;
  - b. Provide utilities, electricity, gas, and maintenance of the Premises;
  - c. Notify the Contractor of any changes to the Department's normal office hours schedule;
  - d. Provide secure card key access to the Premise for authorized employees of the Contractor;
  - e. Provide access to breakrooms and restrooms for authorized employees of the Contractor; and
  - f. Coordinate with the Contractor in its review of the Contractor's implementation plan prior to the installation of any equipment or technology.
- iv. The Contractor shall retain ownership of all equipment, supplies, furniture, and workstations provided and installed by the Contractor at its own expense. The Contractor shall have full responsibility for any theft, damage, or loss of equipment, supplies, furniture, and workstations resulting from the Contractor's use of the Premises. The Department will not reimburse the Contractor for any of its expenses or losses in providing these on-site FAST services.
- v. Upon termination or cancellation of this Contract, the Contractor shall remove all of its equipment, supplies, furniture, and workstations from the Premises within thirty (30) calendar days of the termination or expiration.
- vi. The Contractor shall use the Premises solely as described herein. The Contractor will not sublease or assign its use of the Premises. The Department shall have access and use at all times to the Premises that the Contractor is using. The Contractor shall take all reasonable measures to keep the Premises secure that are in its use and control.

#### **C.5.4 Fingerprint Acquisition; Appointment Scheduling and Process**

The Contractor shall establish, operate and maintain the ability to process thirty (30) or more applicants, per location, during operational hours. The Department shall determine the Contractor's compliance with this requirement.



Appointments will be available during hours and days of operations of fixed and mobile locations.

The Contractor shall establish, operate and maintain FAST that includes all of the following, at a minimum. The Contractor shall comply with written instructions of the Department regarding the following requirements:

- A. FAST appointment scheduling to include, but not be limited to the following:
  - i. Appointment scheduling via the Contractor's toll-free phone number.
  - ii. Appointment scheduling via the Contractor's public internet website.
  - iii. Collection of applicant demographic information, from either the applicant or electronically from authorized entity supplied document(s).
  - iv. Confirmation provided to applicant via email or mailing via U.S. Postal Service. Appointments made within twenty-four (24) hours of service will receive email confirmation only.
  - v. Ability to accommodate fingerprint authorization form (FAST Pass, Exhibit J.5).
- B. The Contractor shall establish, operate and maintain FAST to allow for fingerprint acquisition processing to include, but not be limited to the following:
  - i. Applicant arrives for appointment at designated FAST location. Where applicable, applicant walk-ins with no appointment will be acceptable, but on a case by case basis, as determined by the Department.
  - ii. The Contractor shall verify identification of the applicant, through visual comparison of the applicant's government-issued photo ID and the physical applicant.
  - iii. The Contractor shall also verify applicant's demographic information collected at time of appointment scheduling.
  - iv. The Contractor shall read or provide the current version of the Applicant Fingerprint Use Waiver to applicants who are not able to read, comprehend, or see the Applicant Fingerprint Use Waiver.
  - v. The Contractor shall ensure that the applicant acknowledges the Applicant Fingerprint Use Waiver Language by using the last four digits of the Applicant's social security number to digitally sign the waiver.
  - vi. The Contractor shall then create the applicant's NIST record and submit to the Department's AFIS.
  - vii. The Contractor shall ensure that the Department's AFIS receives the electronic NIST record from the Contractor. The Contractor shall ensure near real time submission of the NIST record as follows:
    - a. Record submissions from mobile devices without a fixed telecommunication location will be sent within twenty-four (24) hours of acquisition.
    - b. Record submissions from fixed transmission points will be sent in near real time. Batch submission from fixed transmission points will not be allowed.
  - i. The Department shall provide the Contractor with an "accept" or "reject" notice for both the Texas and FBI responses *The Department shall work with Contractor on procedures regarding the accept/reject notice, specifically when no acknowledgement is received within a specified time period.*
  - ii. The Department shall complete the criminal history check, to include FBI check if appropriate. The Department shall submit the results of criminal history check(s) to the Authorized Entity in accordance with Texas Government Code, Chapter 411.

### **C.5.5 FAST Call Centers**

The Contractor shall provide call center services to include, but not be limited to, the following:

- A. Customer service representatives available Monday through Friday 8:00 A.M. to 8:00 P.M. in the assigned time zones.
- B. Customer service representatives trained to answer questions pertaining to: the fingerprint process, site location (physical address and driving directions), location hours of operations, location contact information, and location-specific appointment times and availabilities.
- C. Call center accessible via a toll free number.
- D. An automated recording for after-hours calls that provides the URL for the internet scheduling location.
- E. An automated, after-hours messaging system that allows an applicant to leave a message for personal follow-up by Customer service representatives within the following twelve (12) business hours of receipt.
- F. Answering of ninety percent (90%) of all customer service calls within four (4) minutes.
- G. Both English and Spanish-speaking customer service representatives.
- H. Compatibility with devices used by hearing impaired applicants.
- I. A web site, compliant with all technical and reporting requirements stated herein, available to applicants to schedule their appointments.
- J. The scheduling website will be in both English and Spanish.

### **C.5.6 Fee Collection**

The Contractor shall establish, operate and maintain the collection and processing of all authorized fees for FAST for the Department and Texas.gov. See Section B.1.3 regarding fee collection and processing. The Contractor shall also comply with all written instructions of the Department regarding fee collection and processing.

### **C.5.7 Technical Requirements**

The Contractor and the Contractor's FAST technology and systems will comply with these technical requirements and all reasonably related requirements communicated by the Department.

#### **C.5.7.1 Scheduling**

- A. The Contractor shall provide Authorized Entities with Audit Files, for those applicants fingerprinted at their request.
- B. The Contractor shall, at a minimum, make two (2) attempts to reschedule an applicant (by contacting the applicant via phone or email for rescheduling) when the fingerprint transaction was rejected by either the Department or the FBI.
- C. The Contractor shall promptly reschedule and retake previously rejected fingerprints.
  - i. Resubmitted fingerprints will have the ability to identify and attach the FBI TCN to the submission transaction when rejected fingerprints are resubmitted.
  - ii. The Contractor shall be solely responsible for any charges from the FBI for duplicate, resubmissions that are not provided with the FBI TCN in the Transaction Control Reference (TCR) field.

- D. The Contractor shall establish, operate and maintain, for any Authorized Entity, a hyperlink from that Authorized Entity's website directly to the Contractor's online appointment scheduling system.
- E. The Contractor shall receive applicant biographic and demographic information (collected from either the applicant and / or Authorized Entity) during the Authorized Entity's renewal process, or at time of appointment scheduling.
- F. The Contractor shall receive hard copy fingerprint cards from applicants that can be used to generate and transmit an electronic submission to the Department. The Contractor shall scan hard copy fingerprint card and transmit the information in a NIST Record to the Department. The Contractor shall promptly destroy hard copy fingerprint cards once the Contractor has received the Department's written confirmation of receipt.

#### **C.5.7.2 Authorized Entity Electronic Files**

- A. The Contractor shall receive the following information from the following Authorized Entities via a comma delimited electronic file via a secure file transfer protocol or real-time via electronic mail:
  - i. The Texas State Board of Architecture – applicant demographics and unique identification number to validate the applicant is allowed to schedule a fingerprinting appointment.
  - ii. Department of Family and Protective Services – applicant demographic including social security number to validate the applicant is allowed to schedule a fingerprinting appointment.
  - iii. State Board of Educator Certification – applicant demographics and unique identification number to validate the applicant is allowed to schedule a fingerprinting appointment UNLESS the applicant is printed as a new applicant (TX921310Z), in which case validation is not required.
  - iv. Texas Department of Public Safety Concealed Handgun Licensing – applicants are either passed to the Contractor from Texas Online (with trace number) or must provide the FAST Contractor with their Concealed Handgun License Number and date of birth to confirm that they are authorized to schedule an appointment.
  - v. The Texas Board of Nursing – applicant demographics and unique identification number or social security number to validate the applicant is allowed to schedule a fingerprinting appointment.
- B. The Contractor shall provide Authorized Entities with daily audit files in the same comma delimited format with varying demographic fields depending on the Authorized Entities' specific needs, but always with transaction control number and fingerprint date within the transmitted file.
- C. The Contractor provided audit files will be transferred via an encryption method to comply with the requirements herein, such as but not limited to: Sections C.11.3, C.11.4, I.13, I.16, and, I.17.

#### **C.5.7.3 FAST Transactions**

- A. The Contractor shall create and provide a unique identifier for each applicant. The unique identifier will include a unique control or transaction number that can be linked to the applicant's identification number and the time and date of fingerprint capture.
- B. The Department's Project Manager shall provide the Contractor with written instructions on the Authorized Entities and other appropriate information the Contractor shall use for validation of each transaction.

- C. The Contractor shall establish, operate and maintain all pertinent information regarding the applicant and the applicant's FAST transaction, collected at either time of scheduling or fingerprinting.
- D. The Contractor shall ensure the FBI Transaction Control Number (TCN), reference Exhibit J.10, is included in the NIST record of a retake and resubmission when fingerprints are rejected by the FBI. The FBI TCN may be obtained from either the Department or the Authorized Entity originally requesting the background check and / or the applicant.
- E. The Contractor shall digitally capture an applicant's fingerprints, photograph, and waiver agreement per the following:
  - i. The Contractor shall capture fingerprints, (all fingers and thumbs rolled nail to nail rolled as well as plain impressions of fingers and thumbs) at 500PPI.
  - ii. The Contractor shall format fingerprint images as ANSI/NIST Type 4 records format.
  - iii. The Contractor shall meet the FBI CJIS/AFIS standards for scanning, compressing, and transmitting fingerprint image and demographic data. These standards include the following:
    - a. EBTS Version 9.03 December 9, 2011 or later.
    - b. WSQ Gray-Scale Fingerprint Image Compression Specification (AFIS-IC-0110 (v3) December 19, 1997).
    - c. Compression using WSQ and the compression ratio of electronically transmitted fingerprint images and temporarily stored fingerprint images may not exceed 15:1 on average.
    - d. NIST Special Publication 500-290 Data Format for the interchange of fingerprint, facial & other Biometric Information (ANSI/NIST-ITL 1-2011).
  - iv. The Contractor shall use, as the transmission standard, FBI EBTS, modified only for the Texas Type 2 requirements. Digital photo image record requirements will adhere to those established for the purposes of Driver License / Identification Card photographs. The requirements are as follows:
    - a. Technical Specifications: Size: 2 inches by 2 inches, resolution approximately 320 pixels per inch by 320 pixels per inch, color depth 24 bit RGB.
    - b. Format: JPEG preferred format.
    - c. Compression: medium preferred.
  - v. The Contractor shall ensure that the photos and images meet these general specifications:
    - a. Photo will capture a good likeness of the applicant.
    - b. Applicant will not be photographed wearing a hat or dark glasses.
    - c. Photo will be taken in normal light with white or off white background only.
    - d. Photo will provide clear frontal image of applicant (including full face from bottom of chin to top of head, including hair).
    - e. Applicant's image will be between 1 and 1 3/8 inches.
    - f. Photo will only portray the applicant.
- F. The Contractor shall format the applicant's record to adhere to the National Institute of Standards and Technology (NIST) record requirements. The Contractor shall refer to [http://biometrics.nist.gov/cs\\_links/standard/AN\\_ANSI\\_1-2011\\_standard.pdf](http://biometrics.nist.gov/cs_links/standard/AN_ANSI_1-2011_standard.pdf) for information and additional websites as the information is updated.
- G. The Contractor shall submit fingerprint records to the Department's AFIS as per the following and written instructions of the Department.
  - i. Transmission interface requirements are detailed within the live scan to AFIS/GTC interface document (Exhibit J.7), with data interface requirements listed in Texas Type 2 Document (Exhibit J.16) and Applicant Data Dictionary (Exhibit J.3).
  - ii. The Contractor's Livescan devices may network to a central host that has a single connection to the GTC.

- iii. The Contractor's central host will have no more than four (4) connections to the Department's AFIS.
- H. The Contractor shall retain the applicant NIST record for a minimum of three (3) calendar days or until written processing confirmation is received from the Department as defined in the AFIS/GTC Interface document (reference Exhibit J.7).
  - i. If the Contractor does not receive acknowledgement from the Department within twenty-four (24) hours, the Contractor shall contact the Department's identified Project Manager.
- I. The Contractor shall promptly delete the record upon receipt of the written acknowledgement from the Department.
- J. The Contractor's Livescan device will verify the quality of fingerprints collected at the time of acquisition to ensure compliance with image quality standards included in Appendix F of the EBTS and before the applicant departs the fixed location.
- K. The Contractor shall interface with the Texas.gov application (reference Exhibits J.11 through J.15).
- L. The Contractor shall enhance its FAST solution to interface with future e-commerce initiatives of the Department, the federal government, and the state. The Department shall provide the Contractor with written instructions relative to these initiatives throughout the term of this Contract that are within the scope of FAST services provided under this Contract and Section 80.001, Texas Human Resources Code.

#### **C.5.7.4 FAST Compliance**

- A. The Contractor shall comply with the Texas Online Occupational Licensing System (OLS) requirements currently in use for state agency licensure renewal applications. Details can be found at:  
<http://www.texas.gov/en/discover/pages/topic.aspx?topicid=/licenses/permits>
- B. The Contractor shall comply with information security and confidentiality and other information technology requirements of the Department, including without limitation, the Department's then current Information Security Agreement and other requirements approved by the Department's Chief Information Security Officer. The Department may modify these requirements throughout the term of this Contract and the Contractor shall comply with the modified requirements.
- C. The Contractor shall obtain and maintain certification of all Livescan and Cardscan devices according to the FBI's Image Quality Standards (IQS). The Contractor shall refer to <https://www.fbi biospecs.org/> for information and additional websites as the information is updated.
- D. The Contractor shall maintain a ninety-eight percent (98%) classifiable rate for all fingerprint submissions as determined by the Department and the FBI.

#### **C.6 TRANSITION**

Within 30 calendar days of the Date of Award of this Contract, the Contractor shall have a completely operational toll free number and a public internet website for the purpose of providing FAST location and fingerprint acquisition appointment scheduling information.

Within 60 calendar days of the Date of Award of this Contract, the Contractor shall have a completely operational toll free number, call center services, and a public internet website for the purposes of providing FAST location information, new transaction rate, and fingerprint acquisition appointment scheduling services (incorporating all contract requirements for appointment scheduling).

## **C.7 TRAINING**

- A. The Contractor shall attend training sessions as requested by the Department.
- B. For training sessions it conducts, the Contractor shall provide a copy of any training material or content to the Department's Project Manager for prior written approval by the Department.
- C. The Contractor shall provide all of its subcontractors and employees with the following training throughout the term of this Contract:
  - i. Call center operators
    - a. Call center operators shall be trained to speak professionally to callers.
    - b. Call center operators shall be trained to assist callers through the appointment process.
    - c. Call center operators shall be trained to maintain the applicant's personal information in a confidential manner.
  - ii. FAST customer service representative
    - a. Service representatives shall be trained to greet applicants upon arrival.
    - b. Service representatives shall be trained to maintain the applicant's personal information in a confidential manner.
    - c. Service representatives shall be trained how to operate the Live Scan Devices.
    - d. Service representatives shall be trained how to take high quality fingerprints.

## **C.8 TESTING AND ACCEPTANCE**

The Department shall conduct acceptance testing to verify, to the satisfaction of the Department, the Contractor's compliance with this Contract. The Department shall conduct other testing and monitoring of the Contractor's performance throughout the term of this Contract. Acceptance testing will include routine evaluation, at a minimum, of the Contractor's compliance with the following unit test cases:

- A. NIST record transactions.
- B. Payment coding.
- C. Reconciliation of collected fees against transactions received.
- D. Scheduling system.
- E. Applicant processing time, per location.

### **C.8.1 Testing Requirements, Implementation and Acceptance**

The Contractor shall provide a listing of unit test cases based on the requirements of this Contract, the Implementation Plan, Project Plan and Schedule and in direct coordination with TXDPS Project Manager. The Contractor shall also provide the Department with the results of the listed unit test cases as they are executed. Based on the outcome of successful unit testing, the Contractor shall advance to the next step of System Testing. Successful unit testing will be defined as 100% pass rate of all defined unit test cases. The Contractor shall perform all these tests in a development environment.

#### **A. Solution Testing:**

The Contractor shall receive FAST data as defined herein in order to verify the Contractor's FAST solution. The Contractor shall execute system tests with the Department and Authorized Entity and provide documented results. Solution testing will not be considered successful if there are outstanding Severity One or Severity Two defects pending resolution.

**B. Acceptance Testing (AT):**

Following successful completion of the FAST solution test in the Contractor's Hosted environment, the Department shall coordinate and execute AT. The Department shall notify the Contractor of any defects suspected in the Acceptance of the Solution. The Contractor shall investigate any suspected defects and correct if necessary. The Contractor shall respond with the details of the finding within twenty-four (24) hours of notice of any suspected defects by documenting the response in the agreed upon defect tracking system. The Contractor shall describe the nature of any defects reported and any corrective action taken in the response. The modifications will operate defect free as a complete system for a minimum of seventy-two (72) continuous hours. If the number of defect failures prevents all systems from operating as described above, the Department may reject the entire final FAST solution.

**C. Final Acceptance:**

Implementation of the FAST solution will not occur prior to thirty (30) consecutive calendar days of failure free operation of the system and delivery of all required documentation or at the discretion of the Department. Final acceptance will be officiated by the execution and issuance of Exhibit J.17, Final Acceptance Document.

**D. Failure Resolution:**

Upon failure of any test, the Contractor shall correct the deficiency within twenty-four (24) hours. If FAST requires modification, the fault will be corrected and the test repeated until successfully completed.

- i. Failure to satisfy the requirements of any test is considered a defect and FAST will be subject to rejection by the Department. Any rejected FAST requirements may be offered again for retest provided all noncompliance has been corrected.
- ii. Resolution of Final Acceptance Test Failure: If a defect within FAST is detected during the Final Acceptance, the Department shall document the failure.

The Contractor shall research, document and correct the source of failure. Once corrective measures are taken, the Department shall monitor the point of failure until a consecutive thirty (30) calendar day period free of defects is achieved.

**C.9 CUSTOMER SERVICE STANDARDS**

The Contractor shall comply with the following customer service standards and reasonably related requirements.

**A. Call Center**

- i. Applicants calling the call center will speak to a call center operator within four (4) minutes.
- ii. Applicants will be prompted with a choice to leave a voicemail message or continue to hold for a call center operator.
- iii. Applicants will be provided with instructions about scheduling an appointment online and provided the URL for the scheduling website while on hold.
- iv. Call center operators shall be courteous and identify themselves by full name (first and last).

**B. Fixed Location and Mobile Location**

- i. Will comply with the Americans with Disabilities Act and all applicable federal, state, and local laws, statutes, ordinances, codes, rules and regulations.
- ii. Will display proper signage to indicate it is a FAST location.
- iii. Will have a clean waiting area with seating.
- iv. Provide the applicant with privacy during the fingerprint appointment.
- v. The FAST service representative will not engage in any personal business and shall remain courteous and professional during the course of the applicant's fingerprint acquisition appointment.
- vi. The FAST service representative will not use any personal telecommunication equipment during the fingerprint acquisition appointment unless it is being used to resolve an equipment or network issue.
- vii. The FAST service representatives shall adhere to the Department's written instructions on dress code as defined in Exhibit J.19.

**C.10 PERFORMANCE OUTCOME MEASURES**

The Department shall monitor the Contractor's compliance with stated requirements throughout the term of this Contract. The Department's performance outcome measures will include but may not be limited to the following:

- A. Quality of Photo submissions
- B. Fingerprint rejection rate by the Department and FBI AFIS
- C. Reasons for site closure
- D. Call center
  - i. Average wait time
  - ii. Number of calls answered
  - iii. Number of dropped calls
  - iv. Number of applicants contacted to reschedule after site is closed
- E. Fee collection accuracy
- F. Data collection accuracy
- G. Applicant and Authorized Entity service complaint resolution

**C.11 SYSTEM SECURITY AND ACCESS****C.11.1 Intentionally Left Blank (see Section I.17.3)****C.11.2 System Security**

- A. Provide audit logs that enable tracking of activities taking place on the system.
- B. Audit logs will track successful and unsuccessful system log-on attempts.
- C. Audit logs will track successful and unsuccessful attempts to access, create, write, delete or change permission on a user account, file, directory or other system resource.
- D. Audit logs will track successful and unsuccessful attempts to change account passwords.
- E. Audit logs will track successful and unsuccessful actions by privileged accounts.



- F. Audit logs will track successful and unsuccessful attempts for users to access, modify, or destroy the audit log.
- G. Provide the following content to be included with every audited event:
  - i. Date and time of the event;
  - ii. The component of the information system (e.g. software component, hardware component) where the event occurred;
  - iii. IP address;
  - iv. Type of event;
  - v. User/subject identity; and
  - vi. Outcome (success or failure) of the event.
- H. Provide real-time alerts to appropriate Department officials in the event of an audit processing failure. Alert recipients and delivery methods will be configurable and manageable by the Department's System Administrators.
- I. Undergo vulnerability scan/penetration testing conducted by the Department or the Texas Department of Information Resources. The Contractor shall remediate legitimate vulnerabilities and system/application will not be accepted until all vulnerability issues are resolved at no cost to the Department.
- J. Notifications will display an approved system use notification message or banner before granting access to the system. The notification will state:
  - i. Users are accessing a Department system;
  - ii. System usage will be monitored, recorded and subject to audit;
  - iii. Unauthorized use of the system is prohibited and subject to criminal and civil penalties; and
  - iv. A description of the authorized use of the system.
- K. The Contractor shall implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for endpoints, servers and mobile devices. This will include mechanisms to identify vulnerabilities and apply security patches.
- L. The Contractor shall establish and maintain a continuous security program as part of the FAST system. The security program will enable the Contractor (or its selected third party) to:
  - i. Define the scope and boundaries, policies, and organizational structure of an information security management system;
  - ii. Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Contractor due to FAST, subject to the terms, conditions and procedures;
  - iii. Implement appropriate mitigating controls and training programs and manage resources; and
  - iv. Monitor and test the security program to ensure its effectiveness. The Contractor shall review and adjust the security program in light of any assessed risks.

### **C.11.3 Data Security**

- A. If the Contractor or any subcontractors require access to the Department's network; the Department's data; or the network processing, transporting, or storing of the

Department's data (may at the Department's discretion), the Contractor shall sign the CJIS Security Addendum, and all of the Contractor's employees requiring access to the Department's network shall sign the FBI Certification to the CJIS Security Addendum and complete a fingerprint based background check.

- B. The Contractor's FAST will protect against an employee falsely denying having performed a particular action (non-repudiation).
- C. The Contractor, subcontractor, and their staff shall obtain and provide proof of PII certifications for its employees accessing the Department's data at the request of the Department.
- D. The Contractor shall comply with relevant federal and state statutes and rules and the Department's policies, and standards, including but not limited to CJIS requirements.
- E. The Contractor will not export data to an external location without the permission of the Department.
- F. In the event of any impermissible disclosure, loss or destruction of Confidential Information, the receiving Party shall immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

#### **C.11.4 Encryption**

FAST will protect the confidentiality of the Department's information. All data transmitted outside or stored outside the secure network will be encrypted. When cryptography (encryption) is employed within information systems, FAST will perform all cryptographic operations using Federal Information Processing Standard (FIPS) PUB140-2 validated cryptographic modules with approved modes of operation. FAST will produce, control, and distribute symmetric cryptographic keys using NIST-approved key management technology and processes. The key management process is subject to audit by the Department.

- A. Wireless: The following requirements specifies the minimum set of security measures required on WLAN-enabled portable electronic devices (PEDs) that transmit, receive, process, or store PII or confidential information:
  - i. Personal Firewall: WLAN-enabled PED will use personal firewalls or run a Mobile Device Management system that facilitates the ability to provide firewall services.
  - ii. Anti-Virus Software: Anti-virus software will be used on wireless ECMs-capable PEDs or run a Mobile Device Management System that facilitates the ability to provide anti-virus services.
  - iii. Encryption of PII or confidential data-in-transit via WLAN-enabled PEDs, systems and technologies will be implemented in a manner that protects the data end-to-end. All systems components within a WLAN that wirelessly transmit PII or confidential information will have cryptographic functionality that is validated under the National Institute of Standards and Technology (NIST) Cryptographic Module Validation Program as meeting requirements per Federal Information Processing Standards (FIPS) Publication 140-2. Encryption will be a minimum of 128 bit.
  - iv. Data-at-Rest: Data at rest encryption will be implemented in a manner that protects PII and confidential information stored on WLAN enabled PEDs by requiring that the PED will be powered on and credentials successfully authenticated in order for the data to be deciphered. Data-at-rest encryption will include the encryption of

individual files, portions of the file system (e.g., directories or partitions), or the entire drive (e.g. hard disks, on-board memory cards, memory expansion cards). In recognition of the increased risk of unauthorized access to PII or confidential information in the event that a PED is lost or stolen and the inherently mobile nature of these devices, encryption will be provided for data-at-rest on all WLAN enabled PEDs that is validated as meeting FIPS 140-2.

- v. WLAN Infrastructure: WLAN infrastructure systems may be composed of either stand-alone (autonomous) access points (AP) or thin APS that are centrally controlled by a WLAN controller.
- vi. Validated Physical Security: APs used in the WLANS will not be installed in unprotected environments due to an increased risk of tampering and/or theft.

#### **C.11.5 Data Center Location Requirements**

The data center will be located in the continental United States of America.

### **C.12 INFORMATION TECHNOLOGY (IT) REQUIREMENTS**

The Contractor shall comply with the following standards and requirements wherever they are applicable to this Contract. The Department shall have the sole right to waive specific requirements if in its sole judgment doing so would mitigate costs or risks or significantly improve the installed and configured solution.

#### **C.12.1 IT Requirements**

The FAST system components will be hosted within the Contractor's computing infrastructure.

##### **C.12.1.1 Contractor Hosted FAST solution**

The Contractor shall provide a complete hardware and software inventory including any servers required, an architectural diagram of the complete overall system, and the recommended workstation configuration if any. The Contractor shall also itemize all assumed capabilities for interface partners and shall provide interface partners with the minimum hardware and software configurations required to access the Contractor's product.

- A. Any applicable server hardware will identify:
  - i. The processor requirements;
  - ii. The memory requirements;
  - iii. Operating System details and dependencies; and
  - iv. Data storage requirements.
- B. All workstation recommendations will identify:
  - i. The processor requirements;
  - ii. The memory requirements;
  - iii. Operating System details and dependencies;
  - iv. Data storage requirements; and
  - v. Any support applications required such as Internet Explorer, Adobe PDF Reader etc.

- C. Peripherals required:
- i. Printers;
  - ii. Scanners; and
  - iii. Fax.

#### **C.12.1.2 The Department's Communication Standards**

- A. The FAST solution will support integration with other Department or State Agency systems utilizing standard web services or provide API tools that can be incorporated into the Department's applications or secure file transfer protocol with data encryption.

#### **C.12.2 Network Topography**

The Department utilizes a combination of public and private TCP/IP network resources. The Department currently encrypts all network traffic between routers. All internal communications between client resources, other systems, and system services will be through this network.

#### **C.13 SERVICE OUTAGE ESCALATION AND COMMUNICATION**

The Contractor shall provide a detailed communication plan that specifies how the Contractor will be contacted in the event of a system outage. If the solution is hosted by the Contractor, the Contractor shall provide its notification and escalation process as part of the communication plan.

#### **C.14 DEPARTMENT RECORDS AND DATA RETENTION**

- A. Upon conclusion of this Contract, including management transition to the Department or another contractor, all FAST data and reports, including images, will revert to the Department. This will include data and images and any other information not present in the Contractor's service provisioning documentation as normally initially delivered to other clients.
- B. FAST records and documents will be labeled and delivered in a manner satisfactory to the Department. The Contractor shall comply with additional instructions pertaining to the Department's records as detailed in Section H.55, Books and Records, of this Contract.
- C. In the event the Contractor requires copies of any records after conclusion of this Contract or this Contract's expiration and FAST transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- D. Records will be maintained in accordance with the Department's Records Retention Schedule as detailed in Section E.2, Inspection by State Employees.
- E. The Contractor acknowledges and shall comply with Texas Government Code, Chapter 560, Biometric Identifiers.

#### **C.15 LIVE SCAN DEVICE WORKSTATION AT DEPARTMENT HEADQUARTERS**

- A. The Contractor shall install, repair, and maintain, at its own expense, a Live Scan Device workstation to be used solely for the fingerprint acquisition of Department employees or applicants for employment at the Department. Pursuant to Section B.2.1, FAST, this is a transaction for Department business for which the Contractor will not charge a fee. The Live Scan Device workstation, further detailed in Exhibit J.18, will be installed by the Contractor at the Department's Headquarters.

- B. The Live Scan Device workstation will continue to be the property of the Contractor, and upon the termination of this Contract, the Contractor shall remove the Live Scan Device workstation from the Department premises and return the premises to the condition that they were in before, minus normal wear and tear.
- C. The Department shall use the Live Scan Device workstation with its own personnel solely as provided herein. The Department is using its own personnel, rather than the Contractor's personnel, at this one location only for the Department's convenience and at no additional cost to the Department.
- D. The Contractor shall provide technical support to the Department on the Workstation through the Contractor's Technical Help Desk Standard Operating Procedures.
- E. The Contractor shall ensure that the installation and operation of the Live Scan Device workstation complies with the Department's information technology and security requirements.

## SECTION D – REPORTS AND DATA

### D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM THE CONTRACTOR

The reports in this Section are required to be submitted by the Contractor during the course of this Contract. These reports may be revised or additional reports may be required at the Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Monthly	Last business day	Invoices for goods and services provisioned, tested and accepted for previous month.	Contract, Section G.2 and G.3
Monthly	5 <sup>th</sup> working day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Vendor Progress Assessment Report	Contract, Exhibit J.4
Other	Each instance	Copy of each subcontract	Contract, Section I.2.D
Other	Within ten (10) days of receipt of audit report	Corrective Action for Items of Non-Compliance identified	Contract, Section E.1.F
Other	Prior to Service Commencement Date and upon renewal or replacement	Insurance Requirements	Contract, Section I.1
Other	Prior to next testing phase	Test and Acceptance Documented Results	Contract, Section C.8
Annual	Prior to Service Commencement Date and again Within one-hundred twenty (120) calendar days after the end of Contractor's fiscal year	Financial Disclosure Reports	Contract, Section G.3.8
Other	When requested by Department	CJIS Security Addendum and Certification	Contract, Section I.13
Other	As Stated	Project Reports	Contract, Section D.2

### D.2 PROJECT REPORTS REQUIRED FROM THE CONTRACTOR

The Contractor shall maintain the following reports:

#### D.2.1 Daily Reports/files:

- A. Applicant Data – contains details on each FAST Program Applicant (includes values like Applicant NAME, DOB, Miscellaneous Number (MNU), TCN).
- B. Daily Reports/files:
  - i. Service Files – contains details on each FAST Program service rendered.
  - ii. Payment Files – contains details on each payment, associated with FAST each payment covers.
- C. Location closures report
  - i. How many applicants affected
    - a. How many applicants contacted to reschedule
    - b. How many applicants actually rescheduled
    - c. How many applicants did not reschedule
  - ii. Report of who is scheduled to be fingerprinted (For billing unit-refunds)
  - iii. Report of appointment cancellations/no-shows (For billing unit-refunds)
  - iv. Hard Card Scan Unit – number of cards processed, applicant names, and TCN's
  - v. Hard Card Scan Unit – backlog status for Texas (number of days backlogged)
  - vi. Report on the number of transactions that could not be transmitted due to missing information or other reason

**D.2.2 Weekly Reports/files:**

- A. Location utilization report

**D.2.3 Monthly Reports/files:**

- A. Number of persons fingerprinted by ORI
- B. Number of persons fingerprinted at each location
- C. Call Center Report
  - i. Calls Received
  - ii. Calls Answered
  - iii. Calls Abandoned
  - iv. Average Talk Time
  - v. Average Speed Call Answered
  - vi. Average Customer Abandoned Time
- D. Location closures monthly report
  - i. How many applicants affected
  - ii. How many applicants contacted to reschedule
  - iii. How many applicants actually rescheduled
  - iv. How many applicants did not reschedule
- E. Number and name of agencies set up for the Contractor invoicing
- F. Pending production changes, modifications, adjustments to the schedule module or FAST Program locations

## **SECTION E - INSPECTION AND ACCEPTANCE**

### **E.1 INSPECTION OF SERVICES**

- A. Acceptance criteria for all deliverables under this Contract may be found in Section C.8.
- B. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.
- C. If any deliverables do not conform to this Contract's requirements, the Department shall require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.
- D. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.
- E. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3 of this Contract.
- F. If any services are non-compliant with this Contract's requirements, the Contractor shall be notified describing specific areas of non-compliance. The Contractor shall have a ten (10) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

### **E.2 INSPECTION BY STATE EMPLOYEES**

- A. The Contractor shall provide and maintain all documentation pertaining to quality testing, acceptance of deliverables, maintenance and warranty records, inventories of equipment per location, and all reports necessary as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor will be maintained and made available to the Department during this Contract's performance and for a period of four (4) years after the termination of this Contract.



- B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/agent for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

### **E.3 MONITORING CRITERIA**

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract and the Department's Policies.
- B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by the Department. Such monitoring by the Department will not relieve the Contractor of any of its obligations under this Contract.
- D. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1, Inspection of Services.

## **SECTION F - DELIVERIES OR PERFORMANCE PERIOD**

### **F.1 PLACE OF PERFORMANCE**

The Contractor shall provide services to meet the requirements identified within this Contract.

### **F.2 CONTRACT TERM**

This Contract will consist of a Base Period from Date of Award through August 31, 2017 with two (2) two (2) year Option Period Renewals: (September 1, 2017 through August 31, 2019; September 1, 2019 through August 31, 2021).

This Contract may also be extended as per Section H.16, Option to Extend Service.

The terms, conditions, and rates for all extensions will remain as stated in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR**

#### **G.1.1 Authorized Representative**

- A. In reference to the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative will be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. The Director is hereby designated as the Department's Authorized Representative. The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. Any party may designate any person as its Authorized Representative, at any time, by delivering to the other party a written designation signed, if on behalf of the Contractor by its President or any Vice President, or if on behalf of the Department by the Director. Such designations will remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.
- D. The Department's Authorized Representative or his designated Representative is the only person authorized to make or approve changes in this Contract's requirements, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event the Contractor makes any change at the direction of any person other than the Director or his designated Representative, the change will be considered to have been made without authority and no adjustment will be made in this Contract price to cover any increase in cost incurred as a result thereof.

#### **G.1.2 Contract Administrator**

- A. The Contract Administrator for administration of this Contract is Ray D. Miller.
- B. The telephone number for the Contract Administrator is (512) 424-2205 .
- C. The facsimile number of the Contract Administrator is (512) 424-5419 .
- D. The e-mail address is ray.miller@dps.texas.gov .

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

#### **G.1.3 Contract Monitor**

- A. The Contract Monitor for this Contract is Meg Kee .

- B. The telephone number for the Contract Monitor is (512) 424-2427.
- C. The facsimile number of the Contract Monitor is (512) 424-5911.
- D. The e-mail address is meg.kee@dps.texas.gov.

The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.

The Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.

If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

#### **G.1.4 Department Project Manager**

- A. The Project Manager for this Contract is Don Farris.
- B. The telephone number for the Project Manager is (512) 424-2078.
- C. The facsimile number of the Project Manager is (512) 424-5911.
- D. The e-mail address is donald.farris@dps.texas.gov.

The Department Project Manager for this Contract shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact for the Department. The Project Manager shall have full authority to act for the Department in the performance of this Contract. The Project Manager or a designated representative shall meet with the Contractor Project Manager to discuss problems as they occur.

#### **G.1.5 Contractor Project Manager**

- A. The Contractor Project Manager for this Contract is Chad Wadsworth.
- B. The telephone number for the Contractor Project Manager is (615) 939-2448.
- C. The facsimile number of the Contractor Project Manager is (217) 793-7393.
- D. The e-mail address is [chadwadsworth@morphotrust.com](mailto:chadwadsworth@morphotrust.com)

The Contractor Project Manager shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the State. The Contractor Project Manager shall report to the Department Project Manager or their designee. The Contractor Project Manager shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Project Manager or a designated representative shall meet with the Contract Monitor and Department Project Manager to discuss problems as they occur. The Contractor Project Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

**G.2 INVOICE REQUIREMENTS**

The Department shall pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided and the attendant charge. Itemized invoices will clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked, and the date range of work performance of this associated charge.

A. The Contractor's Invoice will include the following:

- i. This Contract number;
- ii. Remittance Address; and
- iii. Prompt Payment Discount (the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).

B. An invoice copy will be sent electronically to [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov) and [crs.billing@dps.texas.gov](mailto:crs.billing@dps.texas.gov). An original, hard-copy invoice, if required by Contractor, will be submitted to the office designated below:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773**

**The State will not incur any penalty for late payment if the invoice was not mailed to the appropriate address identified herein.**

**G.3 PAYMENTS**

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. If the Contractor elects to be set up for Direct Deposit Payment, the Contractor Direct Deposit authorization form may be obtained from the Department Contract Administrator. Upon the effective date of this Contract, the Contractor shall submit a completed authorization form.
- B. Regardless as to whether Direct Deposit is chosen, the Contractor shall submit a completed Contractor Direct Deposit/Advance Payment Notification Authorization (Exhibit J.8) and Substitute W-9 Form (Exhibit J.9) to the following address:

TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773  
Attention: Mary Hamilton  
Reference: Vendor Set-up for 405-LES-14-41483

**Notes: Contact Ray D. Miller when completed at (512) 424-2205 or [ray.miller@dps.texas.gov](mailto:ray.miller@dps.texas.gov)**

- C. If the Contractor has previously submitted a completed Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted. However, the Contractor is required to provide their eleven (11) digit Texas

Identification Number (TINS) previously provided to Contractor by the Texas Comptroller of Public Accounts.

TINS: 10433205159

- D. In the event the Contractor elects to decline Direct Deposit on the Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form, the payment will be mailed to the following remittance address:

MorphoTrust USA, LLC

14438 Collection Center Drive

Chicago, IL 60693

### **G.3.1 Billing and Payment**

- A. The Texas Government Code, Chapter 2251 (the "Prompt Payment Act") will govern payment and accrual of interest on any overdue payments.
- B. Notwithstanding anything else to the contrary in this Contract, the Department will not make any payments of any amount to the Contractor or any other entity or person, and the Contractor will not submit any invoices, until the Contractor has received from the Department a written Final Acceptance Document signed by the Contract Monitor specifically stating that the Department accepts the work and the Contractor is authorized to submit an invoice.
- C. The Contractor shall bill the Department for each calendar month, one (1) calendar month in arrears for the amount due for the monthly service accepted in writing by the Contract Monitor. Each invoice is subject to the Department's usual auditing and accounting procedures. The Contractor compensation may be subject to proration or reimbursement for unforeseen situation at the discretion of the Department.
- D. If the Department, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by the Contractor, the Department shall place a hold on the disputed items and pay the remaining amount of the invoice. The Department shall timely notify the Contractor of the dispute and request clarification and/or remedial action.
- E. If the dispute is resolved in the Contractor's favor, the Department shall pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in the Department's favor, the Contractor shall resubmit an invoice reflecting all corrections.

### **G.3.2 Payment Adjustment**

- A. The Department may elect to deduct from the Contractor Payment as specified in Section G.3.4, Deductions for Unacceptable Compliance and Section G.3.5, Withholding of Payment, any amount specified in or any money determined to be due as specified in Section E.1.E.

- B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

### **G.3.3 Late Payment**

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof will accrue interest each day that such amount is not paid at the rate specified by Texas Government Code §2251.025, provided, however, that this provision will not excuse failure by the Department to make payment in strict accordance with this Contract.

### **G.3.4 Deductions for Unacceptable Compliance**

- A. The Contractor's failure to meet Compliance Standards will result in a deduction to the invoice Contractor payment.
- B. Non-compliance could result in the Department purchasing FAST Program services for another entity and deducting the cost from the invoice payment.

### **G.3.5 Withholding of Payment**

- A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected.
  - i. Failure to submit reports required for Compliance Standards listed in Section D.1; Reports Required from Contractor.
  - ii. Failure to respond to audit reports; and
  - iii. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) calendar days upon receipt of written notification.
- B. The Department will not pay interest to the Contractor for monies so withheld.
- C. The Contractor Payment withheld will be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive calendar days.
- D. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property will be withheld from the final Payment.
- E. With the exception of disputed issues, such withholding of final Payment by the Department will not exceed one-hundred twenty (120) calendar days from date of this Contract's termination.

**G.3.6 Payment of Debt Owed to the State of Texas**

As required by Texas Government Code, Section 2252.903, payments due under this Contract will be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. The Contractor shall comply with rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

**G.3.7 Right to Offset**

In the event the Department determines that the Contractor owes money to the Department under any contract or purchase order, the Department, upon providing the Contractor with written notice of its intent to offset, shall have the right to withhold monies due to the Contractor with respect to this Contract or purchase order or with respect to any other contract or purchase order with the Department and apply such monies to the money due to the Department.

**G.3.8 Annual Financial Disclosure Reports**

- A. The Contractor shall submit to the Contract Administrator financial reports and financial information acceptable to the Department as described in Section B.1.4 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.
- C. Notwithstanding anything else in this Section G.3.8 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including but not limited to, the audits described in Section H of this Contract.



## **SECTION H – TERMS AND CONDITIONS**

Subcontractors are also obliged to comply with these provisions.

### **H.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS**

- A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Department's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.
- B. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.
- C. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.
- D. The Department may, upon thirty (30) calendar days written notice to the Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect if funding or appropriations for this Contract are reduced by law, the statutory amount of compensation authorized for the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage.

### **H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY**

- A. The Contractor will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of the Department, and then only in accordance with explicit written instructions from the Department.
- B. The Contractor will not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract without

the express prior written consent of the Department. The Department is not authorized to provide endorsements.

- C. Notwithstanding the foregoing, the Contractor may make any disclosure required by law or regulation without the approval of the Department.

### **H.3 FURTHER OPPORTUNITY TO CURE**

- A. If an Event of Default of the type specified in Section H.4.1 occurs and if the Contractor reasonably believes that such Event of Default cannot be cured within the ten (10) business days allowed in Section E.1.F but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the ten (10) business day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. The Department shall promptly review Contractor's plan for curing an Event of Default and at its discretion, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The Department's decision will be communicated in writing to the Contractor.
- D. The Department will not exercise its remedies thereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. The ten (10) business day time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

### **H.4 TERMINATION**

This Contract may be terminated or cancelled in any of the following circumstances:

#### **H.4.1 Termination by Default**

The Department shall notify the Contractor in writing of any failure or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). The Department's notification will demand that the failure or default be remedied within ten (10) calendar days. The Department shall have the right to cancel this Contract upon ten (10) calendar day's written notice if the Contractor fails to remedy such failure or default within the ten (10) calendar day period.

#### **H.4.2 Termination for Unavailability of Funds**

This Contract may be terminated as provided in Section H.1 herein entitled "Availability of Funds for Next Fiscal Year and Legislative Actions." The obligations of the Department under this Contract are contingent upon the availability of funds to meet the Department's liabilities hereunder. The Department may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States, if these funds become unavailable to the Department.

#### H.4.3 Termination for Convenience

This Contract may be terminated, without penalty, by the Department, without cause by giving thirty (30) calendar days written notice of such termination to the Contractor.

#### H.4.4 Termination by Mutual Agreement

This Contract may be terminated upon mutual written agreement.

#### H.4.5 Termination for Cause

This Contract may be terminated by the Department if the Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in Section H.4.1 herein entitled "Termination by Default." The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

#### H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Vendor List

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the Contractor becomes listed on the prohibited Vendors list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if the Contractor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management ("SAM") maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

#### H.4.7 General Termination Provisions

- A. The termination of this Contract, under any circumstances whatsoever, will not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department will not limit any other right or remedy available to the Department at law or in equity.
- B. This Contract does not grant the Contractor a franchise or any other vested property right. The Department reserves the right, in its sole discretion, to solicit or contract with other contractors for the FAST or similar services and deliverables under this Contract at any time. **Except as expressly authorized by the Department under this Contract during the term of this Contract, the Contractor's provision of FAST or other services and deliverables under this Contract is not exclusive. In all events, no minimum number of applications is guaranteed. In all events, no minimum amount of compensation is guaranteed.**
- C. The Department will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of the Department whether such claims

of the Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination hereunder.

- D. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which has been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.
- E. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Department.
- F. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.
- G. The Department reserves the right to cancel this Contract without notice and either re-solicit or re-award this Contract to the next best responsive and responsible Respondent if the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department shall determine the period of suspension based on the seriousness of the default.
- H. The Department and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

## **H.5 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:
  - i. The dispute resolution process provided for in Texas Government Code, Chapter 2260, will be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.
  - ii. The Contractor's claim for breach of this Contract that the Parties cannot resolve in the ordinary course of business will be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.

- iii. The Contractor shall initiate the process by submitting written notice, as required by Subchapter B, to the Procurement and Contract Services Director or designee, at 5805 North Lamar Blvd, Bldg. A, Austin, Texas 78752.
  - iv. Said notice will specifically state that the provisions of the Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under this Contract.
  - v. Compliance by the Contractor with the Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.
  - vi. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the Parties are unable to resolve a dispute under this subparagraph (A).
  - vii. Compliance with the contested case process provided in the Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
  - viii. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract will be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Contractor shall comply with the Department administrative rules published in the Texas Administrative Code, Title 37, Public Safety and Corrections, Part I, Texas Department of Public Safety, Chapter 34, Negotiation and Mediation of Certain Contract Disputes.
- C. The Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, and shall conform to Department directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the Department at all times during the course of the dispute resolution process. The Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

## **H.6 INDEMNIFICATION**

### **H.6.1 Acts or Omissions**

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

**OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### **H.6.2 Infringements**

- A. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, U.S. COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF THE CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
- B. THE CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATIONS MADE TO THE PRODUCT WITHOUT THE CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE DEPARTMENT'S SPECIFIC INSTRUCTIONS; (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE DEPARTMENT; OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE DEPARTMENT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**
- C. IF THE CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE DEPARTMENT PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE DEPARTMENT, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE: (I) PROCURE FOR THE DEPARTMENT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT THE DEPARTMENT'S USE IS NON-INFRINGEMENT.**

#### **H.6.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- A. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING**

**OUT OF THE PERFORMANCES IN THIS CONTRACT. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.**

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

#### **H.7 NO WAIVER OF DEFENSES**

Nothing in this Contract will be construed as a waiver of the State's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or to be considered as a basis for estoppels. The Department does not waive any privileges, rights, defenses, or immunities available to the Department by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

#### **H.8 INDEPENDENT CONTRACTOR**

The Contractor and its employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. The Contractor and its employees, representatives, agents and any subcontractors will not be employees of the Department. Should the Contractor subcontract any of the services provided under this Contract, the Contractor expressly understands and acknowledges that in entering into such subcontracts, the Department is in no manner liable to any subcontractor(s) of the Contractor. In no event will this provision relieve the Contractor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

**H.9 APPLICABLE LAW; VENUE**

This Contract will be governed by and construed in accordance with the substantive and procedural laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas.

**H.10 ASSIGNMENT**

The Contractor will not assign or transfer any interest in or duty under this Contract without the express, prior written consent of the Department at its sole discretion. An attempted assignment in violation of this clause is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under this Contract.

**H.11 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS**

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

**H.12 APPROVAL OF CONTRACT**

This Contract is subject to written approval of the Department Director or the Director's designated representative and will not be binding until so approved.

**H.13 NON-DISCRIMINATION**

In the performance of this Contract, the Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following:

- A. The Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.
- B. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.



- D. Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

#### **H.14 AMENDMENTS**

Except as provided in Sections H.15 and H.16 of this Contract, this Contract may be amended only upon written agreement between the Department and the Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas will be void ab initio.

#### **H.15 OPTION TO EXTEND THE TERM OF THIS CONTRACT**

- A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor prior to this Contract's expiration.
- B. The preliminary notice does not commit the Department to an extension.
- C. If the Department exercises this option, this extended Contract will be considered to include this option provision.

#### **H.16 OPTION TO EXTEND SERVICES**

- A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new contract, and transitioning into a new contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder will not exceed six (6) months.
- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section H.15.

#### **H.17 SEVERABILITY**

In the event that any provision of this Contract is held invalid, void, unenforceable or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, then the remaining terms, provisions, covenants, and conditions of this Contract will remain in full force and effect, and will in no way be affected, impaired, or invalidated.

#### **H.18 IMMIGRATION AND U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM**

The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who shall perform any labor or services under this Contract. The Contractor shall also comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

By entering into this Contract, the Contractor certifies and ensures that it utilizes and shall continue to utilize for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- (1) All persons employed to perform duties within Texas during the term of this Contract; and
- (2) All persons (including subcontractors) assigned by the Contractor to perform work pursuant to this Contract within the United States of America.

The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-conformation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above by the Contractor and the Contractor's subcontractors as proof that this provision is being followed.

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

#### **H.19 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS**

The Contractor shall have no authority to act for or on behalf of the Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. The Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Department.

#### **H.20 PUBLIC SAFETY COMMISSION CONTRACT REVIEW**

The Texas Public Safety Commission or the Commission's designee (Commission) shall receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

- A. Contracts valued at one-million and no/100 dollars (\$1,000,000.00) or more, including available renewal options;
- B. Contract amendments (other than exercise of available renewal options) valued at one-hundred thousand and no/100 dollars (\$100,000.00) or more that increase the value of the original contracts by 50% or more; and
- C. Contract amendments (other than exercise of available renewal options) valued at five hundred thousand and no/100 dollars (\$500,000.00) or more.

The Assistant Director, Administration, shall submit these reports to the Commission. The Commission shall review contracts prior to or after award by the Department if required by applicable law.

**H.21 STRICT COMPLIANCE**

Time is of the essence in the delivery of deliverables as set forth in this Contract. The Contractor shall strictly comply with all of the deadlines, requirements, and standards of performance for this Contract.

**H.22 APPLICABLE LAW AND CONFORMING AMENDMENTS**

The Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department or the Contractor's compliance with all applicable State and federal laws, and regulations.

**H. 23 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS**

- A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.
- B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor shall be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.
- C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor personnel shall comply with all relevant Department policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy and Security Addendum, as they now exist and as they may thereafter be amended.

- D. The Department shall have the right to require the Contractor to remove any Contractor personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

#### **H.24 FORCE MAJEURE**

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, any requirement contained herein caused by force majeure. The existence of such causes of delay or failure will 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. Each party shall inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

#### **H.25 FORESEEABLE DELAY**

If a delivery delay is foreseeable and the delay is not caused by a force majeure event, the Contractor shall give written notice to the Department. The Department has the right to extend the delivery date if reasons appear valid. The Contractor shall keep the Department advised at all times of status of the deliverable. Default in promised (without accepted reasons) or failure to meet specifications authorizes the Department to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to all other legal and equitable remedies.

#### **H.26 NO SUBSTITUTIONS AND DELIVERY TIMES**

No substitutes or cancellations are permitted without written approval of the Department. Delivery will be made during normal business hours only, unless approval for late delivery has been obtained from the Department in writing.

#### **H.27 TESTING; ACCEPTANCE; RETURN; REVOCATION**

All samples will be subject to inspection and testing by the Department or the State of Texas. The Department reserves the right to test items/samples upon request and all costs of such testing will be paid by the Contractor. After award and prior to payment, the Department may conduct acceptance testing on the requested items delivered under this Contract. If the delivered and installed items fail to meet the acceptance criteria or any other requirements, the Department may refuse to accept such items. Upon Department acceptance of deliverable(s) that meet or exceed all requirements, the Department shall notify the Contractor in writing that the Contractor may submit an invoice to the Department's Accounts Payable Division for such deliverables. The Department reserves the right to revoke prior acceptance for, among other things, latent defects.

#### **H.28 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**

**THE CONTRACTOR SHALL INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR**

**INFRINGEMENTS ARISING FROM THE STATE'S OR THE CONTRACTOR'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY THE CONTRACTOR OR OTHERWISE TO WHICH THE STATE OF TEXAS HAS ACCESS AS A RESULT OF THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY THE CONTRACTOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF THE CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM WILL BE MADE BY THE CONTRACTOR WITHOUT THE DEPARTMENT'S PRIOR WRITTEN APPROVAL. THE CONTRACTOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. THE CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST. THE CONTRACTOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS AND PERMITS.**

#### **H.29 SURVIVAL**

Termination of this Contract for any reason will not release the Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and any other provisions of this Contract that impose continuing obligations on either of the Parties or that govern the rights and limitations of either of the Parties after the expiration or termination of this Contract.

#### **H.30 SUCCESSORS**

This Contract will be binding upon and will inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

#### **H.31 EMPLOYEE NON-SOLICITATION**

The Contractor will not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a Department employee or was a Department employee during the previous twelve (12) months with whom the Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

#### **H.32 COMMENCEMENT OF WORK**

Work performed before final execution of this Contract will be at the Contractor's risk and if a cost reimbursement contract, that work will not be reimbursed without prior written authorization from the Department for the Contractor to begin work.

**H.33 ROLLING ESTOPPEL**

- A. The Department shall be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.
- B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

**H.34 SALES AND USE TAX**

The Department, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts. Notwithstanding the foregoing, if any fees to be collected under this Contract are determined to be subject to state sales tax or other taxes by the Texas Comptroller or other relevant government agency, the Contractor may collect, in addition to the Contractor's fees under Section B.2 hereof, and remit such taxes in accordance with any such determination.

**H.35 NOTICES**

Any notice required or permitted under this Contract will be directed to the respective Parties' Contract Administrator as specified in Section G.1.2 and will be deemed received:

- A. when delivered in hand and a receipt granted;
- B. three calendar days after it is deposited in the United States mail by certified mail, return receipt requested; or
- C. when received if sent by confirmed facsimile or confirmed electronic mail.

Either of the Parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it will become effective.

**H.36 MOST FAVORED CUSTOMER**

The Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to the Department pursuant to this Contract are comparable to, or more favorable to, the Department than the price, charges, benefits, warranties, and terms that

the Contractor has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of this Contract, the Contractor contracts with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor shall notify the Department of such more favorable terms and the Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to the Department under this Contract, and be retroactive to the date of this Contract.

#### **H.37 STATE EXCULPATION**

The Department will not be liable to the Contractor for any increased costs or expenses that may be incurred by the Contractor, or for any other damages that may be suffered by the Contractor as a result of any act or omission of any other Contractor to the State of Texas or the Department.

#### **H.38 TITLE AND RISK OF LOSS**

Title and risk of loss for deliverables will not pass to the Department until the Department actually receives, takes possession, and accepts the deliverables at the point or points of delivery (F.O.B. Destination).

#### **H.39 AVAILABILITY OF DEPARTMENT MANPOWER**

All of the Department's obligations and requirements in this Contract are subject to the availability of the Department manpower and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department manpower and the practicability of the Department to perform such obligations and requirements is within the sole discretion of Department management.

#### **H.40 INTERPRETATION AGAINST DRAFTER**

Ambiguities in this Contract or the language at issue will not be interpreted against the drafting party regardless of which party drafted this Contract or the language at issue.

#### **H.41 NON-INCORPORATION CLAUSE**

This Contract embodies the entire agreement between the Parties regarding the deliverables described herein, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the Parties regarding the deliverables described in this Contract other than those specifically set forth herein.

#### **H.42 HEADINGS**

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for convenience only and will not be deemed to limit, amplify, or modify the terms of this Contract, nor to affect the meaning thereof.

**H.43 ATTACHMENTS**

The Department reserves the right, in its sole discretion, to reject any of the Contractor's terms and conditions or other documents or attachments as part of the Contractor's Offer.

**H.44 UNACCEPTABLE CONTRACTOR TERMS**

No Department action, including, but not limited to, execution of this Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such in this formal signed Contract. Such negotiated terms and conditions will take precedence over the other documents that collectively constitute this Contract as specifically provided in this Contract.

Contractor terms and conditions that may violate Texas law or may be unacceptable to the Department for inclusion in this formal signed Contract include:

- A. Incorporation of laws of a state other than Texas;
- B. Requirements for prepayment;
- C. Limitations on the Department's remedies;
- D. Requirements that the Department indemnify the Contractor;
- E. Requirements that the Contractor's documents control in case of conflict;
- F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and
- G. Disclaimer of warranties.

**H.45 RECALL NOTICE**

The Contractor shall immediately upon discovery of same, advise the Department of any or all required replacements or modifications to any equipment or hardware provided under this Contract or the withdrawal of any such equipment or hardware by reason of safety hazard or recall regardless of the nature of same. Verbal notification will be confirmed in writing within twenty-four (24) hours of such verbal notification. The Contractor shall submit all such formal notices to the Department Contract Monitor.

**H.46 COMPETENCY ACKNOWLEDGEMENT**

The Contractor has read and fully understands this Contract between the Department and the Contractor. The Contractor is legally competent to execute this Contract and has done so with the Contractor's own free will and accord, without reliance on any representation of any kind or character by the Department which is not expressly set forth herein. The Contractor understands that it has an opportunity to consult with a lawyer prior to signing this Contract.



**H.47 MULTIPLE CONTRACTS**

This Contract may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Contract, it will not be necessary to produce or account for more than one (1) such counterpart.

**H.48 LITIGATION OR FELONY CRIMINAL CONVICTIONS**

The Contractor represents and warrants that it is not aware of and has received no notices of any court or governmental actions, proceedings, or investigations, etc., pending or threatened against the Contractor that would or could impair the Contractor's performance under this Contract or would otherwise be relevant to the Department entering into this Contract. The Contractor represents and warrants that the Contractor has not and the Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

**H.49 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING**

The Contractor represents and warrants that the Department payments to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Texas Government Code, Sections 556.005 and 556.008.

**H.50 FALSE STATEMENTS**

The Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If the Contractor signs this Contract with a false statement or it is subsequently determined that the Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this Contract, the Contractor shall be in default under this Contract and the Department may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.

**H.51 PUBLIC INFORMATION ACT**

A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. The Contractor shall maintain the confidentiality of information received from the State of Texas during the

performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

- B. The Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt 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.

## **H.52 APPROVAL OF EMPLOYEES**

- A. The Contractor shall retain no Upper Level Management Personnel for administration of the Services without prior approval of each selection by the Department's Authorized Representative or his designee which approval will not be unreasonably withheld.
- B. The Contractor shall provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by the Department.

## **H.53 PERSONNEL**

### **H.53.1 Qualifications of Personnel**

- A. The Contractor warrants that all persons assigned to this Contract are employees or subcontractors of the Contractor, and meet all qualifications as defined herein to perform the work required.
- B. Replacement of personnel, if approved by the Department, will be with personnel of equal or greater ability and qualifications. The Department shall be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.
- C. The Contractor shall assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of the obligations of the Contractor under this Contract. The Department shall have the right to approve the assignment and replacement by the Contractor of all personnel assigned to provide deliverables or to provide on-site representation of the Contractor.
- D. The Contractor shall notify the Department before assigning a replacement individual for any of the personnel commitments identified in this Contract. The Contractor shall notify the Department of the proposed assignment, shall introduce the individual to the appropriate representatives of the Department, shall provide a transfer of knowledge validation and shall provide to the Department a resume and any other information about the individual reasonably requested by the Department. The Department reserves the right to interview the individual before granting approval. The Contractor shall obtain prior written approval for any replacement personnel before beginning any work assignments.

### **H.53.2 Replacement of Personnel at the Department's Request**

- A. The Department reserves the right to require the Contractor to replace the Contractor personnel whom the Department judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the Department or the State of Texas. Before a written request is issued,

representatives of the Department and the Contractor shall discuss the circumstances. Upon receipt of a written request from the Department's Contract Administrator, the Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. The Contractor shall also provide the Department with evidence of a sufficient transfer of knowledge to the proposed replacement.

- B. This provision will not give the Department the right to require the Contractor to terminate any Contractor employee's employment. Rather, this provision gives the Department the right to require the Contractor discontinue using particular personnel in the performance of deliverables for the Department.

### **H.53.3 Unauthorized Removal of Personnel**

It is critical to the overall success of the project that the Contractor not remove or reassign, without the Department's prior written approval, any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel will only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor will be considered by the Department as a material breach of this Contract and grounds for termination.

### **H.54 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance under this Contract. In performing services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

### **H.55 BOOKS AND RECORDS**

All records and documents pertinent to the services contracted hereunder will be kept for a minimum of four (4) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

### **H.56 ORGANIZATIONAL AND NAME CHANGE**

The Contractor shall submit written notification to the Department of any changes in the Contractor's name, address, telephone number, facsimile number and/or email address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as," "DBA" or "also known as", "AKA" and any legal corporate name change filed with the Secretary of State.

**H.57 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor's Authorized Representative shall provide the following to the Department's Project Manager within ten (10) calendar days of executing this Contract:
  - i. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and
  - ii. Acceptable fingerprints for all proposed personnel.
- B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. The Department has the right to prevent the Contractor's personnel from gaining access to the Department building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.9 entitled "Criminal History Background Checks" for details on this requirement.

**H.58 INFORMATION TECHNOLOGY STANDARDS**

The Contractor shall comply with all technology, security, accessibility, warranty, maintenance, confidentiality, testing and other standards, policies and procedures of the Department and the State of Texas that are applicable to the Contractor in its performance of this Contract as such standards, policies, and procedures are amended by the Department or the State throughout the term of this Contract, including any renewal or optional periods. The Information Resource Manager (IRM) designated by the Department shall assist the Contractor in reviewing these standards, policies and procedures and identifying those that are applicable to the Contractor in its performance of this Contract.

**H.59 WARRANTIES****H.59.1 Third Party Warranties**

If, under this Contract, the Contractor procures any materials or products for the Department, the Contractor shall assign or otherwise transfer to the Department, or afford the Department benefits of, any manufacturer's warranty for such materials or products.

**H.59.2 Contractor Warranties**

The Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:

- A. The Contractor/subcontractor(s) shall create and deliver all services and deliverables in accordance with applicable professional standards of a Contractor providing testing services. The Contractor represents and warrants it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.
- B. The Contractor/subcontractor(s) shall assign only qualified personnel to this Contract.
- C. The Contractor/subcontractor(s) shall efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.

- D. The Contractor/subcontractor(s) shall use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.
- E. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.
- F. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.
- G. The Contractor has duly authorized the execution, delivery, and performance of this Contract.
- H. The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the Department.
- I. The Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, the Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

#### **H.60 DRUG-FREE WORKPLACE**

The 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 the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **H.61 AUTHORITY TO AUDIT**

- A. The Contractor understands that acceptance of funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor shall cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract.
- B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

- D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.
- E. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments to the Contractor.

#### **H.62 FRAUD, WASTE OR ABUSE**

- A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at the Department, it can be reported to the SAO by calling 1-800-892-8348 or on the SAO's website at [www.sao.state.tx.us](http://www.sao.state.tx.us). It can also be reported to the Department's Office of the Inspector General at (512) 424-2015, the Department Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

#### **H.63 REDACTED DOCUMENTATION**

The Contractor has provided to the Department, an electronic copy of the Contractor's Offer with specified confidential information removed, plus an overview of the nature of the information removed as per Section L.11 of the RFO.

#### **H.64 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213**

Effective September 1, 2006, State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 and 1 TAC, Chapter 206 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

#### **H.65 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)**

- A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.
- B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.

- C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- D. The Contractor shall provide, at no additional charge, appropriate licenses, as necessary for the Department to use and access, the turnkey solution during the term of this Contract, the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.
- E. Notwithstanding anything to the contrary in this Contract, the Contractor shall retain ownership of its pre-existing intellectual property used in its performance of this Contract. For the avoidance of doubt, the Department will have no ownership rights to proprietary source data, information, materials or other property, both tangible and intangible brought in by the Contractor for use in performance of this Contract or developed by the Contractor for use by or in conjunction with the services performed by the Contractor under this Contract that is also developed for use by or in conjunction with services to be performed for other customers of the Contractor, except as otherwise provided herein in Subsection A above. The Contractor grants to the Department a license to use the proprietary source data, information, materials, or other property referred to herein, consistent with the purposes of this Contract. For the avoidance of doubt, Contractor will have no obligation to provide any source code used in the Contractor's performance of this Contract to the Department.

## SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

Subcontractors are also obliged to comply with these provisions.

### I.1 INSURANCE REQUIREMENTS

- A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract.
- B. The insurance coverage(s) will be evidenced by immediate delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Copies and changes to insurance coverage(s), including extensions, renewals, cancellations and revisions will be submitted to the Contract Administrator within thirty (30) calendar days of the effective date.
- D. The Contractor represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar day's prior written notice to the Department. The Certificate(s) will be addressed to the Texas Department of Public Safety as the Certificate holder.
- E. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it provided the Department with proof of coverage and represents and warrants that it will maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:
  - i. **Workers' Compensation and Employers' Liability.** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.

**Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state Contractor's employee resides in.**

**Coverage B – Employer's Liability (EL) \$1,000,000 each accident limit / \$1,000,000 Disease Policy / \$1,000,000 Disease each employee limit.**

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by WC and EL.

- ii. **Business Automobile Liability Insurance.** The Contractor shall maintain Business Automobile Liability insurance coverage for all owned, hired, and non-owned vehicles, with a minimum **combined single limit of \$1,000,000** for each accident for bodily injury and property damage. Such insurance will include coverage for loading and unloading hazards.

If the Contractor will carry pollutants or hazardous materials, endorsements for Pollution Liability Coverage for Automobile and Motor Carrier Act will be included.



The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by the business auto liability insurance (or any other applicable auto physical damage coverage.)

- iii. **Commercial General Liability Insurance.** The Contractor shall maintain Commercial General Liability insurance coverage that includes, but is not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

**\$1,000,000 each occurrence**

**\$2,000,000 General Aggregate limit**

**\$2,000,000 Products and Completed Products**

**\$1,000,000 Personal/Advertising injury**

**\$50,000 Damage to Premises**

**\$5,000 Medical Payments**

- a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.
- b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.
- c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.
- d. The Department will be named as an additional insured by using endorsement CG2026 or broader.
- e. The Contractor's coverage will include an endorsement for waiver of subrogation and a thirty (30) Calendar Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

- iv. **Professional Liability.** The Contractor shall maintain Professional Liability insurance (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:

**\$1,000,000 per occurrence,**

**\$2,000,000 annual aggregate.**

- a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of this Contract and acceptance by the Department.

- b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract.
  - v. **Commercial Crime Insurance.** The Contractor shall maintain Commercial Crime insurance coverage to cover losses from Employee Dishonesty with a **minimum limit of \$50,000** each occurrence.
    - a. Coverage will be endorsed to cover third party property and the Department shall be a joint loss payee.
  - vi. **Cyber Insurance.** The Contractor shall maintain Cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by the Contractor under or as a result of this Contract. This insurance will provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.
- F. **Umbrella / Excess Liability.** The Contractor may combine its primary and Excess / Umbrella Liability limits to meet the minimum required coverage for any line of coverage; however, if it chooses this option, the coverage will be written at least as broad as those requirements defined above **\$1,000,000 Minimum Limit**.

#### **I.1.1 Additional Provisions**

The Contractor shall ensure that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- A. Name the Department and its board, trustees, officers, employees, agents, representatives and volunteers as additional insured to all applicable policies.
- B. Waiver of subrogation against the Department and its board; trustees, officers, employees, agents, and volunteers, for bodily injury (Including death), property damage or any other loss to all policies.
- C. The Contractor's insurance will be the primary insurance in regards to the Department and its board, trustees, officers, employees, agents, and volunteers.
- D. All provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, will be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. All Certificates of Insurance will identify the service or product being provided and the name of the responsible party.
- F. No "self-insurance" coverage will be acceptable.

- G. The Contractor's insurance coverage will continue in full force and effect during the term of this Contract. This Contract will not be entered into unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the date on which the services of the Contractor will commence.
- H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated "A" or better by A.M. Best or equivalent rating by a similar insurance rating service.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.
- K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

#### **I.1.2 Subcontractor's Insurance**

The Contractor's insurance policies will provide coverage for the Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

#### **I.2 SUBCONTRACTS**

- A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.
- B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall approve all subcontractors and shall require the Contractor to replace any

subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.

- C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor will the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- D. The Contractor shall furnish to the Department copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.

### **I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION**

- A. The Contractor shall make a good faith effort to comply with all state Historically Underutilized Business (HUB) requirements pursuant to Texas Government Code, Chapter 2261 and administrative rules, if applicable. The Contractor shall also comply with the attached HUB Subcontracting Plan, Appendix J.4.
- B. The Contractor shall comply with the implementation of the HUB Subcontracting Plan (HSP) submitted as part of its Offer. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.
- C. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, this agency's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) working days after this Contract is executed.
- D. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Vendor Progress Assessment Report, which is included as Exhibit J.4, HUB Subcontracting Plan.
- E. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

### **I.4 LIQUIDATED DAMAGES**

- A. The Department reserves the right to assess liquidated damages at an amount up to \$1,326.00 for each site per day for each business day the Contractor misses the deadline for each deliverable, with such deadlines designated in this Contract or the deployment plan under Section C of this Contract. The Parties acknowledge that the harm that will be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.

- B. The Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department Project Team, as long as the Contractor timely files its deficiency report as required by the Section herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.
- C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

### **I.5 TRANSITION**

- A. The Contractor shall provide detailed procedures to be accomplished upon termination of this Contract and transition to Department management or management by a third party.
- B. Upon termination of this Contract, the Contractor shall work with the Department under Department supervision for a period of sixty (60) calendar days, prior to the expiration of this Contract, to ensure the orderly transfer and efficient transition from current Contractor management to the Department management (or management by a third party).
  - i. Thirty (30) calendar days before the end of the transition period, the Contractor shall transfer all maintenance records, files and logs to the Department.
  - ii. In the event the Contractor requires copies of any records after this Contract's expiration and management transition, the Department shall furnish copies to the Contractor at Contractor's expense.
- C. The Department reserves the right to require the Contractor, at Contractor's expense, to provide an additional staff member for the sole purpose of overseeing the transition of records and State-Owned property and equipment.
  - i. The Contractor's employees shall be assigned beginning thirty (30) calendar days from the date of execution of this Contract and again for the sixty (60) calendar days prior to the conclusion of this Contract.
  - ii. This employee shall work a shift/schedule to meet the needs of the Department.
  - iii. The Contractor's employees shall represent the Contractor in all transition activities.
  - iv. In the event the Contractor fails to have a representative present during transition inventories the Contractor waives all rights to contest the inventory.

### **I.6 OTHER CONTRACTS**

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department shall provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor shall work cooperatively with the additional contractor in order to ensure that the performance of the services and/or capital improvements is not

unnecessarily delayed. The Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractor(s).

#### **I.7 SUSPENSION OF WORK**

- A. The Department may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Department determines appropriate for the convenience of the Department.
- B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contract Monitor in the administration of this Contract, or by the Contract Monitor's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and this Contract modified in writing accordingly.
- C. A claim under this clause will not be allowed:
  - i. For any costs incurred more than 20 calendar days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order; and
  - ii. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

#### **I.8 STOP-WORK ORDER**

- A. The Contract Administrator may at the request of the Department's Representative, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by the FAST service authorization for a period of up to ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at the Department's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of up to ninety (90) calendar days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties will have agreed, the Contract Administrator may either:
  - i. Cancel the stop-work order; or
  - ii. Terminate the Work covered by the order as provided in the stop-work order of this Contract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume Work. The authorized representative shall make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and the FAST service authorization shall be modified, in writing accordingly, if:

- i. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of the service authorization; and
  - ii. The Contractor asserts its right to the adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and approve the claim submitted at any time before final payment under the Service Authorization.
- C. If a stop-work order is not canceled and the Work covered by the order is terminated, the Contract Administrator may allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Department will not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

#### **I.9 CRIMINAL HISTORY BACKGROUND CHECKS**

- A. The Contractor shall have its project personnel submit to the Department a fingerprint-based Criminal History Background Investigation, if required by the Department, at the Contractor's expense. To facilitate this Criminal History Background Investigation, each person shall complete the Department's Vendor Background Information form (HR-22), which shall be provided by the Department.
- B. If the Department requires a fingerprint-based Criminal History Background Investigation, the Contractor will not allow personnel to work on the project who have not successfully completed the Department's fingerprint-based Criminal History Background Investigation and who do not otherwise maintain the Department's security clearance. The Department has the right to prevent the Contractor's personnel from gaining access to the Department's building(s) and computer systems if the Department determines that such personnel do not pass the background check or fail to otherwise maintain the Department security clearance.
- C. When required, the Contractor's Project Manager shall provide the following to the Department's Project Manager within twenty-one (21) calendar days of executing this Contract: a) the completed Vendor Background Information form (HR-22) for all proposed personnel; and b) acceptable fingerprints for all proposed personnel.
- D. Throughout the term of this Contract, the Department may require the Contractor personnel to submit an annual Department fingerprinted-based Criminal History Background Investigation to the Department.
- E. Throughout the term of this Contract, the Contractor shall promptly notify the Department of any activity or action by the Contractor's personnel that may affect that individual's ability to continue to work under this Contract.

## **I.10 CONFIDENTIALITY AND SECURITY REQUIREMENTS**

### **I.10.1 General Confidentiality Requirements**

All information provided by the Department or sub-recipients to the Contractor or created by the Contractor in performing the obligations under this Contract is confidential and will not be used by the Contractor or disclosed to any person or entity, unless such use or disclosure is required for the Contractor to perform work under this Contract.

The obligations of this section do not apply to information that the Contractor can demonstrate:

- 1) Is publicly available;
- 2) The Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act;
- 3) The Contractor independently developed without regard to the Department confidential information; or
- 4) Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that the Contractor shall furnish prompt written notice of such required disclosure and shall reasonably cooperate with the Department at the Department's cost and expense, in any effort made by the Department to seek a protection order or other appropriate protection of its confidential information.

The Contractor shall notify the Department in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of such unauthorized release.

The Contractor shall notify sub-recipient in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of any unauthorized release of confidential information obtained from sub-recipient(s).

The Contractor shall maintain all confidential information, regardless whether obtained from the Department or from sub-recipient(s) in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.

If the Contractor has any questions or doubts as to whether particular material or information is confidential information, the Contractor shall obtain the prior written approval of the Department prior to using, disclosing, or releasing such information.

The Contractor acknowledges that the Department's and sub-recipient(s) confidential information is unique and valuable, and that the Department and sub-recipient(s) may have no adequate remedy at law if the Contractor does not comply with its confidentiality obligations under this Contract. Therefore, the Department shall have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary, and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of the Contractor if the Contractor fails to perform any of its confidentiality obligations under this Contract.

The Contractor shall immediately return to the Department all confidential information when this Contract terminates, at such earlier time as when the confidential information is no



longer required for the performance of this Contract or when the Department requests that such confidential information be returned.

Information, documentation and other material in connection with this Contract, including the Contractor's Offer, may be subject to public disclosure pursuant to the Texas Government Code, Chapter 552.

The FBI and the Department have computer security requirements. The Contractor's and subcontractor's employees working on this assignment shall sign and submit appropriate agreements and abide by these security requirements, within five (5) calendar days of the Department's request.

#### **I.10.2 Sensitive Personal Information**

To the extent this subsection does not conflict with the subsection herein entitled "General Confidentiality Requirements," the Contractor shall comply with both subsections. To the extent this subsection conflicts with the subsection herein entitled "General Confidentiality Requirements," this subsection entitled "Sensitive Personal Information" controls.

"Sensitive personal information" is defined as follows:

- 1) An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
  - a) Social security number;
  - b) Driver's license number or government-issued identification number; or
  - c) 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; or
- 2) Information that identifies an individual and relates to:
  - a) The physical or mental health or condition of the individual;
  - b) The provision of health care to the individual; or
  - c) Payment for the provision of health care to the individual.

Sensitive personal information does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

"Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information the Contractor maintains under this Contract, including data that is encrypted if the Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.

The Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the Contractor under this Contract.

The Contractor shall notify the Department, any affected sub-recipient and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably

believed to have been, acquired by an unauthorized person. However, the Contractor shall delay providing notice to the affected people and sub-recipients at the Department's request, if the Department determines that the notification will impede a criminal investigation. The notification to the affected people will be made as soon as the Department determines that it will not compromise any criminal investigation.

The Contractor shall give notice as follows, at the Contractor's expense:

- 1) Written notice;
- 2) Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;
- 3) Notice as follows:
  - a) If the Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, the Contractor may give notice as follows:
    - i. Electronic mail, if the Contractor has an electronic mail address for the affected people;
    - ii. Conspicuous posting of the notice on the Contractor's website;
    - iii. Notice published in or broadcast on major statewide media; or
  - b) If the Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," the Contractor may provide notice in accordance with that policy.

If this subsection requires the Contractor to notify at one time more than ten-thousand (10,000) people of a breach of system security, the Contractor shall also notify, without unreasonable delay, each consumer reporting agency (as defined by 15 U.S.C. Section 1681a) that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.

In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, the Department is authorized to assess liquidated damages in the amount of \$1,000.00 per day against the Contractor for the following damages, assessment of breach and any labor costs associated with such an assessment; however, the Department reserves the right to claim actual damages for any damages other than the following: limited to the initial assessment and review of lost or compromised data. This amount is a reasonable estimate of the damages the Department will suffer as a result of such breach and is enforceable. The Contractor will not be responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than the Contractor, the Contractor's subcontractor, or the Contractor's agent. (This clause is not to be interpreted that the Contractor is absolved of liability with any other sections pertaining to cyber security or data protection). Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

**I.11 DISCLOSURE OF SECURITY BREACH**

Without limitation on any other provision of this Contract regarding information security or security breaches, the Contractor shall provide notice to the Department's Project Manager and the CISO as soon as possible following the Department's discovery or reasonable belief that there has been unauthorized exposure, access, disclosure, compromise, or loss of sensitive or confidential Department information ("Security Incident"). Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the CISO detailing the circumstances of the incident, which includes at a minimum:

- A. A description of the nature of the Security Incident;
- B. The type of Department information involved;
- C. Who may have obtained the Department information;
- D. What steps the Contractor has taken or shall take to investigate the Security Incident;
- E. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
- F. A point of contact for additional information.

Each day thereafter until the investigation is complete, the Contractor shall provide the CISO with a written report regarding the status of the investigation and the following additional information as it becomes available:

- A. Who is known or suspected to have gained unauthorized access to the Department's information;
- B. Whether there is any knowledge if the Department information has been abused or compromised;
- C. What additional steps the Contractor has taken or shall take to investigate the Security Incident;
- D. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
- E. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

The Contractor shall confer with the CISO regarding the proper course of the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall cooperate fully by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s). Subject to review and approval of the CISO, the Contractor shall, at its own cost, 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 the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice will be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's written request, the Department shall have the right to collect such costs.

**I.12 SECURE ERASURE OF HARD DISK CAPABILITY**

**ALL EQUIPMENT PROVIDED TO THE DEPARTMENT BY THE CONTRACTOR OR UTILIZED BY THE CONTRACT FOR THE PERFORMANCE OF THIS CONTRACT THAT**

**IS EQUIPPED WITH HARD DISK DRIVES (I.E. COMPUTERS, TELEPHONES, PRINTERS, FAX MACHINES, SCANNERS, MULTIFUNCTION DEVICES, ETC.) WILL 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 THIS CONTRACT, IN ACCORDANCE WITH 1 TAC §202 AND CJIS-ITS-DOC-08140-5.3.**

### **I.13 FBI CJIS SECURITY ADDENDUM**

The Contractor shall execute an originally signed CJIS Security Addendum which can be downloaded from <http://www.txdps.state.tx.us/securityreview>. Prior to the Date of Award of this Contract, a CJIS Security Addendum Certification will be signed by each employee with access to networks and systems processing and storing the Department's data beyond the SFTP server. Each original Certification will include an original signature of the employee and the Contractor's representative.

### **I.14 REPRESENTATIONS AND WARRANTIES RELATED TO SOFTWARE**

If any software is provided under this Contract, the Contractor represents and warrants each of the following:

- A. The Contractor has sufficient right, title, and interest in the Software to grant the license required.
- B. Contract terms and conditions included in any "clickwrap", "browsewrap", "shrinkwrap", or other license agreement that accompanies any Software, including but not limited to Software Updates, Software Patch/Fix, or Software Upgrades, provided under this Contract are void and have no effect unless the Department specifically agrees to each licensure term in this Contract.
- C. The Software provided under this Contract does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right;
- D. Software and any Software Updates, Software Maintenance, Software Patch/Fix, and Software Upgrades provided under this Contract will not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and
- E. Software provided under this Contract does not and will not contain any computer code that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanism (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or that would permit the Contractor to access the Software to cause such disablement or impairment (sometimes referred to as "trap door" devices).

**I.15 WORK MADE FOR HIRE**

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of the Department. All right, title and interest in and to said property will vest in the Department upon creation and will be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in the Department, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Department. The Department shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor shall give the Department and/or the State of Texas, as well as any person designated by the Department and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the Contractor for the services rendered under this Contract.

Notwithstanding anything to the contrary in this Contract, the Contractor shall retain ownership of all pre-existing Intellectual Property of the Contractor used in the performance of this Contract. For the avoidance of doubt, the Department will have no ownership rights to proprietary source data, information, materials or other property, both tangible and intangible brought in by the Contractor for use in performance of this Contract or developed by the Contractor for use by or in conjunction with the services performed by the Contractor under this Contract that is also developed for use by or in conjunction with services to be performed for other customers of the Contractor. The Contractor grants to the Department a license to use the proprietary source data, information, materials, or other property referred to herein, consistent with the purposes of this Contract. For the avoidance of doubt, the Contractor will have no obligation to provide any source code used in the Contractor's performance of this Contract to the Department.

**I.16 CONTRACTOR'S COMPLIANCE WITH DEPARTMENT'S INFORMATION SECURITY REQUIREMENTS****I.16.1 Department Information Protection Policies, Standards & Guidelines.**

The Contractor, its employees, and any subcontractors shall comply with all applicable Department Information Protection Policies, Standards & Guidelines and any other Department requirements that relate to the protection or disclosure of the Department's Information. The Department's Information includes all data and information (i) submitted to the Contractor by or on behalf of the Department; (ii) obtained, developed, or produced by the Contractor in connection with this Contract; (iii) communicated verbally whether intentionally or unintentionally; or (iv) to which the Contractor has access in connection with the services provided under this Contract. Such Department Information may include taxpayer, vendor, and other state agency data held by the Department. As used herein, the terms "Sensitive" and "Confidential" information will have the meanings set forth in the Department's Information Protection Policies, Standards & Guidelines. All waiver requests will be processed in accordance with the Department's Information Protection Policies, Standards & Guidelines Waiver Policy. The Department reserves the right to audit the Contractor's compliance with the Department's Information Protection Policies, Standards &

Guidelines. The Department reserves the right to take appropriate action to protect the Department's network and information including the immediate termination of system access.

The Contractor shall ensure that any confidential Department Information in the custody of the Contractor is properly sanitized or destroyed when the information is no longer required to be retained by the Department or the Contractor in accordance with this Contract. Electronic media used for storing any confidential Department Information will be sanitized by clearing, purging or destroying in accordance with NIST Special Publication 800-88 Guidelines for Media Sanitization. The Contractor shall maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- A. Date and time of sanitization/destruction,
- B. Description of the item(s) and serial number(s) if applicable,
- C. Inventory number(s), and
- D. Procedures and tools used for sanitization/destruction.

No later than sixty (60) calendar days from this Contract's expiration or termination or as otherwise specified in this Contract, the Contractor shall complete the sanitization and destruction of the data and provide to the Department all sanitization documentation.

#### **I.16.2 Access to Internal Department Network and Systems.**

As a condition of gaining remote access to any internal Department network and systems, the Contractor shall comply with Department policies and procedures. The Department's remote access request procedures will require the Contractor to submit a Remote Access Request form for the Department's review and approval.

- A. Remote access technologies provided by the Contractor will be approved by the Department's CISO.
- B. Individuals who are provided with access to the Department network may be required to attend or review the Department's Security Awareness Training on an annual basis.
- C. The Contractor shall secure its own connected systems in a manner consistent with Department requirements.
- D. The Department reserves the right to audit the security measures in effect on the Contractor's connected systems without prior warning.
- E. The Department also reserves the right to immediately terminate network and system connections not meeting such requirements.

### **I.17 IT & DATA SECURITY REQUIREMENTS**

#### **I.17.1 Cloud Security Requirements**

The Contractor shall comply with the current Cloud Security Alliance's (CSA) Cloud Control Matrix (CCM) security requirements for the Contractor-hosted services or applications that

are included as part of the Contractor's FAST Program system. Information pertaining to CSA <https://cloudsecurityalliance.org/> and CCM information may be found at <https://cloudsecurityalliance.org/research/ccm/>.

### **I.17.2 System Access Control**

The Contractor-hosted FAST Program system will support external authentication and authorization services, auditing and role definitions.

#### **A. Logging Requirements:**

- i. Audit logs will enable tracking activities to take place on the system.
- ii. Successful and unsuccessful system log-on attempts.
- iii. Successful and unsuccessful attempts to access, create, write, delete, or change permission on a user account, file, directory, or other system resource.
- iv. Successful and unsuccessful attempts to change account passwords.
- v. Successful and unsuccessful actions by administrator accounts.
- vi. Successful and unsuccessful attempts for users to access, modify, or destroy the audit log.

#### **B. The following content will be included with every audited event:**

- i. Date and time of the event;
- ii. The component of the information system (e.g., software component, hardware component) where the event occurred;
- iii. Type of event;
- iv. User/subject identity; and
- v. Outcome (success or failure) of the event.

#### **C. FAST will provide alerts to appropriate agency officials in the event of an audit processing failure.**

### **I.17.3 Account Management**

- A. The system will establish and administer user accounts in accordance with role-based scheme and tracks and monitors role assignments.
- B. The system will automatically audit account creations, modifications, disabling and termination actions and notify appropriate individuals, as necessary.
- C. The system will prevent multiple concurrent active sessions for one (1) user identification.
- D. The system will enforce a limit of no more than three (3) consecutive invalid access attempts by a user.
- E. The system will automatically lock the account/node for a thirty (30) minute time period, after the unsuccessful attempts maximum is met, unless released by an administrator.
- F. The system will prevent further access to the system by initiating a session lock after a maximum of thirty (30) minutes of inactivity, and the session lock remains in effect until

the user reestablishes access using appropriate identification and authentication procedures.

- G. All users will be uniquely identified.
- H. The Contractor shall follow the secure password attributes, below, to authenticate an individual's unique ID. The passwords will:
  - i. be a minimum length of twelve (12) characters on all systems;
  - ii. Must contain characters from two of each of three of the following: Upper case, Lower case, numbers, and symbols.
  - iii. not be a dictionary word or proper name;
  - iv. not be the same as the User ID;
  - v. expire within a maximum of ninety (90) calendar days;
  - vi. not be identical to the previous ten (10) passwords;
  - vii. not be transmitted in the clear; and
  - viii. not be displayed when entered.
- I. The system will protect the confidentiality of Department Information. All data will be encrypted when it is being transmitted or stored. When cryptography (encryption) is employed within information systems, the system will perform all cryptographic operations using Federal Information Processing Standard (FIPS) PUB140-2 validated cryptographic modules with approved modes of operation. The system will produce, control, and distributes symmetric cryptographic keys using NIST-approved key management technology and processes. The key management process is subject to audit by the Department.
- J. The Contractor shall sign the CJIS Security Addendum, and all its employees requiring access to the Department's network or data shall sign the FBI Certification page to the CJIS Security Addendum and complete a fingerprint based background check.
- K. The system will undergo:
  - i. Vulnerability scanning/penetration testing conducted by the Department or the Texas Department of Information Resources on a frequent basis; and
  - ii. The Contractor shall remediate legitimate vulnerabilities within thirty (30) calendar days of notification by the Department when new vulnerabilities potentially affecting the system/application are identified and reported.
- L. System use notification:
  - i. The system will display an approved system use notification message or banner before granting access to the system. The notification will state:
  - ii. system usage may be monitored, recorded, and subject to audit;
  - iii. unauthorized use of the system is prohibited and subject to criminal and civil penalties; and
  - iv. a description of the authorized use of the system.
- M. The system will prevent an individual from denying that previous actions had been performed by the user. The goal is to ensure that the recipient of the data is assured of identity (non-repudiation).



**I.17.4 Paper/Wireless Devices**

The following requirements specify the minimum set of security measures required on WLAN-enabled portable electronic devices (PEDs) that transmit, receive, process, or store PII or confidential information:

- A. Personal Firewall. WLAN-enabled PED will use personal firewalls or run a Mobile Device Management system that facilitates the ability to provide firewall services.
- B. Anti-Virus Software. Anti-virus software will be used on wireless-capable PEDs or run a Mobile Device Management System that facilitates the ability to provide anti-virus services.
- C. Encryption of PII or confidential data-in-transit via WLAN-enabled PEDs, systems and technologies will be implemented in a manner that protects the data end-to-end. All systems components within a WLAN that wirelessly transmit PII or confidential information will have cryptographic functionality that is validated under the National Institute of Standards and Technology (NIST) Cryptographic Module Validation Program as meeting requirements per Federal Information Processing Standards (FIPS) Publication 140-2. Encryption will be a minimum of 128 bit. Department prefers 256-bit encryption.
- D. Data-at-Rest. Data at rest encryption will be implemented in a manner that protects PII and confidential information stored on WLAN enabled PEDs by requiring that the PED must be powered on and credentials successfully authenticated in order for the data to be deciphered. Data-at-rest encryption will include the encryption of individual files, portions of the file system (e.g., directories or partitions), or the entire drive (e.g. hard disks, on-board memory cards, memory expansion cards). In recognition of the increased risk of unauthorized access to PII or confidential information in the event that a PED is lost or stolen and the inherently mobile nature of these devices, encryption will be provided for data-at-rest on all WLAN enabled PEDs that is validated as meeting FIPS 140-2.
- E. WLAN Infrastructure. WLAN infrastructure systems may be composed of either stand-alone (autonomous) access points (AP) or thin APS that are centrally controlled by a WLAN controller.
- F. Validated Physical Security. APs used in the WLANS will not be installed in unprotected environments due to an increased risk of tampering and/or theft.

**I.17.6 Physical Access Controls**

- A. The Contractor shall restrict physical access to the system containing the Department data to authorized personnel with appropriate clearances and access authorizations.
- B. The Contractor shall enforce physical access authorizations for all physical access points to the facility where information system resides.
- C. The Contractor shall verify individual access authorizations before granting access to the facility containing the information system.

- D. The Contractor shall control entry to the facility containing the information system using physical access devices and guards.
- E. The Contractor shall change combinations and keys when keys are lost, combinations are compromised, or individuals are transferred or terminated.
- F. The Contractor shall implement network-based or host-based intrusion detection tools. The Contractor shall, in addition:
  - i. monitor inbound and outbound communications for unusual or unauthorized activities; and
  - ii. send individual intrusion detection logs to a central logging facility where correlation and analysis will be accomplished as a system wide intrusion detection effort.
- G. The Contractor shall employ automated tools to support near-real-time analysis of events in support of detecting system level attacks.
- H. The Contractor shall provide the Department with a security plan outlining these requirements and any additional provisions in place.
- I. The Department and the Contractor shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training. The Contractor shall, at the request of the Department or, in the absence of any request from the Department, at least quarterly, provide the Department with a report of the incidents that it has identified and taken measures to resolve.

#### **I.17.7 Incident Reporting and Notification Requirements**

The Contractor shall provide the Department immediate notification (within 4 hours) of any successful intrusions, attacks, or internal misuse, so the Department can take steps to determine whether its systems have been compromised. The Department shall take appropriate steps to isolate and respond to such incidents, in accordance with its incident response procedures.

**SECTION J - LIST OF EXHIBITS**

EXHIBIT NO.	TITLE	NUMBER OF	PAGES
J.1	Acceptable Identification DL-17		2
J.2	Co-Location Amendment Template		4
J.3	Applicant Data Dictionary		51
J.4	HUB Subcontracting Plan		31
J.5	FAST Pass Examples		2
J.6	Reserved for Future Use		1
J.7	AFIS/GTC Interface		38
J.8	Reserved for Future Use		2
J.9	Reserved for Future Use		4
J.10	TCN Generation Schema		1
J.11	Texas.gov TPE 2.X Integration Guide 1.2		44
J.12	Texas.gov Form18-Payment Testing info		1
J.13	Texas.gov TPE Direct Credit Card Authorization Quick Reference Guide		5
J.14	Texas.gov Draft ePayEmulator Specifications		11
J.15	Texas.gov TPE Developers Quick Start Guide		18
J.16	Texas Type 2 NIST		14
J.17	Final Acceptance Document		1
J.18	Live Scan Device Workstation		1
J.19	Employee Appearance – Dress Code		2

## Cooperative Purchasing Agreement

### **COOPERATIVE PURCHASING AGREEMENT**

This Cooperative Purchasing Agreement ("Agreement") is made and entered into as of the last date written below between the City of Austin ("Austin"), and the Texas Department of Public Safety ("TXDPS").

Both Austin and TXDPS have each determined a need for a cooperative agreement to purchase like criminal history record information ("CHRI") services to avoid duplicate procurement efforts and obtain the benefits of volume purchasing.

For purposes of this Agreement, CHRI services are defined as fingerprinting and name based inquiries for job applicants and/or prospective employees to determine eligibility for licensing or employment in accordance with applicable authorizing statutes.

Austin and TXDPS are authorized by Section 271.102 of the Texas Local Government Code and Chapter 791 of the Texas Government Code to pursue mutually beneficial and cooperative purchasing programs, and to enter into this agreement.

The Parties therefore agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide Austin and TXDPS with additional purchasing options by satisfying the provisions of Section 271.102 of the Texas Local Government Code.
2. **Purchasing Procedure.**
  - 2.1. **Designated Representative.** The parties agree that each of the parties shall respectively designate a person to act under the direction of, and on behalf of, the designating party (the "Designated Representative").
  - 2.2. **Vendor Agreement.** A party that enters into a contract for CHRI services with a vendor (the "First Purchasing Party") shall attempt to obtain the vendor's agreement to offer those services to the other party (the "Second Purchasing Party") for the same price and on the same terms and conditions as have been offered to the First Purchasing Party. If the vendor so agrees, and if the Second Purchasing Party is agreeable to such terms and conditions, the Second Purchasing Party may enter into its own separate contract with the vendor for the purchase of such services.
  - 2.3. **Payments and Contract Monitoring.** Unless otherwise agreed between the Designated Representatives, payments for a purchase made by the Second Purchasing Party shall be paid directly to the vendor and not to the First Purchasing Party. The Second Purchasing Party shall determine whether the vendor has complied with any provisions in its contract with the vendor, including but not limited to those relating to the quality of

## Cooperative Purchasing Agreement

items and terms of delivery, and shall be responsible for enforcement of its contract against the vendor, including all cost of enforcement.

2.4. **No Obligation.** Execution of this Agreement does not obligate Austin or TXDPS to make any purchase, to pay any membership fee or to otherwise incur any cost or obligation.

### 3. Miscellaneous.

3.1. **Duration.** This Agreement is effective on the date of the last signature below for a period of 120 months.

3.2. **Termination.** Either party may terminate this Agreement, without cause or penalty, upon not less than thirty days written notice to the other party.

3.3. **Alteration.** This Agreement may not be altered, amended, or modified except with written agreement from both of the Parties.

3.4. **Governing Law and Venue.** This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations. If any action arises based on any provision of this Agreement, venue for such action shall lie in state or federal courts in accordance with the laws of the State of Texas.

3.5. **Interpretation.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

3.6. **Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, the parties shall endeavor to agree to a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

3.7. **Agreement Execution and Authority.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but the same instrument. The undersigned officers or agents are authorized to execute this Agreement on behalf of the parties, and each party certifies to the other that any necessary actions extending such authority have been duly passed and are now in full force and effect.

3.8. **Notice.** All notices, requests, demands, and other communications required or permitted under this Agreement must be in writing. Notice will be deemed received if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective city representative set out below, or his/her designee.

Cooperative Purchasing Agreement

3.9. **Headings.** The headings in this Agreement are for reference purposes only and are not intended to affect the meaning or interpretation of the Agreement in any way.

EXECUTED this 25<sup>th</sup> day of May, 2016.

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: [Signature]  
Robert J. Bodisch, Sr.

Title: Deputy Director, Homeland Security and Services




CITY OF AUSTIN  
P.O. Box 1088  
Austin, Texas 78767-1088

By: [Signature]  
Title: Interim Assistant City Manager

APPROVED AS TO FORM:

[Signature]  
Texas Department of Public Safety



[Signature]  
Assistant City Attorney

THE STATE OF TEXAS  
COUNTY OF TRAVIS

Contract ID No. 405-LES-16-0024  
Performer's TIN. 4054054050

### **INTERLOCAL COOPERATION CONTRACT**

THIS CONTRACT AND AGREEMENT ("Agreement") is entered into by and between the agencies shown as Contracting Parties, pursuant to the authority granted and in compliance with the provisions of Texas Government Code, Chapter 791.

#### **I. CONTRACTING PARTIES**

The Receiving Agency: City of Austin

The Performing Agency: Texas Department of Public Safety ("TXDPS")

#### **II. STATEMENT OF SERVICES TO BE PERFORMED**

The Performing Agency shall provide criminal history record information (CHRI) on applicants and/or prospective employees for use in determining eligibility for licensing or employment in accordance with the Receiving Agency's authorizing statute.

#### **III. USE OF CRIMINAL HISTORY RECORD INFORMATION**

The Receiving Agency shall comply with all current and future state and federal laws, regulations, and policies related to information received under this Agreement.

#### **IV. BASIS FOR CALCULATING REIMBURSABLE COSTS**

Costs associated with this Agreement are based upon type of service rendered:

- Fingerprint based submission is \$15.00 per Texas search,
- Name based inquiry is \$1.00 per Texas search,
- Federal Bureau of Investigation (FBI) fingerprint based submission is \$14.75 per national search,
- Performing Agency may elect to assess a fee of \$1.00 per review of a CHRI record subscribed to through the Clearinghouse (costs are subject to change as appropriate based upon costs assessed by FBI for this service),
- Non-criminal justice electronic fingerprint capture service (contracted service) is \$10.00.
- At the request of the Receiving Agency, TXDPS may resubmit fingerprint cards for a fee of \$29.75. The appropriate statutory authority must exist and be followed,
- FBI Fingerprint-based Rap Back Fee is \$13.00 per record.

All fees are subject to adjustment resulting from mandated legislation or rule making and monthly invoices will reflect actual fees assessed.

#### **V. CONTRACT AMOUNT**

The total amount of services provided is based upon demand but the total amount of this Agreement shall not exceed \$232,000 for the initial 48 month term and \$116,000 for each 24 month extension option for a total not to exceed \$580,000.

#### **VI. PAYMENT FOR SERVICES**

The Receiving Agency shall pay for services received from appropriation items or accounts of

the Receiving Agency from which like expenditures would normally be paid, based upon vouchers drawn by the Receiving Agency payable to the Performing Agency.

Payments for service performed shall be invoiced by the Performing Agency: Monthly.

Payments received by the Performing Agency shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

## VII. TERM OF CONTRACT

This Agreement is effective September 1, 2015, or the date signed by authorized agency representative if signed after September 1, 2015, and shall terminate after 48 months. The Agreement may be extended up to three 24 month extension options upon the agreement of the parties.

**THE UNDERSIGNED CONTRACTING PARTIES** do hereby certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the effected agencies, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

**PERFORMING AGENCY** further certifies that it has authority to perform the services contracted for by authority granted in Texas Government Code 411.083 (Dissemination of Criminal History Information).

The undersigned parties bind themselves to the faithful performance of this Agreement. It is mutually understood that this Agreement shall not become effective until approved by both agencies and that such approval must be obtained prior to the beginning date of this Agreement.

### RECEIVING AGENCY

CITY OF AUSTIN

Authorized Signature

Printed or Typed Name

Title: Inland Assistant City Mgr.

Date: 5/6/16

### PERFORMING AGENCY

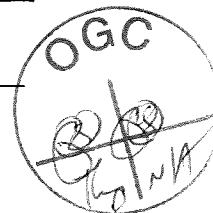
TEXAS DEPARTMENT OF PUBLIC SAFETY

Authorized Signature

Robert J. Bodisch, Sr.  
Printed or Typed Name

Title: Deputy Director, Homeland Security and Services

Date: 5.25.16





## **ATTACHMENT A**

### **TEXAS DEPARTMENT OF PUBLIC SAFETY Penalty for Unauthorized Obtaining, Use or Disclosure of Criminal History Information**

**Penalty for Unauthorized Obtaining, Use or Disclosure  
of Criminal History Information**

Sec. 411.085. UNAUTHORIZED OBTAINING, USE, OR DISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION; PENALTY. (a) A person commits an offense if the person knowingly or intentionally:

(1) obtains criminal history record information in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information;

(2) provides a person with a copy of the person's criminal history record information obtained from the department; or

(3) violates a rule of the department adopted under this subchapter.

(b) An offense under Subsection (a) is a Class B misdemeanor, except as provided by Subsection (c).

(c) An offense under Subsection (a) is a felony of the second degree if the person:

(1) obtains, uses, or discloses criminal history record information for remuneration or for the promise of remuneration; or

(2) employs another person to obtain, use, or disclose criminal history record information for remuneration or for the promise of remuneration.

(d) The department shall provide a copy of this section to:

(1) each person who applies for access to criminal history record information maintained by the department; and

(2) each private entity that purchases criminal history record information from the department.