

**FIRST AMENDMENT TO THE CONTRACT FOR INDIRECT COST ALLOCATION PLAN SERVICES  
BY AND BETWEEN THE  
OFFICE OF THE GOVERNOR  
AND  
MGT OF AMERICA CONSULTING, LLC**

**THIS FIRST AMENDMENT** to the Contract for Indirect Cost Allocation Plan Services by and between the Office of the Governor (“OOG”) and MGT of America Consulting, LLC (“Contractor”) is made and entered into by and between the OOG and the Contractor. The OOG and Contractor are referred to collectively herein as the “Parties.”

**INDUCEMENTS**

**WHEREAS**, the Parties agreed to and executed a Contract for Indirect Cost Allocation Plan Services for the contract period March 7, 2018 through August 31, 2019, hereinafter referred to as the “Original Contract”; and

**WHEREAS**, OOG RFP No. 301-8-0275 and Section 3 of the Original Contract provide the option for the OOG to renew for up to three (3) additional one-year periods through August 31, 2022;

**WHEREAS**, OOG intends to extend the contract term for an additional twelve (12) months to cover the period of performance through August 31, 2020;

**WHEREAS**, the Parties wish to amend the Original Contract, consistent with the exercise of the renewal option to extend the contract term through August 31, 2020, in order to authorize Contractor to perform services relating to the types of project services and deliverables in Section 5.2 of the Original Contract for use in the fiscal year ending August 31, 2020, which is the fiscal year following the fiscal year contemplated in Section 5.2 of the Original Contract; and

**WHEREAS**, the Parties intend to create a new agreement that consists of the provisions of this First Amendment to the Contract for Indirect Cost Allocation Plan Services by and between the OOG and the Contractor (the “First Amendment”) and the remaining unchanged provisions of the Original Contract;

**NOW, THEREFORE**, in consideration of the mutual inducements, covenants, and conditions herein, the Parties agree as follows:

**SECTION 1. AMENDMENTS.** The following amendments to the Original Contract shall be effective as of the date this First Amendment is executed by the Parties:

- (1) **CHANGE IN SECTION 1.** Section 1 of the Original Contract is amended to add the following new paragraph:

“Contract” as used in this document means this agreement entered into by the OOG and the Contractor, which incorporates by reference the documents referenced in Section 10.27 of this agreement, and any amendments to this agreement.

- (2) **CHANGE IN TERM OF CONTRACT.** Section 3 of the Original Contract is amended by modifying Section 3 to read as follows:

**“TERM OF CONTRACT.** The Contract shall commence March 7, 2018 and shall terminate on August 31, 2020 unless terminated earlier pursuant to Section 8 of this Contract. The Contract may be renewed at the discretion of the OOG for up to two (2) additional one-year periods through August 31, 2022.”

- (3) **CHANGE IN STATEMENT OF SERVICES TO BE PERFORMED.**

- a. Subsection 5.1, Project Summary, is amended to read as follows:

**5.1. PROJECT SUMMARY.** OOG is required to submit an annual Indirect Cost Allocation Plan for approval by the OOG’s cognizant federal agency, the U.S. Department of Health and Human Services, Division of Cost Allocation (“DHHS”). The Contractor is required to prepare these plans and other related deliverables as described in the Contract and in RFP No. 301-8-0275. The Contractor will prepare OOG’s agency Indirect Cost Allocation Plans in accordance with the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), for use in the fiscal year ending August 31, 2019 and the fiscal year ending August 31, 2020, for submission for approval by DHHS. The services and corresponding deliverables require the Contractor to prepare cost allocation plans and indirect cost rate proposals based upon actual expenditures and data incurred during recent prior fiscal years, which will be used to establish final indirect cost rates that may be used prospectively to recover indirect costs on federally-funded programs. After preparation and submission of each respective Indirect Cost Allocation Plan, the Contractor will be required to continue to work to obtain final federal approval, implement each respective plan, and provide all necessary assistance to the OOG regarding any required follow-up throughout the remainder of the Term of the Contract. Services shall include the successful negotiation and approval of the respective Indirect Cost Allocation Plans and indirect cost rates with DHHS.

Contractor agrees to provide services to OOG to the best of Contractor’s ability and agrees to devote such time, effort and resources, in Contractor’s reasonable discretion, which are necessary to complete the projects and services under this Contract.

- b. Subsection 5.2.1 is amended to read as follows:

**5.2.1** By no later than 3 p.m. on May 11, 2018, the Contractor will prepare and deliver to the OOG a draft Indirect Cost Allocation Plan based upon actual expenditures and data incurred during the fiscal year ended August 31, 2017, for use in the fiscal year ending August 31, 2019. By no later than 3 p.m. on May 10, 2019, the Contractor will prepare and deliver to the OOG a draft Indirect Cost Allocation Plan based upon actual

expenditures and data incurred during the fiscal year ended August 31, 2018, for use in the fiscal year ending August 31, 2020. Each respective Indirect Cost Allocation Plan will include a cost allocation plan, indirect cost rates, and other 2 CFR Part 200 required documentation, including reconciling schedules and information on billed and allocated costs. Each respective draft Indirect Cost Allocation Plan must be provided to the OOG in electronic format with one (1) bound hard copy.

- c. Subsection 5.2.2 is amended to read as follows:

**5.2.2** By no later than May 28, 2018, the Contractor will prepare and deliver a final Indirect Cost Allocation Plan based upon actual expenditures and data incurred during the fiscal year ended August 31, 2017, for use in the fiscal year ending August 31, 2019, incorporating any revisions requested by the OOG, to DHHS. By no later than May 28, 2019, the Contractor will prepare and deliver a final Indirect Cost Allocation Plan based upon actual expenditures and data incurred during the fiscal year ended August 31, 2018, for use in the fiscal year ending August 31, 2020, incorporating any revisions requested by the OOG, to DHHS. The Contractor will also deliver each respective final Indirect Cost Allocation Plan as submitted to DHHS, in electronic format with one (1) bound hard copy, to the OOG by each respective required deadline.

- d. Subsection 5.2.3 is amended to read as follows:

**5.2.3** The Contractor will negotiate federal approval of the respective Indirect Cost Allocation Plans, including the respective cost allocation plans and indirect cost rates, with DHHS.

- e. Subsection 5.2.4 is amended to read as follows:

**5.2.4** Within thirty (30) days of federal approval by DHHS, the Contractor will deliver each respective Indirect Cost Allocation Plan, as approved by DHHS, to the OOG in electronic format with three (3) bound hard copies.

- f. Subsection 5.2.5 is amended to read as follows:

**5.2.5** The Contractor will provide support to the OOG on the application of the respective Indirect Cost Allocation Plans, indirect cost rates, and the recovery of indirect costs, and will assist the OOG in maximizing the recovery of indirect costs from federal sources.

- g. Subsection 5.2.6 is amended to read as follows:

**5.2.6** The Contractor will respond to questions and assist in providing information responsive to any audit, legislative request, or other inquiry regarding the respective Indirect Cost Allocation Plans and indirect cost rates.

- h. Subsection 5.3, Performance Tracking, is amended as follows:

**5.3 PERFORMANCE TRACKING.** The OOG will monitor the performance and progress of the Contractor's work plan and the respective Indirect Cost Allocation Plans throughout the Term of the Contract, including any renewals or extensions. Contractor is expected to apply its work plan attached as Tab 4 to the Contractor's Response to RFP No. 301-8-0275 to the preparation of each respective Indirect Cost Allocation Plan and related documents, adjusting the timeframes and dates relating to the preparation of the Indirect Cost Allocation Plan for use in the fiscal year ending August 31, 2020 and related documents to be analogous to the timeframes and dates relating to the preparation of the Indirect Cost Allocation Plan used in the prior fiscal year ending August 31, 2019 and related documents. The Contractor must maintain frequent and regular communication with the OOG throughout the Term of the Contract to ensure that all required contract deadlines and goals are timely met. Contractor shall notify OOG, in writing, if there are any concerns with the data sources or any other issues associated with the preparation of the respective Indirect Cost Allocation Plans and shall recommend solutions prior to the due date for each deliverable.

**(4) CHANGES IN FINANCIAL TERMS AND CONDITIONS.**

a. Subsection 6.1 is amended to read as follows:

**6.1. Maximum Contract Amount.** The OOG's maximum liability to the Contractor, in consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations as set forth in the Contract, or arising out of any performance as the result of the Contract, shall not exceed (i) **ELEVEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$11,800.00)** for services performed for use in the fiscal year ending August 31, 2019, and (ii) **ELEVEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$11,800.00)** for services performed for use in the fiscal year ending August 31, 2020. The Contractor shall have no entitlement to payment of the maximum liability amount. Any increase(s) in this amount for subsequent contract renewals or extensions, or as a result of increases in available funding, shall require a written amendment to the Contract, which will specify the new maximum liability amount.

b. Subsection 6.10, Invoicing and Payment, is amended to read as follows:

**6.10. Invoicing and Payment.** Contractor has been or will be paid in six installment payments, which have been or shall be invoiced as follows:

- (1) An installment, in the amount of \$8,300, which was invoiced by the Contractor upon delivery of the draft Indirect Cost Recovery Plan for use in the fiscal year ending August 31, 2019, as further described in Section 5.2.1;
- (2) An installment, in the amount of \$2,500, which was invoiced by the Contractor upon delivery of the final Indirect Cost Recovery Plan for use in the fiscal year ending August 31, 2019, as further described in Section 5.2.2;
- (3) An installment, in the amount of \$1,000.00, shall be invoiced by the Contractor upon final federal approval of the Indirect Cost Recovery Plan for use in the fiscal year

- ending August 31, 2019, and delivery of the approved plan to the OOG, as further described in Sections 5.2.3 and 5.2.4;
- (4) An installment, in the amount of \$8,300, shall be invoiced by the Contractor upon delivery of the draft Indirect Cost Recovery Plan for use in the fiscal year ending August 31, 2020, as further described in Section 5.2.1;
  - (5) An installment, in the amount of \$2,500, shall be invoiced by the Contractor upon delivery of the final Indirect Cost Recovery Plan for use in the fiscal year ending August 31, 2020, as further described in Section 5.2.2; and
  - (6) An installment, in the amount of \$1,000.00, shall be invoiced by the Contractor upon final federal approval of the Indirect Cost Recovery Plan for use in the fiscal year ending August 31, 2020, and delivery of the approved plan to the OOG, as further described in Sections 5.2.3 and 5.2.4.

All invoices for services provided shall be submitted to the OOG by no later than thirty (30) Business Days after the completion and delivery of any required deliverable. Any invoice that does not comply with the minimum requirements stated in this section, or that does not comport with the restrictions on reimbursement of expenses as set forth in this section may not be considered valid and may be subject to rejection and/or return to the Contractor. Upon the request of the OOG, the Contractor must submit to the OOG any additional documentation or explanation the OOG may require to support or document the requested payment under this Contract.

**(5) CHANGE IN ENTITY NAME IN SIGNATURE BLOCK.** The heading for the signature block for Contractor is amended to be corrected as follows:

**MGT OF AMERICA CONSULTING, LLC**


**SECTION 2. ENTIRE AGREEMENT**

The entire agreement between the Parties consists of the provisions of this First Amendment and the remaining unchanged provisions of the Original Contract. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this Contract. To the extent of any conflict between this First Amendment and the Original Contract, the terms of this First Amendment shall supersede and control over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written.

**OFFICE OF THE GOVERNOR**

**MGT OF AMERICA CONSULTING, LLC**

  
\_\_\_\_\_  
Chief of Staff or Designee

  
\_\_\_\_\_  
Authorized Signature  
Printed Name: A. Trey Traviesa  
Title: Chairman and CEO

**CONTRACT FOR INDIRECT COST ALLOCATION PLAN SERVICES  
BY AND BETWEEN THE  
OFFICE OF THE GOVERNOR  
AND  
MGT OF AMERICA CONSULTING, LLC**

**SECTION 1. PARTIES TO CONTRACT.** The parties to this Contract are the Office of the Governor, (“OOG”) and MGT of America Consulting, LLC, (“Contractor”). OOG and Contractor are referred to collectively as the “parties.”

**SECTION 2. PURPOSE.** The purpose of this agreement is to procure the services of the Contractor to prepare the OOG’s annual agency Indirect Cost Allocation Plan for submission to the U.S. Dept. of Health and Human Services for approval. Thereafter, the Contractor will be required to continue to work to obtain final federal approval, implement the plan, and provide all necessary assistance to the OOG regarding any required follow-up throughout the remainder of the Term of the Contract. If the Contract is renewed or extended by the OOG, the Contractor may be required to provide Indirect Cost Allocation Plan services for subsequent fiscal years.

**SECTION 3. TERM OF CONTRACT.** This Contract shall commence March 7, 2018 and shall terminate August 31, 2019 unless terminated earlier pursuant to Section 8 of this Contract. The Contract may be renewed at the discretion of the OOG for up to three (3) additional one-year periods through August 31, 2022.

**SECTION 4. AMENDMENT.** Contract may be amended only upon written agreement signed by both parties to this Contract. The parties stipulate and agree that any act, oral statements, or representation by either party, their agents or employees that purports to increase the liability of the OOG or modify the Statement of Services to be Performed is voidable by the OOG, unless the Contract is amended in writing.

The OOG reserves the right to amend the Contract through execution of a unilateral amendment provided to the Contractor under the following circumstances: (i) to correct an obvious clerical error in this Contract; (ii) to incorporate new or revised federal or state laws, regulations, rules, or policies that are required to be included as part of the Contract; (iii) to change the designated OOG contact person or mailing address for this Contract; or (iv) to change the designated Contractor’s contact person or mailing address for this Contract.

**SECTION 5. STATEMENT OF SERVICES TO BE PERFORMED.**

**5.1. Project Summary.** The Office of the Governor is required to submit an annual Indirect Cost Allocation Plan for approval by the OOG’s cognizant federal agency, the U.S. Department of Health and Human Services, Division of Cost Allocation (DHHS). The Contractor is required to prepare this plan and other related deliverables as described herein and in RFP No. 301-8-0275. The Contractor will prepare the OOG’s agency Indirect Cost Allocation Plan in accordance with the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) for submission for approval by DHHS. The

services and corresponding deliverables require the Contractor to prepare a cost allocation plan and indirect cost rate proposal based upon actual expenditures and data incurred during the most recent prior fiscal year, which will be used to establish final indirect cost rates that may be used prospectively to recover indirect costs on federally-funded programs. After preparation and submission of the Indirect Cost Allocation Plan, the Contractor will be required to continue to work to obtain final federal approval, implement the plan, and provide all necessary assistance to the OOG regarding any required follow-up throughout the remainder of the Term of the Contract. Services shall include the successful negotiation and approval of the Indirect Cost Allocation Plan and the indirect cost rates with DHHS. Contractor agrees to provide services to OOG to the best of Contractor's ability and agrees to devote such time, effort and resources, in Contractor's reasonable discretion, which are necessary to complete the projects and services under this Contract.

**5.2. Project Services and Deliverables.** With full understanding of the project and regulations presented in 2 CFR Part 200, the Contractor will complete the project as described herein, and in Tabs 2 and 4 of Contractor's Response to RFP No. 301-8-0275, to provide the following project services and deliverables:

**5.2.1** By no later than 3 p.m. on May 11, 2018, the Contractor will prepare and deliver to the OOG a draft Indirect Cost Allocation Plan based upon actual expenditures and data incurred during the fiscal year ended August 31, 2017 for use in the fiscal year ended August 31, 2019. The Indirect Cost Allocation Plan will include a cost allocation plan, indirect cost rates, and other 2 CFR Part 200 required documentation, including reconciling schedules and information on billed and allocated costs. The draft Indirect Cost Allocation Plan must be provided to the OOG in electronic format with one (1) bound hard copy.

**5.2.2** By no later than May 28, 2018, the Contractor will prepare and deliver a final Indirect Cost Allocation Plan, incorporating any revisions requested by the OOG, to DHHS. The Contractor will also deliver the final Indirect Cost Allocation Plan as submitted to DHHS, in electronic format with one (1) bound hard copy, to the OOG by the required deadline.

**5.2.3** The Contractor will negotiate federal approval of the Indirect Cost Allocation Plan, including both the cost allocation plan and indirect cost rates, with DHSS.

**5.2.4** Within thirty (30) days of federal approval by DHHS, the Contractor will deliver the Indirect Cost Allocation Plan, as approved by DHHS, to the OOG in electronic format with three (3) bound hard copies.

**5.2.5** The Contractor will provide support to the OOG on the application of the cost allocation plan and indirect cost rates and the recovery of indirect costs, and will assist the OOG in maximizing the recovery of indirect costs from federal sources.

**5.2.6** The Contractor will respond to questions and assist in providing information responsive to any audit, legislative request, or other inquiry regarding the Indirect Cost Allocation Plan and indirect cost rates.

**5.2.7** The Contractor may propose, and may also be required from time-to-time by the OOG, to provide additional or *ad hoc* services that are generally within the scope and intent of the services described herein that are reasonable and necessary to perform and carry out the OOG's stated goals and objectives relating to Indirect Cost Allocation Plan services.

**5.3 Performance Tracking.** The OOG will monitor the performance and progress of the Contractor's Work Plan and the Indirect Cost Allocation Plan throughout the Term of the Contract, including any renewals or extensions. The Contractor must maintain frequent and regular communication with the OOG throughout the Term of the Contract to ensure that all required contract deadlines and goals are timely met. Contractor shall notify OOG, in writing, if there are any concerns with the data sources or any other issues associated with the preparation of the indirect Cost Allocation Plan and shall recommend solutions prior to the due date for each deliverable.

**5.4 Contractor Staffing Requirements.** The Contractor shall dedicate qualified professional staff who have demonstrated experience in the preparation of Indirect Cost Allocation Plans in accordance with applicable federal regulations to provide services under the Contract. The Contractor must dedicate a U.S.-based project manager to oversee all activities and services performed and provided under the Contract, including responsibility for the management, accounting for the entire contract, billing, and reporting. The project manager will be the OOG's primary day-to-day contact. Any substitution of project team members by Contractor requires pre-approval and acceptance by the OOG.

**5.5 Schedule for Performance of Services.** Time is of the essence in the rendering of services required by this Contract. The OOG may require Contractor to perform tasks or services according to a date sensitive schedule. All deliverables shall be prepared by the Contractor in anticipation that all required deadlines established by the OOG or applicable authorities will be met. Submission of the cost allocation plan is generally required within six (6) months prior to the beginning of each fiscal year to which each applies. If the Contract is renewed or extended, the OOG reserves the right to establish report deadlines applicable to any Indirect Cost Allocation Plan to be prepared by Contractor for subsequent fiscal years.

## **SECTION 6. FINANCIAL TERMS AND CONDITIONS.**

**6.1. Maximum Contract Amount.** The OOG's maximum liability to the Contractor, in consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations as set forth in the Contract or arising out of any performance as the result of this Contract, shall not exceed **ELEVEN THOUSAND EIGHT-HUNDRED AND NO/100 DOLLARS (\$11,800.00)** for the initial Term of Contract beginning the date of contract execution through August 31, 2019. The Contractor shall have no entitlement to payment of the maximum liability amount. Any increase(s) in this amount for subsequent contract renewals or extensions, or as a result of increases in available funding shall require a written amendment to the Contract, which will specify the new maximum liability amount.

**6.2. Increase in the Maximum Contract Amount.** Contractor shall monitor the costs of all services under the Contract to ensure that the amount of each new invoice added together with all



previous invoices will not exceed the Maximum Contract Amount. Contractor shall provide thirty (30) calendar days advance notice to the OOG in the event that the cost of services is anticipated to exceed the Maximum Contract Amount. Any increase(s) in the Maximum Contract Amount as a result of increases in funding shall be approved via a formal contract amendment executed by the Parties. Any increase in the Maximum Contract Amount is subject to the availability of funds in accordance with Section 6.3.

**6.3. Availability of Funds.** Contractor agrees that nothing in this Contract will be interpreted to create an obligation or liability of OOG in excess of the funds delineated in this Contract. Contractor agrees that funding for this Contract is subject to the actual receipt by OOG of funds appropriated to OOG. Contractor agrees that the funds received from OOG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of OOG for the purpose of this Contract. Contractor agrees that notwithstanding any other provision of this Contract, if OOG is not appropriated the funds or if OOG does not receive the appropriated funds, or if the funds appropriated to OOG are required to be reallocated to fund other state programs or purposes, then OOG may terminate the Contract without cost or penalty.

**6.4. Purchase of Services/Utilization.** The OOG cannot and does not guarantee the purchase of particular level, quantity, or utilization of any services during the Term of Contract (including any optional Contract renewal or extension periods). All quantities of services and work products shall be purchased upon OOG's request, in "as-needed" quantities, on an "as-needed" basis, as determined by OOG.

**6.5. Compensation to Contractor.** The Contractor is expected to provide all services described herein for the fees as set forth in the Contractor's Compensation Schedule (Tab 6/Exhibit C to Contractor's Response to RFP No. 301-8-0275). Contractor will not be compensated for any time expended or expense incurred before the effective date of this Contract. The amount(s) stated in the Compensation Schedule shall be a fixed fee amount to be charged by the Contractor to fully-compensate the Contractor, and supporting subcontractors if applicable, for the costs of all of the Contractor's services and administrative expenses required to complete work under this Contract.

The Contractor understands and agrees that the amounts set forth the Contractor's Compensation Schedule shall cover the costs of all services, including, but not limited to: all Indirect Cost Allocation Plan services; required reports; labor; project and contract management; accounting and billing services; administrative support; legal services and fees; facilities; equipment; and all incidental and normal business operating expenses, such as local and long distance phone calls (landline and mobile), facsimile, website development and hosting, publication costs, software or other licensing; travel, per diem, postage, local courier service, internal copying, supplies, materials, parking and other ongoing services performed or required for routine performance.

**6.6. Restrictions on Reimbursement of Expenses.** Because all costs of services and expenses are expected to be included within the Contractor's Compensation Schedule, the OOG will generally not reimburse Contractor for any expenses incurred in the performance of services. However, the OOG may, in its sole discretion, authorize the reimbursement of certain unanticipated expenses in accordance with the following:

**6.6.1 Pre-Approval Required.** Contractor may only be reimbursed for actual expenses that are pre-approved in writing by the OOG. Contractor must provide the OOG with a written justification to substantiate how any expenses proposed for pre-approval are reasonable and necessary for the performance of required services under the Contract, and could not have been reasonably anticipated as part of the fees set forth in the Contractor's Compensation Schedule.

**6.6.2 No Mark-up.** Contractor shall not be reimbursed for any mark-up or other overhead costs.

**6.6.3 Expenses prohibited by Texas law.** The OOG will not reimburse Contractor for any cost of expenses incurred by the Contractor relating to an expense for which agencies of the State of Texas are prohibited by law or by the policies and procedures of the OOG or the Comptroller from paying.

**6.7. Contract Issuance.** No authorization for the purchase of any services is provided until the Contractor receives a fully-executed Contract or Contract Amendment as applicable. Upon notice from the OOG that a Contract or Contract Amendment has been properly executed, the Contractor shall identify the contract manager authorized to receive direction from OOG, to manage the work being performed, and to act on behalf of the Contractor. The Contractor shall ensure that its contract manager, or his or her authorized designee, is available at all times for consultation with OOG.

**6.8. Delivery.** All deliveries of the goods or services authorized under the Contract shall be made in accordance with the Statement of Services to be Performed. No substitutions or cancellations shall be permitted without prior written approval of OOG. The Contractor shall keep the OOG advised at all times of the delivery status of goods and services to be provided. If the Contractor foresees problems, delays, or adverse conditions that may prevent the Contractor from meeting delivery requirements, the Contractor shall give not less than ten (10) business days' advance written notice to the OOG prior to the due date for any deliverable that explains the reason(s) for the delay and proposes an alternate delivery for OOG approval. The OOG has the right to accept or reject the proposed alternative delivery in its sole discretion. Default in promised delivery, without accepted reasons, authorizes the OOG to purchase goods or services elsewhere and to charge to the defaulting Contractor the full amount of any increase in costs associated with procuring replacement goods or services. Default in Contractor's delivery may result in the exercise of available remedies and/or termination of the Contract for reason of default.

**6.9. Acceptance of Work Performed.** All work performed by the Contractor shall be accepted in writing by an authorized official of the OOG before payment will be approved. Acceptance shall be based upon Contractor's compliance with all applicable Contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the Contract requirements. Should the OOG determine, in its sole discretion, that the Contractor's work is of poor quality and/or Contractor fails to perform services in a manner that complies with the Contract requirements, the OOG may require the Contractor to promptly re-perform the services in conformity with the Contract requirements at no additional cost to the OOG, or the OOG may

reject payment of invoices for Contractor's work without penalty or further obligation to the Contractor. The OOG may further require new performance, a refund, or offset in the event that work is discovered after payment has been made to be either unauthorized or below the accepted quality level. Failure to perform work in compliance with all Contract requirements may result in termination of the Contract for reason of default.

**6.10. Invoicing and Payment.** Vendor will be paid in three installment payments, which shall be invoiced as follows:

- (1) The first installment, in the amount of \$8,300.00, shall be invoiced by the Vendor upon delivery of the draft Indirect Cost Recovery Plan as further described in Section 5.2.1;
- (2) The second installment, in the amount of \$2,500.00, shall be invoiced by the Vendor upon delivery of the final Indirect Cost Recovery Plan as further described in Section 5.2.2.
- (3) The third and final installment, in the amount of \$1,000.00, shall be invoiced by the Vendor upon final federal approval of the Indirect Cost Recovery Plan and delivery of the approved plan to the OOG as further described in Sections 5.2.3 and 5.2.4.

All invoices for services provided shall be submitted to the OOG by no later than thirty (30) business days after the completion and delivery of any required deliverable. Any invoice that does not comply with the minimum requirements stated in this Section, or that does not comport with the restrictions on reimbursement of expenses as set forth in this section may not be considered valid and may be subject to rejection and/or return to the Contractor. Upon the request of the OOG, the Contractor must submit to the OOG any additional documentation or explanation the OOG may require to support or document the requested payment under this Contract.

**6.10.1** As a prerequisite to the OOG's ability to process any payments to Contractor under this Contract, Contractor shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (available on the Comptroller's website at <https://comptroller.texas.gov/forms/ap-152.pdf>). If Contractor has previously completed the required documentation to obtain a Texas Identification Number (TIN) prior to the effective date of this Contract, Contractor may satisfy this requirement by providing the OOG with Contractor's current TIN, name, and address to permit the OOG to verify registration in the TINS System with the Comptroller.

**6.10.2** Each invoice presented must include: (i) the OOG's Contract number; (ii) the Contractor's TIN; (iii) the name and division of the OOG contact; (iv) a report for the services provided under this Contract; (v) description of each service/expense and the dollar amount attributable to each; and (vi) the name of the entity or individual to which each service/expense is attributable. OOG acceptance and receipt of an acceptable invoice is required under this section.

**6.10.3** The Contractor shall submit itemized invoices for all services completed, delivered to and accepted by the OOG, per the Contract requirements. Invoice amounts shall be in U.S. dollars. All invoices shall be made payable to the Contractor at the address shown and/or with the wire

transfer instructions indicated in the Contract.

**6.10.4** Invoices and payment inquiries shall be submitted directed to:

Accounts.Payable@gov.texas.gov or by mail to:  
Office of the Governor  
Accounts Payable  
P.O. Box 12878  
Austin, Texas 78711-2878

**6.10.5** Each invoice is subject to review and approval by the OOG before payment will be processed. Upon acceptance of Contractor's performance and receipt of an acceptable invoice required to be submitted under this section, the OOG will process payment to the Contractor in accordance with Chapter 2251 of the Texas Government Code (the Texas Prompt Payment Act). It is the policy of the OOG to make payment on a properly prepared and submitted invoice within thirty (30) calendar days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice.

**6.10.6** By submission of the invoices, Contractor is warranting the following: (i) its invoices have been carefully reviewed to ensure that all invoiced services have been performed in compliance with all terms of the Contract; (ii) the charges and expenses shown on the invoice are allowable costs that are reasonable and necessary; and (iii) all supporting documentation is attached.

**6.10.7** Upon satisfactory completion by the Contractor of all the tasks identified in the contract, acceptance by the OOG, and the OOG's release of any payment holds, the Contractor will be paid the unpaid balance of any money due for such tasks in accordance with the payment terms outlined in the Contract. The Contractor understands and agrees that determination of satisfactory completion will be based entirely on the judgment of the staff of OOG, and that the OOG and its staff are not liable for any damages to Contractor or any subcontractors for claims arising from the OOG's enforcement of the requirements of this Section.

**6.11. Accounting Systems.** The Contractor shall have an accounting system that accounts for costs in accordance with Generally Accepted Accounting Principles (GAAP). The Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

**6.12. Inspections.** Throughout the Contract Term, all services and other work products, shall be subject to inspection and testing by authorized OOG representatives. OOG reserves the right, at all reasonable times, to have access to and inspect all goods and services being provided by the Contractor and its subcontractors. This shall include, but is not limited to, all facilities, equipment, supplies, and pertinent records or written material relating to the Contract requirements. Contractor's and/or subcontractor's failure to comply with this requirement may be grounds for termination of the Contract for reason of default. In the event inspected or tested services are deemed unacceptable by OOG for failure to meet all Contract requirements, the OOG may impose appropriate remedies, including, but not limited to: (i) Requiring the

Contractor to bear the cost of the Works or services tested and any costs of testing; (ii) Providing the Contractor with notice and a reasonable opportunity to cure the defective performance; (iii) Revoking OOG acceptance of any product or service in the event that latent defects in Works or services are discovered after acceptance; (iv) Requiring the Contractor to return or offset the portion of any payments attributable to such non-performance or delays in performance as compensation to the OOG for failure to comply with the Contract requirements; and/or (v) Requiring Contractor to refund or offset contract payments associated with the defective Works or services.

**6.13. Contract Monitoring.** The Contractor's performance will be monitored regularly as work is performed in accordance with the terms and conditions of this Contract. Monitoring activities may include, but are not necessarily limited to: (i) Inspection of deliverables prior to acceptance to ensure Contract compliance; (ii) Invoice review to ensure compliance with all applicable Contract terms and conditions; (iii) Periodic review of the Contractor's reports for verification that services are provided in accordance with Contract terms and conditions; (iv) Performance review and planning meetings to be held in Austin, Texas or as may otherwise be coordinated between the OOG and the Contractor; and (v) On-site reviews at Contractor's work site, to include observation, monitoring, and interview of Contractor staff to ascertain their understanding of program goals, review key Contract requirements and service documentation, and/or review fiscal records.

#### **6.14. Audit, Access to Records, Records Retention.**

**6.14.1 Contractor Cooperation.** Contractor will cooperate fully in any monitoring, inspection, assessment, review or audit conducted by the OOG or its authorized representatives related to any services provided under this Contract or billed to the OOG. Contractor will remedy any weaknesses, deficiencies, contract noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives within 30 days or less after receipt of notification from the OOG. Such remedy may include a refund or offset of contract payments or any other appropriate actions deemed necessary by the OOG. Contractor's failure to comply with this requirement may be grounds for termination of the contract, for reason of default.

**6.14.2 Access to Records.** The OOG, through any of its duly authorized representatives, shall have access to books, records, documents, financial records and any other information, pertinent to performance of all work under this Contract for the purpose of audit, review, inspection, copying, and/or audit. This right of access applies to services performed by, or financial records pertaining to, all subcontracts and subcontractor services. The Contractor shall provide proper facilities for such access and inspection, or otherwise promptly make such records available to the OOG or its authorized representatives through the production or copying of any documents or information required by the OOG at Contractor's expense.

**6.14.3 Records Retention.** Contractor shall maintain adequate records to support its charges, procedures, and performances for all work relating to this Contract. Records shall be maintained by the Contractor and made available to the OOG and its authorized representatives during the entire term of this Contract and thereafter until the later of the expiration of: (i) seven (7) years from date of final payment by the OOG for the services provided under this Contract; or (ii)

seven (7) years from date of final completion of any audit, dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken.

**6.14.4 State Auditor.** In addition to and without limitation on the other audit provisions of this Contract, pursuant to Section 2262.154 of the Texas Government Code, the Texas State Auditor's Office may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the OOG directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract is acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Contractor or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Contractor related to this Contract.

## **SECTION 7. DEFAULT, REMEDIES AND OPPORTUNITY TO CURE.**

**7.1. Notice of Possible Default.** The OOG, in its sole discretion and based on information from contract monitoring, audit, or other verifiable sources, will determine whether Contractor has acted or failed to act in such a manner that gives rise to an act of possible default under this Contract. The OOG may give written notice to Contractor setting out the circumstances that support the OOG's determination of possible default.

**7.2. OOG Remedies in the Event of Default.** Upon the OOG's determination of possible default, the OOG, in its sole discretion, may terminate the Contract for cause or take other actions, including, but not limited to:

**7.2.1** Giving the Contractor at least ten (10) calendar days to cure the possible default and to provide the OOG with sufficient information that supports a finding of cure by the OOG;

**7.2.2** Requiring the Contractor to take specific corrective actions in order to achieve or remain in compliance with any contractual term;

**7.2.3** Withholding or recouping payments made to the Contractor or imposing other sanctions based on specific violations of Contract requirements;

**7.2.4** Suspending and/or limiting any services and placing conditions on any such suspensions and/or limitations of services;

**7.2.5** Requiring the removal of any employee of the Contractor or any subcontractor from the provision of services under this Contract;

**7.2.6** Imposing special conditions on the Contractor as deemed appropriate by the OOG to ensure strict compliance with Contract terms, including, but not limited to, the imposition of additional procedures to ensure the proper delivery of services or to support payments to the Contractor, or the suspension, abeyance, or removal of any contractual rights of the Contractor.

**7.3. Cure.** If the OOG is satisfied that the Contractor has cured the possible default event, the OOG will give written notice to the Contractor. The OOG will exercise good faith and reasonableness in determining, in the sole discretion of the OOG, whether the Contractor has cured the possible default.

**7.4. Default.** If the OOG is not satisfied that the Contractor has cured the possible default, the Contractor shall be in default hereunder, and the OOG may give written notice to the Contractor declaring such default.

**7.5. Repeated Acts of Possible Default.** If Contractor commits more than two (2) independent acts of possible default, even if each possible default was cured, the OOG may be declare the Contractor to be in default of this Contract.

## **SECTION 8. TERMINATION.**

**8.1. Convenience of the State.** The OOG may, in its sole discretion and at its sole option, terminate any Contract awarded as the result of this Contract, in whole or in part, without recourse or penalty, by notifying Contractor in writing of such termination. Such notification of termination shall state the effective date of such termination and if no effective date is specified, the termination shall be effective upon the date of the notification.

**8.2. Agreed Termination.** The OOG and Contractor may mutually agree to terminate this Contract.

**8.3. Cause or Default.** In the event Contractor fails to perform or comply with an obligation or a term, condition or provision of this Contract, or if Contractor is in default and has failed to cure such default after having received notice and an opportunity to cure, the OOG may, upon written notice to Contractor, terminate all or any part of this Contract for cause. If the Contractor's breach is based on repeated acts of default or is of a nature such that it cannot be cured within a reasonable time as determined by the OOG, then the OOG may terminate all or any part of this Contract immediately without further notice or opportunity to cure. Such notification of Termination for Cause shall state the effective date of such termination, and if no effective date is specified, the termination shall be effective upon the date of the notification. Notwithstanding any other provision of this Contract, the OOG is not required to give Contractor any notice of default or an opportunity to cure in order to exercise the OOG's right to termination for cause.

**8.4. Rights upon Termination or Expiration.**

**8.4.1 Cessation of Work.** Upon receipt of written notice to terminate or upon final expiration of the Contract, the Contractor shall immediately discontinue all services affected as of the effective date of termination or expiration, unless the OOG directs otherwise.

**8.4.2 Liability for Payments.** The OOG shall be liable for payment of compensation to the Contractor only to the portion of work authorized by OOG in writing, completed prior to the effective date of termination, and accepted by the OOG. The OOG shall not be liable for any damages, claims, losses, or any other amounts arising from or related to any such termination or expiration, or for any work performed: (i) that is not accepted by the OOG; (ii) that does not meet Contract requirements; (iii) that was performed after the OOG the effective date of termination; and/or (iv) for which the OOG rescinded its approval or acceptance in accordance with Section 6.9.

**8.4.3 Return and Ownership of Works and Materials.** Subject to any service requirements of the Contractor to provide end of contract transition services, the Contractor shall promptly deliver or otherwise make available to OOG at Contractor's expense, all Works and such other information and materials as may have been accumulated by the Contractor in performing services under the Contract, whether completed or in process. Upon termination or expiration, the OOG may take over the work and pursue the same to completion by contract with another party or otherwise. All Works, work product or other deliverables produced by Contractor and paid for by the OOG shall become and/or remain the property of the OOG as further described in this Contract.

**8.4.4 Remedies.** Notwithstanding any exercise by the OOG of its rights of early termination pursuant to this section, Contractor shall not be relieved of any liability to the OOG for damages due to the OOG by virtue of any breach of this Contract by Contractor or for amounts otherwise due the OOG by Contractor. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract to enforce the terms of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The Contractor shall remain liable for all covenants and indemnities under the Contract and for all costs and expenses, including court costs, incurred by OOG with respect to the enforcement of any of the remedies listed herein.

## **SECTION 9. CONTRACTOR CERTIFICATIONS.**

By executing this Contract, Contractor hereby makes the following certifications and warranties:

**9.1. Delinquent Child Support Obligations.** Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

**9.2. Prohibited Bids and Contracts.** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and contracts), the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.



**9.3. Previous Employment with the Agency.** The Contractor acknowledges and understands that Section 2252.901 of the Texas Government Code prohibits the Office of the Governor from using state appropriated funds to enter into any employment or consulting contract with any individual who has been previously employed, as an employee, by the Agency within the past twelve (12) months. The Contractor certifies that Section 2252.901 of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein. Contractor further acknowledges and understands that Section 572.069 of the Texas Government Code prohibits state officers and employees who participated in the procurement of services under this Contract from accepting employment with the Contractor for a period of two years after the contract is signed or the procurement is terminated or withdrawn.

**9.4. Buy Texas.** To the extent reasonably applicable, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials as required by Section 2155.4441 of the Texas Government Code.

**9.5. Gift to Public Servant.** The Contractor warrants that it has not given, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Contract.

**9.6. No Claims.** Contractor certifies that Contractor does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.

**9.7. Certification of Good Standing; Delinquent Taxes.** Contractor certifies that it is in good standing under the laws of the State in which it was formed or organized, and if requested, will provide OOG with supporting documentation. Contractor certifies that it owes no delinquent taxes to any taxing unit of this State at the start date of this Contract. Contractor agrees to remain in good standing with the Texas Secretary of State, the Texas Comptroller of Public Accounts and related state or federal governmental bodies related to Contractor's right to conduct its business in Texas during the term of this Contract.

**9.8. No Compensation for Contract Specifications.** Neither the Contractor nor any person or entity which will participate financially in this Contract has received compensation for participation in the preparation of the specifications, preparation, or production of this Contract.

**9.9. Conflicts of Interest.** Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested services to the OOG under this Contract and that Contractor's provision of the requested services under this Contract would not reasonably create an appearance of impropriety. Contractor has a continual and ongoing obligation to immediately notify OOG in writing, upon discovery of any actual or potential conflict. In addition, Section 2252.908, Texas Government Code and the administrative rules of the Texas Ethics Commission (TEC) at Title I, Chapter 46 of the Texas Administrative Code, require certain contractors to file

a Disclosure of Interested Parties Form 1295 (Form 1295) with the TEC and the OOG. The OOG may require the Contractor to complete and file the Form 1295 at the time of Contract execution and/or prior to the execution of an amendment of the contract.

**9.10. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** OOG will adhere to the directions provided in U.S. Presidential Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing Contractors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>. Contractor further certifies that it will not knowingly enter into any subcontract with an entity who is, or whose principals are, on the specially designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. That Contractor will ensure that this Section regarding debarment, suspension, ineligibility, and voluntary exclusion, and the specially designated nationals list without modification in any subcontracts or solicitations for subcontracts.

**9.11. Israel.** In accordance with Texas Government Code, Section 2270.002, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

**9.12. Iran, Sudan or Federal Terrorist Organization.** In accordance with Texas Government Code, Section 2252.152, Contractor agrees that it is not a "Listed Company," as identified by the Texas Comptroller of Public Accounts, as doing business with Iran, Sudan or a foreign terrorist organization.

**9.13. Hurricane Relief.** Texas law prohibits the OOG from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the Contractor certifies that the individual or business entity named in its proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld or rescinded if this certification is inaccurate or false.

**9.14. Former Executive Head and Employees of the Agency.** Contractor certifies that this Contract is compliant, and will remain in compliance during the Contract term, with Sections 669.003 (Contracting with Executive Head of State Agency) and 2252.901 (Contracts with Former or Retired Agency Employees) of the Texas Government Code.

**9.15. Terminated Contracts.** Contractor certifies that it has not had a contract with the State of Texas terminated for cause within the past five (5) years and is not currently prohibited from contracting with any state or federal agency. If Contractor has a contract terminated for cause with the State of Texas or is prohibited from contracting with any state or federal governmental agency, Contractor shall identify the contract terminated or the prohibition from contracting and provide an explanation to the OOG within five (5) Business Days of the event.

**9.16. Deceptive Trade Practices; Unfair Business Practices.** If Contractor has been found liable for deceptive trade practices violations under Chapter 17 of the Texas Business and Commerce Code or any other unfair business practices in Texas, Contractor will notify the OOG. If Contractor has any officers who have served as officers of other entities who have been found liable for deceptive trade practices violations under Chapter 17 of the Texas Business and Commerce Code or any other unfair business practices in Texas, Contractor will notify the OOG. If Contractor or its officers are found liable for deceptive trade practices violations under Chapter 17 of the Texas Business and Commerce Code or any other unfair business practices in Texas, Contractor shall notify the OOG and provide an explanation of the liability determination within five (5) Business Days of the event.

**9.17. Antitrust and Assignment of Claims.** Neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State under Chapter 15, Texas Business and Commerce Code, or the Federal Antitrust Laws nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Contractor hereby assigns to the State of Texas all of Contractor's right's, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas of the United States for overcharges associated with this Contract.

**9.18. Immigration.** The Contractor shall not permit any employees, nor any employee of its subcontractors, to perform any work on behalf of, or for the benefit of, OOG in the United States without first ensuring said employee's authorization to lawfully work in the U.S. The Contractor represents and warrants that it shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under the Contract, and that it shall require that all employees provide proof of identity and employment eligibility before they can work in the U.S.

**9.19. U.S. Department of Homeland Security's E-Verify System.** The Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of the Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: (i) all persons employed to perform duties within the U.S., during the term of the Contract; and (ii) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract, within the United States.

**9.20. Felony Criminal Convictions.** Contractor represents and warrants that Contractor and Contractor's employees providing services under the Contract have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised

OOG as to the facts and circumstances surrounding the conviction.

**9.21. Resident Bidder.** Contractor certifies that if a Texas address is shown as the address of the Contractor, then Contractor qualifies as a Texas Resident Bidder as defined in Texas Government Code, Section 2252.001 and applicable regulations of the Texas Comptroller of Public Accounts.

**9.22. Licenses, Permits and Laws.** The Contractor warrants and covenants that it has or will obtain all permits, approvals, and licenses, or other legal approvals necessary for its lawful performance of its obligations under this Contract at Contractor's expense, and shall maintain such licenses or approvals during the term of this Contract without additional expense to OOG. The Contractor shall comply with any applicable U.S. or international federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with the work required by this Contract at Contractor's expense.

**9.23. Political Activity.** Contractor certifies that none of the activities or performances rendered hereunder by the Contractor shall involve lobbying or political activity, including but not limited to, any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation. Contractor represents and warrants that Comptroller's payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.

**9.24. Americans with Disabilities Act.** Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act of 1990, as amended, including related regulations ("ADA").

**9.25. Unlawful Employment Practices.** Contractor represents and warrants that it shall not engage in unlawful employment discrimination, disparagement, harassment, retaliation, prejudice and/or violent behavior toward any group of people for any reason.

**9.26. False Statements.** Contractor represents and warrants that it is not making any false statements, representations, certifications, affirmations, warranties or guarantees regarding the Contract. If any of the statements, representations, certifications, affirmations, warranties or guarantees are false or if Contractor signs the Contract with a false statement or it is subsequently determined that Contractor has violated any of the statements, representations, certifications, affirmations, warranties or guarantees included in the Contract, Contractor shall be in default under this Contract and OOG may terminate or void this Contract for cause and pursue other remedies available to OOG under this Contract and applicable law.

## **SECTION 10. GENERAL TERMS AND CONDITIONS.**

**10.1. Independent Contractor.** Contractor shall render the goods, services, and requirements under this Contract as an independent contractor. Employees and contractors of Contractor are not employees of OOG or the State of Texas by virtue of this Contract or otherwise within the meaning of any federal, state, or local law, ordinance, or regulation. Contractor agrees it is

entirely responsible for the payment of Contractor's and Contractor's employees' taxes, unemployment and workers' compensation insurance, and Contractor agrees to comply with all state and federal laws applicable to any such persons.

**10.2. Subcontracting.** In the event that the Contractor should determine that it is necessary or expedient to subcontract for any of the performances herein, Contractor understands and agrees that it will be responsible to the OOG for any subcontractor's performance under this Contract. In no event shall this Section or any other provision of this Contract be construed as relieving the Contractor of the responsibility for ensuring that performance under this Contract, and any subcontracts thereto, is rendered in compliance with all of the terms of this Contract. If Contractor uses a subcontractor for any or all of the work required, the following conditions will apply: (i) Contractors planning to subcontract all or a portion of the work to be performed will identify the proposed subcontractors to the OOG. The OOG retains the right to approve or reject the use of submitted subcontractors; (ii) OOG approval of Contractor's use of any subcontractor is conditioned in part upon the extent that any subcontract does not conflict with any requirements of the Contract between the OOG; (iii) The Contractor, in subcontracting for any performances specified herein, expressly understands and agrees that the Contractor shall be solely and exclusively responsible for any payments and other claims due to subcontractors for work performed, and that the OOG shall not be liable in any manner to the Contractor's subcontractor(s); (iv) Contractor will be the sole point of contact for the OOG with respect to any performances to be provided by the subcontractor, and/or any payments due to the subcontractor; and (v) In accordance with Texas Government Code, Chapter 2251 (Texas Prompt Payment Act), the Contractor shall, upon receipt of payment from the OOG, pay a subcontractor the appropriate share of the payment not later than ten (10) calendar days after the date the Contractor receives the payment. Upon request of the OOG, Contractor shall promptly provide documentation in a form acceptable to the OOG to support confirmation of payments made by Contractor to subcontractors. Any failure to promptly pay subcontractors as required by this Section may result in termination of this Contract. The obligations of Contractor under this Section will survive this Contract and must be included in all subcontracts.

**10.3. No Assignment.** Contractor may not assign this Contract or any of its rights or obligations hereunder (including, without limitation, rights and duties of performance) to any third party or entity, without the prior written consent of the OOG. Any attempted assignment without the OOG's prior written consent is void.

**10.4. Change of Management or Key Personnel.** Contractor agrees that the key personnel assigned to work under the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by Contractor unless the OOG agrees to a change in the key personnel.

**10.5. Change of Name/Merger.** Contractor shall promptly notify OOG of any change of name, merger, consolidation, restructuring, sale, or other such change in the identification or designation of the proper legal entity in which it holds this Contract. In such an event, an Amendment to this Contract shall be required, and shall specifically state that no other terms, condition, or obligations of this Contract are thereby changed. Contractor shall not assign this Contract pursuant to this Section.

**10.6. Bankruptcy.** Contractor shall notify the OOG in writing within ten (10) calendar days should the Contractor become subject to any proceedings for bankruptcy, insolvency, reorganization, arrangement, reorganization arrangement, winding-up, or composition or adjustment of debts, whether such proceedings are instituted by or against the Contractor. In the event of such proceedings involving the Contractor, the OOG may terminate the Contract for cause in its sole discretion.

**10.7. Confidentiality and Security.** Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with OOG agency requirements and any federal, state, or local laws and regulations that apply. Contractor must establish a method to secure the confidentiality of records and other information relating to the OOG in accordance with applicable federal and state laws, rules, and regulations. The obligations of Contractor under this Confidentiality and Security Section will survive this Contract and must be included in all subcontracts.

**10.8. Vendor Performance.** Pursuant to Texas Government Code, Section 2155.089 and 34 TAC Section 20.115, after the Contract is completed or otherwise terminated, the OOG is required to review and report on the Contractor's performance using the Vendor Performance Tracking System (VPTS) established by the CPA. More information about the VPTS is available at: <https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>

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

#### **10.10 Intellectual Property/Infringements – Including Indemnity**

**10.10.1 CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE OOGS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY**

**OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**

**10.10.2** 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 modification made to the product without Contractor's written approval; (iii) any modifications made to the product by the Contractor pursuant to the OOG's specific instructions; (iv) any intellectual property right owned by or licensed to the OOG; or (v) any use of the product or service by the OOG that is not in conformity with the terms of any applicable license agreement.

**10.10.3** If Contractor becomes aware of an actual or potential claim, or the OOG provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against the OOG, shall), at Contractor's sole option and expense; (a) procure for the OOG the right to continue to use the affected portion of the product or service; or (b) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that the OOG's use is non-infringing.

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

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

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

**10.12. Insurance and Other Security.**

Contractor will be required to obtain insurance coverage limits not less than the following insurance and bonding coverage outlined below in connection with the Contract:

**Workers Compensation Insurance.** Contractor must maintain standard workers' compensation insurance or its equivalency in accordance for all its employee personnel who will provide services to the OOG under this Contract.

**Professional Liability Insurance.** Contractor shall maintain malpractice/professional liability insurance in an amount of not less than \$1,000,000. Contractor agrees that no claim by the OOG or the State of Texas for damages resulting from breach of Contractor's fiduciary duties to the OOG under this Contract shall be limited to the amount of professional liability insurance maintained by Contractor.

**General Commercial Liability Insurance.** Contractor must maintain Commercial General Liability Insurance, including personal injury and advertising injury insurance, and commercial crime insurance with third-party and employee dishonesty or "Client Property" endorsement/coverage, with coverage limits of not less than the following:

Bodily Injury and Property Damage	
Each occurrence limit:	\$1,000,000
Aggregate limit:	\$2,000,000
Medical Expense each person:	\$5,000
Personal Injury and Advertising Liability:	\$1,000,000
Products /Completed Operations Aggregate Limit:	\$2,000,000
Damage to Premises Rented:	\$50,000

The required coverage is to be with companies licensed in the state of Texas, with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.



The Contractor is not required to cover the employees of subcontractors. However, the Contractor must require its subcontractors to maintain the required coverage. To the extent that Contractor's subcontractor does not have or maintain insurance or does not have or maintain sufficient insurance as required by this Contract, Contractor acknowledges and agrees that Contractor will be solely responsible for any losses or damages related to or caused by the subcontractor's performance of any duties or obligations under this Contract. The OOG will have no obligation to reimburse or otherwise pay Contractor or its subcontractor for any costs incurred related to any such losses or damages.

Contractor represents and warrants that all policies, to the extent possible, shall contain endorsements prohibiting cancellation except upon at least thirty (30) calendar days prior written notice to OOG. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide OOG with acceptable proof of insurance within seven (7) calendar days of the OOG's written request.

### **10.13. Intellectual Property Rights.**

**10.13.1 Ownership.** As between the Contractor and the OOG, the Works and Intellectual Property Rights in the Works are and shall be owned exclusively by the OOG, and not the Contractor. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the OOG. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby agrees that this Contract transfers, grants, conveys, assigns, and relinquishes exclusively to the OOG all right, title and interest in and to the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the OOG shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works, subject to any exceptions with respect to pre-existing or third party rights as set forth below. Contractor and Contractor's employees shall have no rights in or ownership of the Works, documents or other products, results of services, or any other intellectual property of the OOG, other than the limited, non-exclusive right to use such property or tangible and intangible items solely for the purposes set forth in this Contract and only for the duration of such Contract.

**10.13.2 Ownership of Prior Rights by the Contractor.** All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Contractor prior to the issuance of this Contract shall continue to be exclusively owned by the Contractor, and the OOG shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible or intangible items solely for the purposes set forth in this Contract. All intellectual property relating to the goods and/or services set forth herein or under the Contract, including the Intellectual Property Rights in those goods and/or services, that was created, developed or licensed by the Contractor prior to the issuance or the execution of the Contract, or during the term of the Contract, to the extent such intellectual property is not considered "Works" as defined above, but shall be, and is, licensed to the OOG on a non-exclusive, perpetual, irrevocable, royalty-free, worldwide basis, to allow the OOG or its designees to provide, and continue to provide, the goods and services set forth herein or under the Contract, including after the expiration or termination of the Contract.

**10.13.3 Further Actions.** The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the OOG to evidence more fully the transfer of ownership of all Works to the OOG to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the OOG. In the event the OOG shall be unable for any reason to obtain the Contractor's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the OOG and its duly authorized officers and agents as the Contractor's agent and the Contractor's attorney-in-fact to act for and in the Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

**10.13.4 Waiver of Moral Rights.** The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

**10.13.5 Injunctive Relief.** The Contract is intended to protect the OOG's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the OOG's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property, licensing, and confidentiality provisions of the Contract, upon a request by the OOG, without requiring proof of irreparable injury as same should be presumed.

**10.13.6 Return of Works.** Upon the request of the OOG, but in any event upon expiration or termination of this Contract, the Contractor shall surrender to the OOG all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the OOG to the Contractor, including all materials embodying the Works, any OOG confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This Section is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the OOG or by anyone else that pertains to the Works.

**10.14. Informal Meetings and Dispute Resolution.** The parties' representatives will meet as needed to implement the terms of this Contract and will make a good faith attempt to informally resolve any disputes. If the dispute resolution process provided for in Chapter 2260 of the Texas Government Code applies, it shall be used as the sole and exclusive process to resolve any claim for breach of this Contract made by Contractor. Neither the execution of this Contract nor any other conduct of or statements by any representative of the OOG relating to this Contract shall be

considered a waiver of sovereign immunity.

**10.15. Company's Continued Performance.** Company shall not be excused from performance during any pending dispute, unless approved in writing by the OOG.

**10.16. Debt to State.** The Contractor acknowledges and agrees that, to the extent the Contractor owes or incurs any debt or delinquent taxes to the State of Texas, any payments the Contractor is owed under this Contract during the term of the Contract may be applied by the Comptroller toward any debt or delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

**10.17. Media Releases or Pronouncements.** The Contractor understands that the OOG does not endorse any contractor, commodity good, or service. Except as authorized by the OOG to fulfill the Statement of Services to be Performed under this Contract, Contractor, its employees, representatives, subcontractors or other agents may not make any news releases, public announcements, or public disclosures, or engage in any conversations with representatives of the news media, pertaining to this Contract, without the prior written approval of OOG, and then only in accordance with explicit written instructions from OOG. Contractor must not use the name of the State of Texas or OOG in any advertisement, promotion, or otherwise for any purpose regarding this Contract without OOG's prior written approval. The Contractor shall not affix its company name, label, logo, or any other similar identifying information to or on any products, equipment or any other goods provided under this Contract.

**10.18. Texas Public Information Act/Confidentiality.** Contractor agrees the State, OOG, and this Contract are subject to the Texas Public Information Act, Chapter 552, Government Code (the "PIA"). Contractor agrees all information created or exchanged in connection with this Contract is subject to the PIA. Contractor will cooperate with OOG in the production of documents or information responsive to a request for information. Information provided by Contractor in connection with this Contract that Contractor considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to OOG. Contractor will notify OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided to the Contractor by the OOG or the State. Contractor agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to OOG or the State.

**10.19. Force Majeure.** Neither Contractor nor OOG shall be liable to the other for any delay in, or failure of performance, of any requirement included this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the Term of Contract 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 must inform the other in writing, with proof of receipt, with seven (7) Business Days of the existence of such force majeure, or

otherwise waive this right as a defense. If non-performance under this Section continues for more than thirty (30) calendar days, the OOG may exercise any rights to termination.

**10.20. Liability for Damage to Government Property.** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to this Contract. The Contractor shall notify the OOG Contract Manager in writing of any such damage within one (1) calendar day.

**10.21. Compliance with Applicable Laws.** The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code Section 36.02, which prohibits bribery; (ii) Texas Penal Code Section 36.09, which prohibits the offering or conferring of benefits to public servants; and (iii) Texas Government Code, Section 2155.003, which prohibits certain state employees from having an interest in, or in any manner being connected with, a contract or bid for a purchase of goods or services by an agency of the state, or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of this Contract. Except where otherwise expressly required by applicable laws and regulations, OOG shall not be responsible for monitoring Contractor's compliance. If Contractor performs any work knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all claims, costs, losses, and damages caused by, arising out of, or resulting there from.

**10.22. Drug Free Workplace.** Contractor shall comply with and implement the applicable provisions of the Drug-Free Work Place Act of 1988 and any amendments that may hereafter be issued.

**10.23. Technology Accessibility.** To the extent applicable, Contractor will comply with the State of Texas Accessibility standards for Electronic and Information Resources established for state agencies by the Texas Department of Information Resources (DIR), including as set forth in Title 1, Chapters 206 and 213 of the Texas Administrative Code (including as may be amended during the term of the Contract) when such products are available in the commercial marketplace or when such products are developed in response to this Contract. Likewise, if applicable, Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). A Contractor not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

**10.24. Fraud, Waste and Abuse.** Contractor understands that the OOG does not tolerate any type of fraud, waste, or misuse of funds received from the OOG. The OOG's policy is to promote consistent, legal, and ethical organizational behavior, by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, OOG policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event Contractor becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from the OOG that is made against Contractor, Contractor is required to immediately notify the OOG of said allegation or finding. Contractor is also obliged to inform the OOG of the status of any on-going investigations. Contractor is expected to report any possible fraudulent or dishonest acts, waste, or abuse to the OOG's Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

**10.25. Governing Law and Venue.** This Contract is made and entered into in the State of Texas. This Contract and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements. Venue for any Contractor-initiated action, suit or litigation arising out of or in any way relating to this Contract shall be exclusively in the Travis County District Court or the United States District Court, Western District of Texas - Austin Division. Venue for any OOG-initiated action, suit or litigation arising out of or in any way relating to this Contract may be in a Texas state district court or a United States District Court in Texas selected by the OOG in its sole discretion. The Contractor hereby irrevocably and unconditionally consents to the jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending any such litigation. The Contractor hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that the Contractor is not subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is otherwise improper.

**10.26. No Waiver of Immunity.** OOG is immune from suit and from liability. No part of this Contract, nor the conduct or statement of any person, will be construed as a waiver of sovereign immunity or official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, and/or the State of Texas, or their officers, employees, or agents as provided by law.

**10.27. Documents Incorporated by Reference and Order of Precedence.** The following documents are hereby incorporated by reference as part of this Contract: (1) RFP No. 301-8-0275; (2) any Addenda issued by the OOG; (3) the OOG's Official Responses to Questions regarding the RFP; and (4) Tabs 2, 3, 4, 6, and 7 of the Contractor's Response to RFP No. 301-8-0275. In the event of conflicts or inconsistencies between this Contract and any related documents under which the Contractor's services were procured, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Executed Contract, the OOG's Official Responses to Questions regarding the RFP, the RFP and any Addenda, and the applicable sections of the Contractor's Proposal.

**10.28. Delivery of Notices.** Any notice required or permitted under this Contract by one party to the other party must be in writing and correspond with the contact information noted in this

section. Any notice required or permitted to be given under this Contract may be given by regular first class mail and/or email and shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving party at the address specified in this section. At all times, Contractor will maintain and monitor at least one active electronic mail (e-mail) address for the receipt of Contract-related communications from the OOG. It is the Contractor's responsibility to monitor this e-mail address for Contract-related information.

**Office of the Governor**  
Financial Services Division  
Theresa Boland, Director of Financial Services  
P.O. Box 12878  
Austin, Texas 78711-2878  
Phone: (512) 936-0166  
Email: [TBoland@gov.texas.gov](mailto:TBoland@gov.texas.gov)

**Contractor**  
MGT of America Consulting, LLC  
Elise d'Auteuil, Senior Manager  
1801 East 51st Street, Suite 365-504  
Austin, TX 78702  
Phone: (214) 321-2408  
Email: [edauteui@mgtcounseling.com](mailto:edauteui@mgtcounseling.com)

**10.29. Non-Waiver of Rights.** Failure of the OOG to require performance by the Contractor under the Contract will not affect the right of the OOG to require performance in the future. No delay, failure, or waiver of the OOG's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by the OOG of any breach of any term of the Contract will not be construed as a waiver of any continuing or successive breach.

**10.30. Survival of Terms.** Termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding invoicing or return of funds, confidentiality and security, limitation of liability, indemnification, audit rights, subcontracting, transition, Intellectual Property Rights, Texas Public Information Act, media releases or pronouncements, records retention, dispute resolution, sovereign immunity, governing law and venue.

**10.31. Severability/Interpretation.** If any provision of this Contract is held to be void or unenforceable, this shall have no effect on the remaining provisions of the Contract, which shall continue in full force and effect. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Contract.

**10.32. Transition to New Contractor.** The Contractor shall allow such access to any Works created for OOG hereunder as may be necessary to enable any new OOG Contractor of Indirect Cost Allocation Plan Services to accomplish a smooth transition to the new Contractor.

**10.33. Entirety.** This Contract is intended as a full and complete expression of and constitutes

the entire agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are superseded and replaced by this Contract.

**SECTION 11. SIGNATORIES. IN WITNESS WHEREOF, THE UNDERSIGNED REPRESENTATIVES HAVE THE AUTHORITY TO EXECUTE AND AGREE TO THIS CONTRACT ON BEHALF OF THEIR RESPECTIVE REPRESENTED PARTY, AND HAVE EXECUTED THIS CONTRACT TO BE EFFECTIVE AS STATED HEREIN.**

OFFICE OF THE GOVERNOR



Chief of Staff or Designee

MGT OF AMERICA, LLC.

  
Authorized Signature

Printed Name: J. Bradley Burgess

Title: Executive Vice President