

**CONTRACT FOR SERVICES  
BETWEEN  
THE OFFICE OF THE GOVERNOR  
AND  
TXP, INC.**

This contract for services ("Contract") is entered into by and between the Texas Music Office within the Office of the Governor ("OOG") and TXP, Inc. ("Contractor"). The OOG and the Contractor are hereinafter referred to either individually as the "Party" or collectively as the "Parties."

**SECTION 1. PURPOSE AND AUTHORITY.** The Texas Music Office is authorized by the General Appropriations Act and Texas Government Code, Section 485.004 to undertake activities to promote the development of the music industry in the state. Accordingly, the purpose of this Contract is to procure the services of the Contractor to prepare an updated economic analysis of the statewide impact of the Texas music industry.

**SECTION 2. TERM OF CONTRACT.** This Contract will commence upon the signature of the last Party to sign this agreement, and shall terminate upon completion of Contractor's work or August 31, 2019, unless terminated earlier in accordance with Section 8 of this Contract.

**SECTION 3. STATEMENT OF SERVICES.**

**A. Services.** Contractor agrees to provide services to OOG to the best of Contractor's ability and to devote such time, effort, and resources, in Contractor's reasonable discretion, which are necessary to complete the projects and services under this Contract, including the following:

Contractor will prepare an updated economic analysis of the statewide impact of the music industry on the Texas economy. The objective of this economic analysis is to update a previous analysis performed in 2017. In order to conduct the analysis, the Contractor will rely on the information contained in the most recent State of the Texas Music Industry directory published by the OOG. This information will be combined with other data from secondary sources to create an estimate of the direct economic impact of Texas music, which will then be used to calculate the total economic impact on a statewide basis.

The Contractor will deliver the completed economic analysis report, in electronic format and with three (3) bound hard copies, to the Texas Music Office by no later than thirty (30) days from the receipt of input information from the OOG. The State of Texas and the OOG has a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for its purposes or for the purposes of any party authorized by them the "Work" of the Contractor.

After completion and OOG acceptance of the economic analysis report, Contractor will respond to questions and assist in providing information responsive to any audit, legislative request, or other inquiry regarding study methodology and overall findings.

**B. Schedule for Performance of Services.** Time is of the essence in the rendering of services required by this Contract. The OOG may require the Contractor to perform tasks or services according to a date-sensitive schedule. All deliverables shall be prepared by the Contractor in anticipation of all required deadlines established by the OOG.

**SECTION 4. MAXIMUM CONTRACT AMOUNT.** The Parties stipulate and agree that the OOG's total liability to Contractor, including consideration for the full, satisfactory, and timely performance of all its duties, responsibilities and obligations as set forth in this Contract or arising out of any performance herein, shall not exceed **FOUR THOUSAND NINE HUNDRED NINETY-FIVE AND NO/100 (\$4,995.00) DOLLARS** for the Term of Contract. The Parties stipulate and agree that any act, action, or representation by either Party, their agents, or their employees that purports to increase the liability of the OOG is voidable by the OOG, unless this Contract is amended in writing and signed by both Parties to specifically modify the limitation of liability as set forth in this Section.

**SECTION 5. PAYMENT OF CONTRACT AMOUNT.** Subject to the requirements of Section 6, the OOG will pay the Contractor upon completion and the OOG's acceptance of all work set forth in the Statement of Services.

**SECTION 6. ACCEPTANCE OF WORK PERFORMED, INVOICING, AND PAYMENT OF INVOICES.** All work performed by the Contractor requires acceptance by the OOG. The 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 compliance 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 or a refund in the event that work is determined by the OOG 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 in accordance with Section 8.

All invoices for services provided shall be submitted to the OOG on a timely basis. By submission of the invoices, the Contractor is warranting the following: (1) its invoices have been carefully reviewed to ensure that all invoiced services have been performed in compliance with all terms of the Contract; (2) the amount of each new invoice added together with all previous invoices does not exceed the maximum contract amount stated in Section 4; and (3) the charges and expenses shown on the invoice are allowable costs that are reasonable and necessary; and (4) all supporting documentation is attached.

Each invoice presented must include: (1) the OOG's Purchase Order or Contract number; (2) the Contractor's Tax Identification Number (TIN); (3) the name and division of the OOG contact; (4) an itemized description of each service/expense and the dollar amount attributable to each; and (5) the name of the entity or individual to which each service/expense is attributable. OOG receipt and acceptance of an acceptable invoice is required under this section. 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.

All Invoices and payment inquiries shall be submitted directed to:

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

It is the policy of the OOG to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice in accordance with Chapter 2251 of the Texas Government Code.

#### **SECTION 7. AMENDMENT**

This Contract may be amended only upon written agreement signed by all Parties to this Contract.

#### **SECTION 8. TERMINATION**

**A. Convenience.** The OOG may, in its sole discretion and at its sole option, terminate 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.

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

**C. Cause/Default.** In the event that Contractor fails to provide the agreed upon services according to the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, OOG may, upon written notice to Contractor, terminate this Contract for Cause by providing written notice to Contractor and stating the effective date of such termination.

**D. Rights upon Termination or Expiration.** 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. The OOG shall be obligated to pay the Contractor only for services performed up to the effective date of termination. In the event that the Contract is terminated for any reason, or upon its expiration, the OOG shall retain ownership and license of all associated work products and/or intellectual property specially prepared, developed, supplied, commissioned, gathered, or generated by the Contractor in the performance of its obligations under this Contract and the OOG shall have unrestricted rights to use such products and documents as it deems necessary to continue or complete its work. The OOG, at its sole discretion, may require the Contractor to refund or offset any payments made by the OOG for services not yet performed by the Contractor. Such refund shall be made by Contractor to OOG within thirty (30) calendar days after such refund is requested in writing by OOG, or within thirty (30) calendar days of a notice

from OOG indicating the request is the result of a final determination that the refund is owed. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract.

**SECTION 9. NOTICES.** Any notice required or permitted to be given under this Contract by either Party shall be in writing and shall be deemed to have been given immediately if delivered by e-mail, or in person as set forth 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.

**Office of the Governor**  
Texas Music Office  
Attn: Marc Fort  
P.O. Box 12878  
Austin, Texas 78711  
Phone: (512) 463-6666  
Email: marc.fort@gov.texas.gov

**Contractor**  
TXP, Inc.  
Attn: Jon Hockenyos  
1310 South 1<sup>st</sup> Street, Suite 105  
Austin, TX 787024  
Phone: (512) 328-8300  
Email: jon@txp.com

**SECTION 10. CONTRACTOR CERTIFICATIONS.** By agreeing to and signing this Contract, Contractor makes the following certifications and warranties and agrees that payments under this Contract can be withheld and this Contract terminated, without further notice, if the Certifications and Warranties are inaccurate or false:

- A. 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 any payment under this Contract.
- B. Buy Texas.** If Contractor is authorized to make purchases under this Contract, it certifies that it will buy Texas products, services and materials when available at a comparable price and in a comparable period of time.
- C. Gift to Public Servant.** 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.
- D. Debt to State.** Contractor acknowledges and agrees that, to the extent Contractor owes or incurs any debt or delinquent taxes to the State of Texas, any payments Contractor is owed during the term of this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.
- E. Prohibited Bids and Contracts.** Under Section 2155.004 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract.

**F. Conflicts of Interest; Disclosure of Conflicts; Disclosure of Interested Parties.** Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to the OOG under this Contract, and that Contractor's provision of the requested goods or services will 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 any amendment of the Contract.

**G. Former Executive Head, State Officer, and Employees of the Agency.** Contractor certifies this Contract is compliant, and will remain in compliance during the Contract term, with Texas Government Code, Section 669.003 (Contracting with Executive Head of State Agency), Section 2252.901 (Contracts with Former or Retired Agency Employees) and Section 572.069 (If Applicable, Prohibiting Employment within two years of Former State Officer or Employee who participated in procurement of goods or services).

**H. Certification of Good Standing; Delinquent Taxes.** Contractor certifies that it is in good standing under the laws of the jurisdiction in which it was formed or organized, and if requested, will provide OOG with confirming documentation. Contractor certifies that it owes no delinquent taxes to any taxing unit of the State of Texas 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 any other state or federal governmental entities that may have authority to regulate or oversee any aspects of the Contractor's business during the term of this Contract.

**I. 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.

**J. U.S. Department of Homeland Security's E-Verify System.** Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the United States Department of Homeland Security's E-Verify system to determine the eligibility of: (1) All persons employed to perform duties within Texas, during the term of the Contract; and (2) All persons including subcontractors, assigned by Contractor to perform work pursuant to the Contract, within the United States of America. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the OOG and at no fault to the OOG.

**K. Immigration Laws.** 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 the 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.

**L. Compliance with Licensing, Permitting, and Regulatory Bodies.** Contractor certifies that it has or will obtain all licenses, certifications, and permits, or other legal approvals necessary for its lawful performance of its obligations under this Contract, without costs to OOG. Contractor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with its obligations under this Contract at Contractor's expense.

**M. Hurricane Relief.** Contractor certifies that it has not, in the past five (5) years, 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, Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053, Texas Government Code, Contractor certifies that it is not ineligible from entering into this Contract.

**N. Deceptive Trade Practices; Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17, Texas Bus. & Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings. Contractor shall notify OOG in writing within five (5) calendar days if Contractor or any of its officers are subject to allegations of Deceptive Trade Practices or are the subject of alleged violations of any unfair business practices in an administrative hearing or court suit, and that Contractor or officers have been found to be liable for such practices in such proceedings.

**O. Antitrust and Assignment of Claims.** Pursuant to 15 U.S.C. Section 1, et seq., and Chapter 15 of the Texas Business and Commerce Code, neither the Contractor nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution, has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly its bid made for this Contract 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 or Texas of the United States for overcharges associated with this Contract.

**P. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** Contractor understands the 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 respondents/vendors 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 it and its principals are eligible to participate in this Contract and have

not been subjected to any relevant 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. Contractor will ensure that this section regarding debarment, suspension, ineligibility, and voluntary exclusion, and the specially designated nationals list is included without modification in any subcontracts or solicitations for subcontracts.

## **SECTION 11. GENERAL TERMS AND CONDITIONS**

**A. 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. This Contract does not entitle employees or contractors of Contractor to any pay or benefit available to a state employee. 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, including laws regarding wages, taxes, insurance, and workers' compensation.

**B. 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: (1) Contractor's plans 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 proposed subcontractors. The 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 and Contractor; (2) The Contractor, in subcontracting for any performances specified herein, expressly understands and agrees that subcontracting will be solely at Contractor's expense and the OOG shall not be liable in any manner to the Contractor's subcontractor(s); (3) The 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 (4) Pursuant to Chapter 2251 of the Texas Government Code, Contractor will make any payments owed to subcontractors within ten (10) calendar days of Contractor's receipt of funds from the OOG.

**C. 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 voidable by the OOG in its sole discretion, and may

result in termination of the Contract by reason of default.

**D. 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. 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.

**E. Records Retention; Accounting Records; Access.** Contractor shall maintain adequate records to support its charges, procedures, and performances for all work related to this Contract and retain those records for a period of seven (7) years after the later of the date of the final payment or the resolution of any audit, dispute, litigation, or the settlement of claims arising out of the Contract. 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.

**F. Tax Identification Information Required.** 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 of Public Accounts' website at <https://www.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 Texas Comptroller of Public Accounts.

**G. OOG Contract Review/Remedies.** 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 in a timely manner any weaknesses, deficiencies, Contract noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives. Such remedy may include a refund or offset of contract payments or any other appropriate actions deemed necessary by the OOG.

**H. State Auditor Access.** 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.

**I. Texas Public Information Act.** Contractor agrees the State, OOG, and this Contract are subject to the Texas Public Information Act, Chapter 552 of the Texas 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 PDF, Microsoft Word, Microsoft Power Point or Microsoft Excel formats(s) at no additional charge to OOG or the State.

Contractor is advised to consult with their legal counsel concerning disclosure issues relating to this Contractor's trade secrets and other proprietary information. If it is necessary for a Contractor to provide Contractor's proprietary or otherwise confidential information in information provided to the OOG, that particular information should be clearly identified at the time such information is provided to the OOG. The Contractor should specify the confidential information by marking "Confidential" on each page or by each paragraph containing such information prior to submitting the proposal to the OOG. Contractors are further encouraged to identify the specific legal exception that applies to each item marked "Confidential." Vague and general claims to confidentiality, such as marking an entire document as "confidential" or "copyrighted," may not be sufficient to ensure legal protections. The OOG will notify a Contractor if all or part of Contractor's confidential information is requested under the Act. Failure of a Contractor to timely respond to such notification may result in the release of all or part of the proposal as public information. It is the Contractor's obligation to timely submit briefing to the Office of the Attorney General of Texas in accordance with the Act, setting forth the legal basis upon which the requested information should remain confidential. The OOG assumes no responsibility for asserting legal arguments to the Office of the Attorney General of Texas on behalf of Contractors.

**J. Confidentiality and Security.** Contractor agrees that all information, documents, and communications between Contractor and the OOG: (1) shall be treated as confidential; (2) shall not be used or disclosed by the Contractor for any purpose other than providing services within the scope of this Contract; and (3) shall not be disclosed to any third-party for any purpose unless the disclosure is required by law or the OOG expressly consents in writing in advance of each disclosure. Contractor shall employ and maintain appropriate information security procedures to protect against the unauthorized acquisition, use, or disclosure of any personal information under

applicable laws (including Personal Identifying Information or Sensitive Personal Information as those terms are defined in Texas Business and Commerce Code, Chapter 521) that it receives, compiles, or creates as a result of the Contract to ensure compliance with any OOG agency requirements and/or any applicable international, federal, state, or local laws and regulations. In the event of an unauthorized acquisition, use, or disclosure of personal information by the Contractor, its employees, representatives, subcontractors or other agents in the performance of Contractor's duties, the Contractor shall: (i) immediately notify the OOG in writing; (ii) assume and comply with any applicable remedial requirements required by law; (iii) bear all costs of such compliance and remediation; and (iv) provide the OOG with information regarding the breach and the progress of any remedial efforts if requested. The obligations of Contractor under this section will survive this Contract and must be included in all subcontracts in which the subcontractor may have access to personal information. From time-to-time and on the request of the OOG, Contractor may be required to execute written information security or non-disclosure agreements as deemed necessary by the OOG to strictly comply with any applicable agency confidentiality or information security requirements or applicable laws, regulations, and protective orders.

**K. News Releases, Advertisements, and Publicity.** The Contractor understands that the OOG does not endorse any contractor, commodity, good, or service. Contractor may not make any news releases, public announcements, or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the 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.

**L. Force Majeure.** Neither Contractor nor OOG shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract resulting from or caused by force majeure. The existence of such causes of delay or failure shall extend the Period of Performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each Party must inform the other in writing, with proof of receipt, with three (3) 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) days, the OOG may exercise any rights to termination.

**M. State Funding Subject to Appropriation.** 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 by the Texas State Legislature to OOG. Contractor agrees that the funds, if any, 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.

**N. Applicable 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 OOG in its sole discretion. 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. 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.

**O. 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, or the State of Texas, or their officers, employees, or agents as provided by law.

**P. 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 Chapter 2260, Texas Government Code is applicable, 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 OOG relating to this Contract shall be considered a waiver of sovereign immunity. Contractor shall not be excused from performance during any pending dispute, unless approved in writing by OOG.

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

ANY SUCH CLAIM.

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

(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 LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE OOG AND/OR THE STATE OF TEXAS 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 OCCUPATIONAL ACCIDENT INSURANCE (WORKERS' COMPENSATION) OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF OOG.

(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 TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**S. 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 of a formal allegation or a finding of fraud, waste, or misuse of funds received from OOG is made against Contractor, Contractor is required to immediately notify OOG of said 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.

**T. Survival of Promises.** 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, without limitation, the provisions regarding Maximum Contract Amount, acceptance of work performed, invoicing and payment, audit rights, rights upon termination, dispute resolution, subcontractors, transition, media releases or pronouncements, confidentiality, Texas Public Information Act, information security/privacy, intellectual property rights, return of works, records retention, indemnification, dispute resolution, applicable law and venue, and sovereign immunity.

**U. 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.

**V. False Statements; Breach of Representations.** By signing this Contract, 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.

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

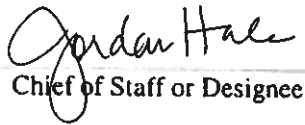
**SECTION 12. Severability/Interpretation.** If any provision of this Contract is held to be void or unenforceable, this shall have no effect on the remaining provisions of the Contract, which shall continue in full force and effect. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Contract.


**SECTION 13. 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. All prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are superseded and replaced by this Contract.

**SECTION 14. 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**

**TXP, INC.**

  
Chief of Staff or Designee

  
Authorized Signature  
Printed Name: Jon Hockaday  
Title: President

Date: 1/25/19

Date 1/19/19