

## ATTACHMENT B

### CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS

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

- (a) *Anonymized, Anonymizing and Anonymization* shall have the meanings assigned by the National Institute of Standards and Technology (NIST) in NIST SP 800-122, and Anonymized data refers to previously identifiable information that has been de-identified and for which a code, audit log, link or other association for re-identification no longer exists. Anonymization includes, without limitation, masking for small numbers and multiple layers of anonymization techniques. The process of creating Anonymized data is the irreversible process of removing identifiable information from datasets.
- (b) *Authorized User* shall mean (i) TEA, (ii) any Texas Local Education Agency (“LEA”), school district staff member, open-enrollment charter school, open-enrollment charter school staff member, private school, private school staff member, teacher, tutor, parent, student and/or resident (whether currently in-state or temporarily outside the State), and (iii) any other third party and its or their staff or personnel serving or acting on behalf of any of the Authorized Users named in (i) or (ii) above.
- (c) *Cloud Computing* means, in accordance with Section 2054.0593 of the Texas Government Code, a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.
- (d) *Commercial* shall mean selling or reselling (whether directly or indirectly, via outright sale, license or otherwise) for financial consideration, access to the Contractor Materials or the Technology Platform.
- (e) *Comptroller* means the Texas Comptroller of Public Accounts.
- (f) *Contract* means the document entered into between TEA and Contractor, including all attachments (for the avoidance of doubt, including, but not limited to, the Standard TEA Terms and Conditions and any Special Terms and Conditions), annexes, exhibits, schedules, amendments, renewals and extensions of or to the Contract.
- (g) *Contract Manager* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project.
- (h) *Contract Project* means the purpose intended to be achieved through the Contract.
- (i) *Contractor* means the party to this Contract who is providing the contracted goods or services to TEA, provided that, prior to Contract award, Contractor means the person or entity who provides a Response (i.e., a “Respondent”).
- (j) *Contractor Materials* means, collectively: (i) the pre-existing, complete, standalone materials or products of Contractor marketed and offered by Contractor to third parties prior to provision to TEA that Contractor can document as such, (ii) all Intellectual Property Rights embodied therein, and (iii) any derivatives thereof (other than those created by TEA during the Term) and all Intellectual Property Rights embodied in those derivatives. Contractor Materials includes any Third-Party Materials. Contractor Materials includes the Technology Platform.
- (k) *FERPA* means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), the regulations issued pursuant thereto, and any amendments thereto.
- (l) *Generative AI* means an artificial intelligence capable of producing new or original outputs that resemble human-created content. Outputs created by a Generative AI can include text, images, audio, video, or computer code. Producing new and original content can include modifications to, or derivations of, existing content used as an input or prompt for the Generative AI. Generative AI does not include narrow AI if the narrow AI is incapable of producing new or original outputs.
- (m) *HSP* means a HUB subcontracting plan.
- (n) *HUB* means an entity certified by the Comptroller as a Historically Underutilized Business as defined in Section 2161.001 of the Texas Government Code.
- (o) *Intellectual Property Rights* means the legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations, social media pages and associated handles and hashtags; and (v) any other similar rights. The Intellectual Property Rights of a party include all legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

(p) *Non-Commercial* means any activity other than Commercial activities.

(q) *Personally Identifiable Information* means information that alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's: name; Social Security number; date of birth; driver's license number; government-issued identification number; mother's maiden name; unique biometric data (including, but not limited to, the individual's fingerprint, voice print, retina or iris image, or a record of hand or face geometry); unique electronic identification number; address or routing code; telecommunication access device; account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; and/or identity and relates to the physical or mental health or condition of the individual, the provision of health care to the individual; or payment for the provision of health care to the individual.

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

- (i) The student's name;
- (ii) The name of the student's parents or other family members;
- (iii) The address of the student's parent or other family members;
- (iv) A personal identifier, such as the student's Social Security number, student number, or biometric record (as defined in 34 CFR 99.3);
- (v) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (vi) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (vii) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

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

- (i) is collected by and through any Technology Platform provided or operated by Contractor,
- (ii) may be input by Authorized Users, and/or
- (iii) is generated by Authorized Users or their devices by interacting with any Technology Platform provided by or through Contractor, including, without limitation, Personally Identifiable Information pertaining to students as well as to their parents or legal guardian and all grades, scorings, rankings, percentage comparisons, answers and responses to questions and assignments, and "educational records" as that term is defined by FERPA. Protected Data shall also include all versions and portions of any part of the Protected Data, all files and databases containing such Protected Data, as well as any information derived or generated therefrom through database hygiene, database management or otherwise.

(s) *Response* is what a Contractor submits in response to the solicitation that underlies this Contract, if any.

(t) *Service Credit* means any applicable credit, discount or refund for inadequate performance of the products or services under the Contract including, without limitation, of a Technology Platform, that could be construed as liquidated damages and has been incorporated into this Contract as a valid pre-estimate of damages TEA will sustain which will not be capable of precise determination; such credit is therefore considered to be an agreed-upon cost incurred as a result of Contractor's failure to meet the contracted-for requirements and is not a penalty.

(u) *Special Terms and Conditions* means the provisions contained in an Attachment C, if any.

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

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

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

(y) *TEA Confidential Information* means information that is confidential under the provisions of FERPA, the Texas Public Information Act, or other applicable State or federal laws and (1) that is provided to Contractor by TEA, (2) that Contractor collects on behalf of TEA, or (3) that Contractor obtains in connection with the provision of goods and services hereunder. TEA Confidential Information also means information that is otherwise designated by TEA as non-public. TEA Confidential Information includes, without limitation, Protected Data. Examples of TEA Confidential Information include: (i) Personally Identifiable Information (ii) criminal background checks; (iii) an e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (iv) certain personnel information concerning a TEA employee including, but not limited to, home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial

decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (v) information about security vulnerabilities in TEA systems; (vi) dataset extracted from confidential sources (e.g., SAS data sets); and (vii) student IDs (FERPA protected) and some government IDs. TEA Confidential Information also includes, without limitation, all cookies and metadata associated with TEA's webpages and online content. TEA Confidential Information does not include information that is proven by written records: (i) to be publicly known at the time of disclosure, (ii) to subsequently become publicly known through no fault of the Contractor and that is not under any other restrictions, or (iii) to have been obtained by Contractor through legitimate means other than from TEA, TEA's representatives, other contractors, or Authorized Users and that is not under any other restrictions.

(z) *TEA Trademarks License* has the meaning assigned to such term in Clause 20 of this Attachment B.

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

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

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

(dd) *WCAG* means the Web Content Accessibility Guidelines, version 2.1 of June 5, 2018, level AA, from the World Wide Web Consortium, which are incorporated herein by reference.

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

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

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

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

#### General

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

#### Intellectual Property

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, DESIGNEES, AND/OR ANY AUTHORIZED

USER THAT DIRECTLY OR INDIRECTLY RECEIVES GOODS OR SERVICES FROM CONTRACTOR PURSUANT TO THIS CONTRACT, FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, ARISING OUT OF OR RELATING TO: (A) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (B) ANY DELIVERABLE, WORKS, DERIVATIVES OF SUCH DELIVERABLES AND WORKS, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (C) TEA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TEA BY CONTRACTOR OR OTHERWISE TO WHICH TEA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, CONTRACTOR WILL REIMBURSE TEA AND THE STATE FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TEA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TEA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TEA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TEA'S COUNSEL. FOR AVOIDANCE OF DOUBT, NOTWITHSTANDING THE ABOVE, ANY GOODS OR SERVICES CREATED BY A GENERATIVE AI ARE SUBJECT TO THIS INDEMNITY.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

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

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, ARISING OUT OF OR RELATING TO PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4. **Signature Authority and Binding Effect:** By executing the Contract, Contractor represents and warrants that the individual signing the Contract and any documents made part of the Contract, including, without limitation, the Response, is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under the Contract. The Contract shall be binding upon and shall inure to the benefit of TEA and Contractor and to their respective permitted successors, and assigns.
5. **Responsibility for Actions and Limitation on Authority:** Contractor is solely responsible for its actions and those of its agents, employees or subcontractors. Contractor and its agents, employees or subcontractors shall have no authority to act for or on behalf of TEA or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Contractor and its agents, employees and subcontractors may not incur any debt, obligation, expenses, or liability of any kind on behalf of TEA or the State.
6. **Final Expression, and Superseding Document:** The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties and any documents referenced via URLs, "click-through" license agreements, end-user licenses, subscription agreements, terms of use or other terms that may be presented on, through or by the Technology Platform provided or operated by Contractor (whether presented before or after Contract signing) (collectively, "Supplemental Terms"). Such Supplemental Terms shall have no force and effect with respect to the Parties or any Authorized Users except with respect to the Creative Commons and open source licenses specified in Attachment E to the Contract. Contractor hereby represents and warrants that no Creative Commons licenses or open source licenses are applicable to any Works or Contractor Materials (other than a Technology Platform) except as provided in Attachment E to the Contract, and if no Attachment E is attached to the Contract, no such Supplemental Terms apply to this Contract. Subject to the foregoing, any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended as provided in Clause 7 or Clause 37 below.

Notwithstanding the foregoing, a particular Authorized User may agree to terms that are more protective of that Authorized User or their interests provided those terms do not conflict with the terms and conditions of this Contract. No such terms and conditions shall have any effect to the extent that they conflict with or diminish the rights of any Authorized User, or the protections afforded that Authorized User through this Contract.

**7. Contract Change Management Procedure and Amendments:** All modifications, amendments or extensions to this Contract are subject to Clause 2 of these Standard TEA Terms and Conditions, will be executed on standard TEA forms, and will follow TEA's internal contracting process. All modifications, amendments or extensions will be initiated by TEA Contract and Purchasing staff. A modification, amendment, or extension to this Contract will become effective on the date of signature by TEA or the effective date shown on such, modification, amendment or extension document, whichever is later. All modifications, amendments, or extensions (other than a renewal as provided for in the Contract) must be in writing and signed by both parties. Notwithstanding the foregoing, TEA may make technical amendments in order to correct manifest errors in the Contract, provided such technical amendments would not have a materially adverse effect on Contractor and Contractor does not contest such amendments in writing within 30 days after TEA provides written notice to Contractor of such technical amendments.

- (a) Written amendments are required for the following Contract changes:
  - i. Any revision which would result in the need for additional funding;
  - ii. Revisions or additions to the scope of work, deliverables, or objectives of the Contract, other than revisions permitted by paragraph (b) of this Clause 7;
  - iii. Any extension of the period of the Contract other than a renewal as provided for in the Contract;
  - iv. Any reduction of funds or reduction in the scope of work, other than revisions permitted by paragraph (b) of this Clause 7; and
  - v. Any change to the Standard TEA Terms and Conditions.
  
- (b) Budget revisions approved by Contract Managers may be permitted, provided that: (1) any changes are documented in a form prepared by the TEA Contracts and Purchasing Division; (2) such budget revisions are countersigned by Contract Manager and Contractor; and (3) such changes are approved in writing by the TEA Contracts and Purchasing Division. Such budget revisions may only be considered in the following circumstances:
  - i. Reallocating existing funds among existing Contract tasks/deliverables (up to 25% increase or any decrease for each specified task/deliverable, provided that total Contract value does not increase);
  - ii. Reallocating funds across TEA fiscal years and State bienniums; and
  - iii. Revisions to the scope of work consisting of a reduction to specified tasks that would decrease the total Contract value.

#### Unauthorized Purchases

All changes to this Contract must follow the change management procedures set forth above. Any work not contemplated in this Contract must be added to this Contract in a formal contract amendment processed by the TEA Contracts and Purchasing Division prior to the work commencing. Only four individuals are authorized to execute contracts on behalf of the Texas Education Agency: The Commissioner of Education, the Deputy Commissioner of Finance, the Associate Commissioner of Agency Finance and the Director of Contracts and Purchasing. An amendment not signed by one of these four individuals is void. TEA shall have no obligation to pay for work performed without an executed Contract amendment in place in accordance with the foregoing. For any questions about Contract changes and to verify an amendment or budget revision, please email: [teacontractmonitoring@tea.texas.gov](mailto:teacontractmonitoring@tea.texas.gov).

#### Updates to Standard TEA Terms and Conditions

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

- 8. Assignment:** Contractor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of TEA, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. To seek consent for assignment of this Contract, Contractor should contact [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov).
- 9. Mergers, Conversions, and Name Changes:** Contractor must notify TEA if Contractor is party to a merger, conversion to a different entity type, or amendment of its name within 15 calendar days of the effective date of the merger, conversion or name change. Upon effectiveness of the merger, conversion or name change, Contractor must submit to TEA (1) a certified copy of the merger, conversion or amendment document filed with Contractor's home state and (2) if Contractor is not a Texas entity, sufficient evidence to prove Contractor has updated its registration to transact business in Texas with the Texas Secretary of State pursuant to Chapter 9 of the Texas Business Organizations Code. Submissions under this Clause should be made to [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov).

If Contractor is a non-surviving party to the merger, Contractor's representatives may designate a surviving party of the merger. Subject to TEA approval in Clause 8, Assignment, the Contract will be considered to have been assigned to the designated survivor on the effective date of the merger or acquisition.

If Contractor survives the merger, no changes to the Contract shall be made. Payment will continue to be made directly to Contractor or its designee pursuant to the Contract.

- 10. Subcontracting:** Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TEA. If the Contractor intends to enter into any subcontracts, Contractor shall send notice of such intent to the Contract Manager with a copy sent to [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov). Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.
- 11. Personnel Assignments, Transfers, HUB Subcontracting, Substitutions and Reporting:** TEA reserves the right to request changes in personnel assigned to the Contract Project. The TEA Contract Manager must pre-approve any changes in key personnel throughout the Term. Pursuant to 34 Tex. Admin. Code § 20.281-298 and Chapter 2161 of the Texas Government Code, Contractor shall maintain business records documenting compliance with the HSP and shall submit compliance reports to TEA. Any changes to the HSP must be approved by TEA HUB Coordinator before subcontracting changes are initiated. Substitutions are not permitted without written approval of TEA Contract Manager. If Contractor subcontracts any of the work without prior authorization and without complying with this Clause, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Chapter 2161 of the Texas Government Code and other applicable State law. Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. PAR's are due no later than the 10<sup>th</sup> day of the following month. The PAR is required to be submitted monthly, even if no reportable activity occurred for the month. Reports shall be submitted electronically to the [HUBOffice@tea.texas.gov](mailto:HUBOffice@tea.texas.gov). In addition to the PAR, Contractor shall also create and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 12. Interpretation:** If this Contract is the result of a competitive solicitation, the terms, conditions, and assurances stated in such solicitation, if any, as well as Contractor's Response thereto, are incorporated herein by reference. In the event of a conflict between or among the various documents comprising the Contract, the order of precedence set forth in the Contract shall apply.
- 13. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- 14. Proof of Financial Stability, Records Retention and the Right to Audit:** TEA may require Contractor to provide proof of financial stability prior to or at any time during the Term.

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

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

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

## **16. Technology Platform (SaaS) License**

- (a) **License to Access and Use Technology Platform:** Contractor hereby grants to TEA, exercisable by TEA and by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable, transferable and sublicensable right and license throughout the world during the Term and such additional periods, if any, as Contractor is required to provide any Technology Platform, to: (i) access and use the Technology Platform, including in operation with other software, hardware, systems, networks, and Technology Platform, for TEA's permitted uses; (ii) generate, print, copy, upload, download, store and otherwise process all graphical user interfaces, audio, visual, digital, and other output, displays, and content as may result from any access to or use of the Technology Platform; (iii) prepare, reproduce, print, download and use as many copies of the documentation as may be necessary or useful for any use of the Technology Platform under this Contract; (iv) access and use the Technology Platform

for all such non-production uses and applications as may be necessary or useful for the effective use of the Technology Platform as permitted hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support, and repair, which access and use will be without charge and shall not be included for any purpose in any calculation of TEA's or its Authorized Users' use of the Technology Platform, including for purposes of assessing any fees or other consideration payable to Contractor or determining any excess use of the Technology Platform as described in an order; and (v) perform, display, execute, reproduce, and modify (including to create improvements and derivative works of), and distribute and otherwise make available to Authorized Users, any Technology Platform solely to the extent necessary to access or use the Technology Platform in accordance with the terms and conditions of this Contract.

- (b) **Technology Platform Service Levels and Service Credits**: Contractor shall make the Technology Platform, if any, available to Authorized Users in accordance with Attachment F to the Contract, if attached, and provide the Service Credits set forth in Attachment F to the Contract for any failure to meet the agreed upon service levels.
- (c) **Technical Support Service Levels**: Contractor shall provide Authorized Users with technical support in accordance with Attachment F to the Contract, if any.
- (d) **No Indemnities for Authorized Users**: The Parties hereby acknowledge and agree that since Contractor controls the means of access to the Technology Platform and TEA is prohibited by law from indemnifying third parties, TEA shall have no responsibility or liability for: (1) verifying or enforcing whether an Authorized User is a bona fide Authorized User; (2) creating, distributing or enforcing login credentials; (3) controlling whether or not access to the Technology Platform is limited to Authorized Users; (4) enforcing or controlling Authorized Users' use of the Contractor Materials; (5) limiting Authorized Users' use of the Contractor Materials to Non-Commercial uses; (6) use of Contractor Materials by Authorized Users; (7) any other failures of, or actions by, any Authorized User in connection with this Contract, other than the willful actions of TEA or its employees; or (8) adherence to any Technology Platform user agreement provisions.

## 17. Intellectual Property

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

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

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

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

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

### (b) **License to Contractor Materials**

Contractor hereby grants to TEA and Authorized Users a nonexclusive, worldwide, royalty-free, fully paid-up, irrevocable, perpetual, unlimited, assignable and transferable right and license to the Contractor Materials (except for any Contractor Materials that are a Technology Platform), and any updates, revisions, additions thereto, or derivative works thereof, to directly and indirectly: (i) use, access, execute, reproduce, copy, modify, adapt, publicly display, publicly perform, provide access

to, distribute copies of, transmit and otherwise use and exploit; and (ii) authorize others to do any or all of the foregoing in a sublicense, subcontractor agreement, sub-grant or otherwise, for or on behalf of TEA, in order to further the purposes of TEA (collectively "Materials License"). The Materials License includes the right for TEA and Authorized Users to create derivative works of the Contractor Materials and authorize others to do so in order to further the purposes of TEA and/or Authorized Users. The authors of such derivative works shall have and retain ownership of such derivative works.

For the avoidance of doubt, Technology Platforms are subject only to the license in Clause 16.

**18. Social Security Numbers (SSNs) Withheld:** TEA will not provide SSNs to any Contractor under this Contract unless specifically stated as part of the Contract Project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, Contractor will not use any student-identifying information in any way that violates the provisions of FERPA and will destroy or return all student-identifying information in accordance with the terms in Clause 21 on Confidential Information, FERPA, and Information Security Requirements hereof.

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

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

Contractor hereby acknowledges and agrees that all trademarks and service marks adopted, used, registered, and/or owned by TEA ("TEA Trademarks," as shown in the TEA Brand Book, which is available upon request) remain the exclusive property of TEA, that all right, title and interest in and to the TEA Trademarks are exclusively held by TEA and all goodwill associated with such trademarks inures solely to TEA. TEA hereby grants to Contractor, and any approved subcontractors pursuant to Clause 10 hereof, for the Term, a limited, non-exclusive, non-assignable, non-transferable license to reproduce specific TEA Trademarks, which must be approved by the Contract Manager in each case, on published materials, in print and digital form, solely for purposes authorized under this Contract and only in furtherance of the Contract Project ("TEA Trademarks License"), provided that such TEA Trademarks License is expressly conditional upon and subject to, the following:

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

Contractor represents and warrants that all materials produced for and/or procured by TEA will align with the requirements and content expectations detailed in the TEA Brand Book. All materials delivered by Contractor that do not meet the requirements contained in the TEA Brand Book shall be deemed not accepted for purposes of Clause 55 (Payment) of these Standard TEA Terms and Conditions. To the extent that Contractor has any questions about content in the TEA Brand Book or TEA appearance and style guidelines, they should email [Communications@tea.texas.gov](mailto:Communications@tea.texas.gov).

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

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

registration of a domain name which is, in TEA's reasonable opinion, the same as, confusingly similar to or incorporates any of the TEA Trademarks.

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

(a) **TEA Confidential Information and Protected Data**

Contractor acknowledges and agrees that Contractor does not own any TEA Confidential Information, including any Protected Data, shall not acquire any ownership or other rights to such TEA Confidential Information as a result of performing this Contract, and has no right to use such TEA Confidential Information except as explicitly provided in this Contract for the purposes of performing this Contract Project as directed by TEA.

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

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

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

Contractor shall not: (i) anonymize or de-identify any part of TEA Confidential Information or create statistics or analysis of TEA Confidential Information for any Contractor purpose, marketing or otherwise, except as necessary to meet its obligations to TEA under the Contract or as allowed by Clause 22(d); (ii) use or distribute any part of TEA Confidential Information by or to any third-party, except as necessary to meet its obligations to TEA under the Contract and subject to Clause 21(e) below; and/or (iii) use such data for any other purpose not specifically set forth herein or as otherwise authorized in writing by the owner of the Protected Data.

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

Under no circumstances, unless the use is explicitly and expressly allowed under the terms of this Contract and only to directly further the Contract Project, may any TEA Confidential Information be used (1) as an input to a Generative AI, (2) in an environment where any Generative AI may have access to the TEA Confidential Information, or (3) to train, improve or otherwise modify any artificial intelligence models or algorithms, including, without limitation, any large language models. A statement in the Response that Generative AI will or may be used shall not be considered an explicit and express allowance.

(c) **Data Privacy Agreements for Protected Data**

In addition to any agreements required by an Authorized User, prior to the collection, input, or generation of any Protected Data, a data privacy agreement must be signed between the Contractor and/or relevant subcontractor and such Authorized User. The data privacy agreement must be the most recent version and revision of the Texas Standard Student Data Privacy Agreement distributed by Texas Education Technology Leaders unless a different agreement is explicitly required in writing by the Authorized User.

(d) **Limited Use of Anonymized Data**

If Contractor wishes to produce Anonymized data from TEA's Protected Data, Contractor shall submit a written request to TEA, and TEA has the option, in its sole discretion, to approve or deny that request. If the request is granted by TEA for a particular set of Protected Data, after Anonymization, the resulting Anonymized data is owned by TEA and is only authorized for use by Contractor in accordance with the following:

- (1) Protected Data that has been Anonymized by Contractor must be reported to TEA at that time, and upon termination or expiration of the Contract, and accompanied by a document in each instance signed by an authorized officer of Contractor attesting that all requirements relative to Anonymization have been met;
- (2) Contractor represents and warrants it shall and will continue to: (A) comply with all applicable laws and regulations governing the handling of such Anonymized data; and (B) implement internal procedures and controls to protect against the re-identification of Anonymized data;
- (3) Contractor may use Anonymized data solely for purposes of product improvement;
- (4) The Anonymized dataset shall not be used to re-identify the dataset or to recreate the original data during or after the Term; and

- (5) CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE STATE AND TEA, AND/OR ITS/THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES AND/OR ANY AUTHORIZED USER AGAINST ANY AND ALL CLAIMS AND LIABILITIES, INCLUDING ALL COSTS AND EXPENSES, ARISING OUT OF ANY SUCH USE AND/OR DISCLOSURE OF PROTECTED DATA TO ITS RESEARCH PARTNERS, OR IN ANY WAY CONNECTED WITH ANY ACTUAL OR ALLEGED ACTION OR FAILURE TO ACT RELATIVE TO, OR RESULTING FROM, THE MISUSE AND/OR MISHANDLING OF THE PROTECTED DATA BY CONTRACTOR, CONTRACTOR'S SUBCONTRACTORS AND/OR CONTRACTOR'S RESEARCH PARTNERS.

Contractor shall not provide any Protected Data to research partners.

If any of the above requirements have not been met as determined by TEA in its sole discretion, Contractor agrees to immediately cease use of the applicable Anonymized data and return such data to TEA.

Notwithstanding the above, unless the use is explicitly and expressly allowed under the terms of this Contract and only to directly further the Contract Project, TEA Confidential Information, regardless of whether it has been Anonymized, may not be used (1) as an input to a Generative AI, (2) in an environment where any Generative AI may have access to the TEA Confidential Information, or (3) to train, improve or otherwise modify any artificial intelligence models or algorithms. A statement in the Response that Generative AI will or may be used shall not be considered an explicit and express allowance.

(e) **Release of TEA Confidential Information**

Contractor may not release or disclose TEA Confidential Information to any third-party except as described in this Clause. TEA Confidential Information may only be released or disclosed to any third-party if: (i) required by applicable laws or regulations, (ii) required by any subpoena or similar legal process, or (iii) (A) the release or disclosure is necessary for Contractor to meet its obligations to TEA under the Contract, (B) Contractor keeps a record of all individuals that will have access to the TEA Confidential Information, (C) Contractor requires TEA confidentiality forms be signed by all individuals who will or may access the TEA Confidential Information and (D) Contractor obtains express, written consent from the Contract Manager to release the TEA Confidential Information. Such consent shall be required in all circumstances notwithstanding any other provision of this Contract. The record of individuals with access to the TEA Confidential Information must be made available to TEA immediately upon request.

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

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

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

(g) **FERPA**

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

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

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

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

Subject to Clause 64(g), no later than 30 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of all TEA Confidential Information, including all copies thereof and materials incorporating such TEA Confidential Information, whether in physical or electronic form, and provide to the TEA Contract Manager documentation that the sanitization has been completed. An authorized agent of Contractor must certify the completion of the destruction of data and sanitization.

## **22. Information Security Requirements**

Contractor shall: (a) use appropriate legal, organizational, physical, administrative and technical measures, and security procedures, including, without limitation, ensuring TEA Confidential Information will be encrypted at rest and in motion, to safeguard and ensure the security of TEA Confidential Information and to protect TEA Confidential Information from unauthorized access, hacking, disclosure, duplication, theft, use, modification and/or loss; (b) comply with all applicable laws and regulations governing the handling

of TEA data, including TEA Confidential Information; (c) process all TEA Confidential Information solely within the United States and limit access to the TEA Confidential Information to employees, subcontractors and staff of Contractor who have passed reasonable security clearance checks; (d) implement physical security and access controls at any of its facilities (including any data centers) that house TEA Confidential Information; (e) leverage one or more of the following authentication controls: multi-factor authentication (MFA), privileged access management (PAM), and/or 14 character minimum passphrases on systems that will store, process, or transmit TEA Confidential Information; (f) enable endpoint detection and response (EDR) technology on systems that will store, process, or transmit TEA Confidential Information; (g) provide evidence of an established vulnerability and patch management program; and (h) store backups of all TEA data, including TEA Confidential Information, on a separate network from production.

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

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

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

(a) **Cybersecurity Training**

Contractor shall ensure that any Contractor employee or subcontractor employee who (1) has access to any TEA Confidential Information or (2) has remote access to any internal TEA network or system, shall complete a cybersecurity training program certified by the Texas Department of Information Resources under Section 2054.519 of the Texas Government Code. Such training is required annually. Contractor shall provide TEA with verification of the completion of the requisite training. If TEA requires a specific cybersecurity training program, Contractor's employees or subcontractors shall complete that cybersecurity training program even if those individuals have already completed another certified training program that otherwise complies with this subsection.

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

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

(c) **Data Management and Security Controls**

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

(d) **Contractor-Developed Websites and Mobile Applications**

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

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

If Contractor develops or hosts a website or mobile application on behalf of TEA, TEA shall have the right to require, at Contractor's sole expense, a third-party risk assessment, including, but not limited to, a security audit or a privacy audit. Contractor may provide a copy of a current and valid Service Organization Control type 2 (SOC 2) report in lieu of the foregoing.

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

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

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

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

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

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

Contractor will notify TEA, at [cybersecurity@tea.texas.gov](mailto:cybersecurity@tea.texas.gov), within 24 hours, of any new report of a known exploited security vulnerability published in publications of the Cybersecurity and Infrastructure Security Agency, such as the Known Exploited Vulnerabilities (KEV) database, or any zero-day security vulnerability, that directly or indirectly affects either the Contractor's Technology Platform or any platform that includes or could allow access to TEA Confidential Information (each such event, a "Security Vulnerability").

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

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, SAS 70 Audit or other audit in TEA's sole discretion, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

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

Contractor shall reimburse and indemnify TEA or affected Authorized Users for any and all costs and expenses that TEA or affected

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

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

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

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

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

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

- 26. Electronic and Information Resources Accessibility Standards:** Contractor represents and warrants that the products and services that are the subject of this Contract comply with the State accessibility requirements for Electronic Information Resources (EIR) specified in 1 Tex. Admin. Code Chapter 206 and 1 Tex. Admin. Code Chapter 213. For purposes of this Contract, digital files such as PDFs, Word files, PowerPoint files, and other similar files are EIR within the meaning of Chapter 206 and Chapter 213 of the Texas Administrative Code.

Contractor represents and warrants that the deliverables under this Contract also comply with the federal regulations set forth in Section 508 of the Rehabilitation Act of 1973.

Contractor shall follow the WCAG as the minimum technical accessibility standard unless a stricter standard is mandated under 1 Tex. Admin. Code Chapter 206 or 1 Tex. Admin. Code Chapter 213.

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

Upon request of TEA, which shall not be unreasonable, a Contractor shall arrange accessibility testing with a third-party company to evaluate the accessibility of each EIR at Contractor's expense unless otherwise provided in Attachment A. The ideal third-party company shall have a proven track record in accessibility testing for products of the same type as the EIR and use real users with disabilities for manual testing. The third-party company will provide an accessibility conformance report (ACR) to the Contractor and any recommendations they suggest. The report must be submitted to the TEA Contract Manager for inclusion in the Contract file.

In addition to the quality control measures for Generative AI in Clause 27, if Contractor uses Generative AI to make any deliverable, or part of a deliverable, accessible, Contractor shall ensure the output of the Generative AI is reviewed in whole for accuracy, quality, and compliance with any relevant law by an individual with the knowledge and skills required to perform such a review.

- 27. Quality Control Measures for Generative AI:** Contractor represents and warrants that Generative AI will only be used by Contractor, if at all, in compliance with any restrictions on such use under this Contract. If Contractor is otherwise permitted under this Contract to use Generative AI for any specific purpose, such use shall only be permitted with quality controls as described in this Clause and this Contract.

Contractor shall implement robust and comprehensive quality control measures when using Generative AI. Quality control measures should include all reasonable industry standards and expectations with regard to use of Generative AI and shall include, but should not be limited to, the following quality controls:

- (a) **Human Oversight:** Any output by Generative AI must, within a reasonable timeframe, be reviewed, approved, and edited by a human qualified to perform the review, approval, and editing. The review shall ensure, at minimum, the output is accurate and free of bias.

- (b) **Safety and Testing:** Contractor must ensure that the Generative AI has been subject to adequate testing and safeguards in alignment with general and reasonable industry standards and expectations.
- (c) **Quality of Generative AI:** Contractor must ensure that the Generative AI used by Contractor (1) performs in accordance with any specifications placed by Contractor, if any, (2) was created using an industry standard risk management system such as NIST-AI-600-1, and (3) has been trained using data appropriate for its use, with such data sources having been appropriately licensed as required by law.
- (d) **Security of Generative AI:** The Generative AI used by Contractor must be secure against (1) attacks, gaming, and misuse, and (2) data leakage.
- (e) **Bias:** Contractor must ensure that the underlying model powering the Generative AI is reasonably free from bias. The model must be designed to identify and mitigate any type of bias in its training data or in its algorithm by ensuring, to the extent possible, demographic parity and equalized odds. Bias includes, but is not limited to, racial, gender, ideological, or other prejudicial biases.
- (f) **Transparency:** Contractor must ensure that the Generative AI reasonably complies with all industry standards relating to transparency in the field of generative artificial intelligence such as ISO/IEC or NIST standards.
- (g) **Compliance with Law:** The Generative AI used by Contractor must comply with all relevant State and federal laws.
- (h) **Provenance:** Contractor must have the capability, as appropriate and technologically feasible, to verify and reliably label or establish the provenance of the Generative AI's output as being generated or modified by the Generative AI.
- (i) **Attribution:** Contractor must have a process in place to review output, determine whether attribution to a third-party source is necessary, and notify TEA of the need to attribute.
- (j) **Training:** Contractor shall provide training to any individual who will use Generative AI on behalf of Contractor in performance under this Contract. The training should (1) encompass the functionality, advantages, and possible hazards of the Generative AI and (2) emphasize the ethical and legal obligations relating to generative artificial intelligence. The training should be conducted regularly to ensure users are familiar with the latest industry standard practices regarding generative artificial intelligence.

Contractor shall maintain an awareness of industry practices with regard to generative artificial intelligence and review its quality control measures at least quarterly to ensure Contractor meets or exceeds the requirements of those industry practices.

Contractor acknowledges that it is paramount that TEA have the necessary resources and information to, upon TEA's request, verify Contractor's compliance with this Clause and demonstrate compliance with this Clause. Accordingly, Contractor shall retain and maintain information in a human-readable form that explains or could reasonably be used to explain the output of any Generative AI used by Contractor in furtherance of this Contract. Contractor shall provide that information to TEA upon request and shall reasonably make resources available to (1) facilitate TEA's understanding and review of the information and (2) assist TEA in responding to requests, inquiries, investigations, or other actions with respect to the Generative AI. Contractor shall also provide a copy of any of its policies and procedures relating to Generative AI upon request by TEA.

- 28. Using Generative AI in Decision-making:** Contractor shall not allow Generative AI to make decisions or judgments in performance of this Contract.
- 29. Unauthorized Recordings or Transcripts Prohibited:** Contractor may not, except to the extent required by federal or State law, record or transcribe the contents of any meeting involving TEA staff or any Authorized User without the prior written consent of the Contract Manager. Written consent must be obtained from the Contract Manager for each meeting that will be recorded or transcribed; blanket written consent for all meetings under the Contract or a subset of those meetings is insufficient under this Clause. This prohibition includes, but is not limited to, the use of Generative AI for such purpose. Any transcription that is authorized under this Clause must be submitted to TEA for review.
- 30. Drafts or Working Versions of Electronic Deliverables:** In addition to the format of any deliverables set forth in Attachment A and/or the task plan, Contractor shall provide, within five (5) business days of a request by TEA, any (1) deliverable or (2) draft component or working version of a deliverable to TEA in its native format or another format specified by TEA, if Contractor can reasonably provide such a draft or working version.
- 31. Obscene or Harmful Content and LEA Compliance with Laws:** Contractor represents and warrants that all Contractor Materials, Works and any other deliverables hereunder and/or content accessible within a product provided under this Contract:
  - (a) Are and shall be compliant and consistent with all relevant laws and regulations to protect Texas students from obscene or harmful content, including, but not limited to:
    - i. the Children's Internet Protection Act, Pub. L. No. 106-554, 114 Stat. 2763A-335 (2000);
    - ii. Section 28.0022 of the Texas Education Code;
    - iii. Section 43.22 of the Texas Penal Code (meaning no violation of such Penal Code section); and
    - iv. any other law, rule or regulation that protects students from obscene or harmful content, including any TEKS or instructional materials suitability rubrics,
  - and
  - (b) Shall not undermine, subvert or impede compliance with federal and state law by any LEA that uses goods or services provided under this Contract. Compliance with federal and state law includes, but is not limited to, Section 31.1011(a)(1) of the Texas

Education Code, which requires that districts and charter schools must certify annually, for each subject and grade level in their curriculum, that (1) they provide each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level, and (2) that students are protected from obscene or harmful content in compliance with subsection (a)(i) above.

Any content included in Contractor Materials, Works or other deliverables and/or accessible content determined by TEA to be out of compliance with (a) above shall be corrected by Contractor and resubmitted to TEA within fifteen (15) working days of written notification from TEA. This correction shall be made even if the deliverables have already been accepted by TEA. In addition, Contractor shall routinely report in writing to TEA any feedback from participating school districts, LEAs, Education Service Centers, charter schools or other educators or parents that may relate to, or indicate a violation of, the above requirements, within fifteen (15) working days of receipt of such feedback.

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

- (e) The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR Part 110;
- (f) The Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments;
- (g) Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
- (h) Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
- (i) The Clean Air Act (42 U.S.C. § 7401 et seq.) and the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended;
- (j) P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
- (k) General Education Provisions Act, as amended.

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

- 39. Equal Employment Opportunity:** Contractor represents and warrants its compliance with all applicable duly enacted State and federal laws governing equal employment opportunities.
- 40. E-Verify Program:** Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the Term of the Contract to determine the eligibility of:
- (a) All persons employed by Contractor to perform duties within Texas; and
  - (b) All persons, including subcontractors, assigned by Contractor to perform work pursuant to the Contract within the United States of America.
- 41. Compliance with Laws:** Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to a contractor providing services and products required by the Contract to the State, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the Term. TEA reserves the right, in its sole discretion, to unilaterally amend the Contract prior to award and throughout the Term to incorporate any modifications necessary for TEA's compliance, as an agency of the State, with all applicable State and federal laws, regulations, requirements, and guidelines. Contractor represents and warrants that it has determined what licenses, certifications, and permits are required under the Contract and has acquired all applicable licenses, certifications, and permits. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 42. Legal and Regulatory Actions:** Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. In addition, Contractor represents and warrants that it shall notify TEA in writing within 5 working days of any changes to the representations or warranties in this Clause and understands that failure to so timely update TEA shall constitute a material breach of contract and may result in immediate termination of the Contract.
- 43. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure to so comply.
- 44. No Exclusivity:** The Contract is not exclusive to the Contractor. TEA may obtain products and related services from other sources during the Term of the Contract. TEA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.
- 45. Antitrust:** By signing this Contract, Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution has (a) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (b) communicated directly or indirectly any of the contents of the Response to any competitor or any other person engaged in the same line of business as Contractor.
- 46. Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit. Contractor represents and warrants that it has no officers who have served as officers of

other entities who have been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practices in an administrative hearing or court suit.

- 47. Child Support Obligation Affirmation:** Under Section 231.006 of the Texas Family Code, Contractor certifies that the individual or business entity named in this Contract or Response is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 48. Public Information Act:** Contractor understands that TEA is subject to, and will comply with, the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State. Information, documentation, and other material in connection with this solicitation, the Response or any resulting Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. TEA Contract Manager will provide the specific format by which Contractor is required to make the information accessible by the public.
- If TEA receives a request for disclosure of information, such information must qualify for an exception provided by the Act to be withheld from public disclosure. Contractor authorizes TEA to submit any such information, including information Contractor has labeled as confidential or proprietary, to the Office of the Attorney General for a determination as to whether such information may be exempt from public disclosure under the Act. TEA shall have no obligation to submit information it does not have a good faith belief may be subject to an exception to disclosure to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided in accordance with the Texas Public Information Act. Upon receipt of a request for information, the TEA Contract Manager shall request the responsive information from the Contractor, and Contractor shall respond to TEA's request within five working days.
- 49. Lobbying Prohibition:** Contractor represents and warrants that TEA's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- 50. Prohibition of Text Messaging and Emailing while Driving during Official Federal Grant Business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.
- 51. Liability for and Payment of Taxes:** Purchases made for the State's use are exempt from the State Sales Tax and Federal Excise Tax. TEA will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- 52. Conformance:** Contractor represents and warrants that all goods and services furnished will conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and will be free from any defects in materials, workmanship, or design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- 53. Buy Texas Affirmation:** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services, Contractor shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this State. This provision does not apply if Contractor receives any federal funds under this Contract.
- 54. Pricing Certification, Best Pricing:** Contractor hereby represents and warrants that the fees and expenses charged for the work being conducted for TEA under this Contract are no less favorable than Contractor's standard pricing practices utilized for offers for similar work to similar organizations including, without limitation, any pricing provided pursuant to a contract with the Texas Department of Information Resources or any pricing previously provided to TEA. If Contractor enters into any subsequent agreement for similar work with any similar organization during the Term which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this Contract, Contractor shall notify TEA promptly of the existence of such more favorable benefits, pricing and/or hourly rates and TEA shall have the right to receive the more favorable contractual terms immediately. If requested in writing by TEA, Contractor hereby agrees to amend this Contract to contain the more favorable benefits, pricing and/or hourly rates.
- 55. Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Payment for goods or services purchased with State-appropriated funds will be issued by (a) State warrants or (b) electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Additional information and a Direct Deposit Authorization application may be found at: <https://fmnx.cpa.state.tx.us/fm/payment/index.php>. Invoices must be submitted to TEAAccountsPayable@tea.texas.gov and TEA Contract Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the latest of:

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

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

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

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

TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. Contractor must receive written approval from TEA before payment may be made on a deliverable. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition provided by the TEA Contract Manager and Attachment A, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirements and resubmit the deliverable. A "Correction Action Plan" under this Clause means a written document that identifies specific activities that must be performed by the Contractor to restore compliance with the Contract and be tailored to address the identified deficiency, clearly state the desired outcome, and establish a time frame for the Contractor to demonstrate improved performance. TEA reserves the right to reject and withhold payment for deliverables found to be substandard or not in compliance with the deliverable definition, including without limitation test items developed under the Contract.

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

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

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

**56. Debts and Delinquencies Affirmation:** Contractor acknowledges and agrees that, to the extent Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State, any payments or other amounts Contractor is otherwise owed under the Contract may be applied toward any debt Contractor owes the State until the debt is paid in full, regardless of when the debt or delinquency was incurred. These provisions are effective at any time Contractor owes any such debt or delinquency.

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

**57. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.

- 58. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- 59. Credit for Deficient Deliverables:** After payment has been made on an invoice related to a deliverable, even if that deliverable has already been accepted, if TEA discovers a deficiency in that deliverable, TEA shall be entitled to a credit equal to the amount paid for that deliverable if Contractor is not able to resolve the deficiency within 90 days from the day Contractor is notified by TEA of the deficiency. TEA shall reasonably determine if a deficiency is resolved. If a deficiency is not resolved, TEA shall have the right to withhold the amount of the credit from future invoice payments to Contractor.

For purposes of this Clause, a deficiency shall be defined as (1) a critical flaw in the deliverable, (2) Contractor's failure to obtain intellectual property rights relating to the deliverable as required by this Contract, or (3) Contractor's failure to comply with a certification, warranty, or representation in a Clause of this Contract in relation to or in performance of the deliverable.

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

Time is of the Essence

Contractor's timely performance is essential to this Contract.

Suspension

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

Sanctions

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

- 61. Service Levels:** Contractor shall perform its obligations in accordance with the performance standards set forth in Exhibit F, if attached, and provide the Service Credits set forth in Attachment F for any failure to meet the agreed upon service levels.
- 62. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- 63. Protests:** Any actual or prospective Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this Contract by TEA may submit a formal protest to the Director of TEA's Purchasing and Contracts Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules (19 Tex. Admin. Code § 30.2002).

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

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

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

(b) **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under the Contract. TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or may proceed by

appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

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

- (c) **Termination Due to Changes in Law:** If federal or State laws or regulations or other federal or State requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this Contract.
- (d) **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all Works and associated documentation and materials obtained from Contractor under the Contract.
- (e) **Survival of Terms:** Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, ownership of intellectual property or other property rights, dispute resolution, rights and remedies upon termination, invoice and fees verification.
- (f) **Delivery of Works:** Upon TEA's request, at any time during the Term, and upon termination or expiration of the Contract, Contractor shall deliver, surrender, and assign, to TEA or to a third party designated by TEA in writing, all Works, except any Works containing TEA Confidential Information which shall be returned to TEA in accordance with subsection (g) below. Contractor will begin shipping, transmitting or providing access to all Works to TEA or its designee within 10 business days from TEA's request. Contractor will be responsible for providing the services identified in the Contract until all Works have been completely transferred to TEA or its designee. Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract transition. For the avoidance of doubt, TEA has no obligation to compensate Contractor for transferring items under this Clause unless compensation is specifically provided for in Attachment A.

TEA will not pay the final invoice until all Works are returned to TEA or its designee. TEA Contract Manager shall approve the transition plan prior to its implementation. The transition plan must minimize the impacts on continuity of operations and maintain communication with TEA Contract Manager and TEA's designee, if any.

- (g) **Return of TEA Confidential Information:** TEA has the unrestricted right, (i) upon request at any time during the Term or (ii) upon termination or expiration of the Contract, to the return of TEA Confidential Information to any Authorized Users designated by TEA.

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

**65. Insurance:** Contractor represents and warrants that it maintains and will maintain the following insurance coverage during the Term:

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

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

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

Contractor shall:

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

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

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

overcome. Force majeure events specifically exclude cyberattacks, intrusions and incidents of unauthorized access to any Contractor Technology Platform that is provided to TEA hereunder. Each party must inform the other in writing, with proof of receipt, within five working days of the existence of such force majeure, or otherwise waive this right as a defense. Contractor shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. In the event of a force majeure event, Contractor will not increase its charges under this Contract. If the delay or failure continues beyond 10 calendar days, TEA may terminate this Contract in whole or in part with no further liability and will receive a refund of any prepaid fees unearned as of the time of termination.

- 67. Drug Free Workplace Policy:** Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.
- 68. Performance Measurement:** Contractor shall use Office of Management and Budget-approved standard information collections when providing financial and performance information. Contractor must be able to relate financial data to performance accomplishments of the Contract Project. Contractor must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). Contract performance should be measured in a way that will help to improve program outcomes, share lessons learned, and spread adoption of promising practices. Contractor must have effective control over, and accountability for, all funds, property, and other assets. The Contractor must adequately safeguard all assets and assure that they are used solely for authorized purposes.
- 69. Entities that Boycott Israel:** Contractor represents and warrants that: (a) it does not, and shall not for the duration of the Contract, boycott Israel or (b) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 70. Energy Company Boycotts:** Contractor represents and warrants that: (a) it does not, and will not for the duration of the Contract, boycott energy companies or (b) the verification required by Section 2276.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 71. Firearm Entities and Trade Associations Discrimination:** Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 72. COVID-19 Vaccine Passport Prohibition:** Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.
- 73. National Anthem Verification:** If Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, including a wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of a professional sports team that exists to make a profit, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State. TEA or the Attorney General may strictly enforce this provision.
- 74. Equal Treatment of All Persons:** Consistent with Article I, Section 3a of the Texas Constitution, the Fourteenth Amendment to the United States Constitution, federal and State law, and Executive Order No. GA-55, Contractor represents and warrants that:
- (a) all conduct under this Contract shall be administered and performed in a neutral manner without regard to race of persons;
  - (b) Contractor shall not, in the specific performance of this Contract, elevate one individual person over another, or advantage any one person over another, due to race;
  - (c) Contractor shall not, in the specific performance of this Contract, employ practices or engage in any advancement of the programs known as diversity, equity and inclusion, critical race theory, affirmative action, or other similar, divisive agendas;
  - (d) Contractor's staff, agents, and subcontractors that are selected and employed in the specific performance of this Contract shall be selected and employed solely on merit and the ability to perform; and
  - (e) Contractor shall ensure that any subcontractors participating in the specific performance of this Contract represent and warrant to the provisions of this Clause.
- 75. Biological Sex and No Preferred Pronouns:** Contractor represents and warrants that it shall ensure that all actions in specific performance of this Contract shall comply with federal and state law and reflect that there are only two sexes. Contractor's employees, officers, representatives, subcontractors, and agents shall not, in performance of this Contract, present, direct, request, or suggest the use of preferred personal pronouns in professional correspondence or presentations.
- 76. Critical Infrastructure Affirmation:** If Contractor will be granted direct or remote access to or control of critical infrastructure in this State, as defined by Section 2275.0101 of the Texas Government Code, which includes cybersecurity systems, excluding access specifically allowed by the governmental entity for product warranty and support purposes, then pursuant to Section 2275.0102 of the Texas Government Code, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent

company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code Section 2275.0103, or (2) headquartered in any of those countries.

**77. Critical Infrastructure Subcontracts:** For purposes of this Clause, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes, unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify TEA before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

**78. Disaster Recovery Measures and Plan:** Contractor will maintain commercially reasonable business continuity and disaster recovery measures (including but not limited to adequate backups in the case of ransomware) to prevent or cure any resulting delay or failure and must execute such measures prior to being excused from performance due to force majeure. In accordance with 13 Tex. Admin. Code § 6.94(a)(9), Contractor must provide to TEA the descriptions of its business continuity and disaster recovery plan. Contractor shall provide TEA with a copy of updated versions of its business continuity and disaster recovery plan (and that of any subcontractor, including any third-party hosting company, that it uses) within 30 days after changes are adopted, or within five days of TEA requesting a copy. Contractor must provide TEA the expected recovery time objective and recovery point objective in the event of major outage. TEA shall be free to share the disaster plan with any government agency with jurisdiction to request a copy from TEA and as otherwise required by a court of competent jurisdiction, or any federal or State law, including without limitation the Public Information Act, in accordance with Clause 48 hereof.

**79. Computer Equipment Recycling Program:** If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 Tex. Admin. Code Chapter 328.

**80. Television Equipment Recycling Program:** If Contractor is submitting a Response for the purchase or lease of covered television equipment, then Contractor certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

**81. Secure Erasure of Hard Disk Capability:** All equipment provided to TEA by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 Tex. Admin. Code Chapter 202.

**82. Electrical Items:** All electrical items purchased under this Contract must meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

**83. Independent Contractor:** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor, Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers are not employees of TEA or the State. Contractor shall have no claim against TEA for vacation pay, sick leave, retirement benefits, Social Security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and TEA.

**84. Excluded Parties:** Contractor certifies that:

(a) It is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; and

(b) Neither Contractor, nor any of its holding companies or subsidiaries, is:

- (i) listed in Section 889 of the 2019 National Defense Authorization Act;
- (ii) listed in Section 1260H of the 2021 National Defense Authorization Act;
- (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
- (iv) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

- 85. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees, agents or representatives, including any subcontractors and employees, agents or representative of such subcontractors assigned to TEA projects, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- 86. Criminal Background Checks:** If during the Term, Contractor and/or Contractor's staff, or subcontractor and/or subcontractor's staff have either (a) access to Texas public school campuses, or (b) access to TEA Confidential Information or TEA data systems, all of Contractor and/or Contractor's staff and/or subcontractor and/or subcontractor's staff must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor, Contractor's staff, subcontractor or subcontractor's staff is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- (a) Contractor, Contractor's staff, subcontractor or subcontractor's staff will not meet eligibility standards and be permanently disqualified from serving on TEA assignments if an initial review of criminal history records indicates:
- i. A conviction or deferred adjudication for a felony or Class A misdemeanor;
  - ii. Offense on conviction of which the defendant is required to register as a sex offender; or
  - iii. Offense under the laws of another state or federal law that is equivalent to an offense specified above, or their criminal record indicates an unresolved felony or Class A misdemeanor.
- (b) Educator Certification Required: If the individual is a certified educator, the educator's certificate(s) must currently be valid and in good standing. If the certificate(s) is/are not in good standing (inactive, invalid, revoked, suspended or surrendered) the individual is not eligible for TEA appointments, assignments, contract, or grant awards or to provide services to school entities on behalf of TEA.
- 87. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TEA or another State agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (a) the nature of the previous employment with TEA or the other State agency; (b) the date the employment was terminated; and (c) the annual rate of compensation for the employment at the time of its termination.
- 88. No Conflicts of Interest:** Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 89. Collusion:** Contractor represents and warrants that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's Response is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any Contract award.
- 90. Suspension and Debarment:** Contractor represents and warrants that it and its principals are not suspended or debarred from doing business with the State or federal government as listed on the State Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and/or the System for Award Management (SAM) maintained by the General Services Administration.
- 91. Financial Participation Prohibited:** Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in the Response or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
- 92. Foreign Terrorist Organizations:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 93. Former TEA Employees:** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of TEA during the 12 month period immediately prior to the date of execution of the Contract. In the case of professional services contracts as described by Chapter 2254 of the Texas Government Code, Contractor represents and warrants that if a former employee of TEA was employed by Contractor within one year of the employee's leaving TEA, then such employee will not perform services on projects with Contractor that the employee worked on while employed by TEA.
- 94. Restricted Employment of Certain State Personnel:** Pursuant to Section 572.069 of the Texas Government Code, Contractor represents and warrants that it has not employed and will not employ a former State officer or employee who participated in a procurement or contract negotiations for TEA involving Contractor within two years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former State officers or employees whose State service or employment ceased on or after September 1, 2015.

- 95. Dealings with Public Servants:** Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
- 96. Prior Disaster Relief Contract Violation:** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit State agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Contractor certifies that the individual or business entity named in the Response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.
- 97. Ability to Conduct Business in Texas:** Contractor represents and warrants that it is, and will be for the duration of the Contract, duly organized, validly existing and duly authorized and in good standing with an active status to transact business under the laws of its state of organization. If Contractor is a foreign or out-of-state entity, Contractor represents and warrants that it is duly authorized and in good standing to do business with an active status in the State and is registered to transact business in the State under the process described in Texas Business Organizations Code, Title 1, Chapter 9 and any other State or federal statutes which require registration in order for Contractor to conduct business in the State under the Contract.
- 98. Headings:** The headings of articles, sections or clauses contained in this Attachment B and in the Contract, its attachments and annexes are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision hereof or thereof.
- 99. Contracting Information Responsibilities:** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (a) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TEA for the duration of the Contract, (b) promptly provide to TEA any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TEA, and (c) on termination or expiration of the Contract, either provide at no cost to TEA all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TEA. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 100. Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in the Response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 101. Executive Head of State Agency Affirmation:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of the state agency that is party to this Contract, Contractor certifies that it is not (1) the executive head of the agency, (2) a person who at any time during the four years before the date of the Contract was the executive head of the agency, or (3) a person who employs a current or former executive head of the agency.
- 102. Notification Required for Certain Affiliations with Elected or Appointed Officials:** Contractor shall notify TEA within fifteen calendar days of the existence or initiation of any relationship between Contractor and any elected or appointed official, including municipal, county, state, and federal elected or appointed officials, that arises during the Term and/or during the two-year period prior to the Contract Term. A "relationship" under this Clause includes, but is not limited to, an elected or appointed official acting as an executive, director, employee, independent contractor, consultant, agent, or subcontractor. All such relationships must be reported whether or not the elected or appointed official is working on or affiliated with any part of this Contract. Submissions under this Clause should be made to TEAContractMonitoring@tea.texas.gov.
- 103. Point of Contact, Responsiveness and Escalation:** All notices, reports, documents, correspondence or other data required by this Contract shall be in writing and delivered to the individuals listed below, their successors in office, or the TEA employee requesting such notice, report, document, correspondence or other data, on or before scheduled due dates or where no due date is specified within five working days of any request for such notice, report, document, correspondence or other data by TEA. Within 30 days of execution of this Contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Contract Manager level.

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

**104.False Statements:** Contractor represents and warrants that all statements and information contained herein are current, complete, true and accurate. Submitting a document with a false statement or material misrepresentations made during the performance of a Contract is a material breach of contract and may void the submitted Response and any resulting Contract. During the Term of the Contract, Contractor shall promptly disclose to TEA all changes that occur to the representations, warranties, and certifications contained herein. Contractor covenants to fully cooperate in the development and execution of any resulting documentation necessary to maintain accurate record of the representations, warranties and certifications.

The Texas Code cites referenced in this document may be viewed at: <http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code cites referenced in this document may be viewed at:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)