

STATE OF TEXAS

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COUNTY OF FORT BEND

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**PURCHASING AGREEMENT
BETWEEN FORT BEND COUNTY AND CAE HEALTHCARE, INC.
CONTRACT NO. TXMAS-17-6501**

THIS AGREEMENT is made and entered into by and between Fort Bend County, on behalf of Fort Bend County EMS (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and CAE Healthcare, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide supplies and installation and training services for the Fort Bend County EMS facility at 4332 Highway 36 South, Rosenberg, Texas 77471, (hereinafter "Services"), as outlined in the attached Exhibit A, and incorporated by reference; and

WHEREAS, Contractor has entered into and accepted that certain terms and conditions of the Contract with the Texas Comptroller of Public Accounts (CPA), an agency of the State of Texas, through its Statewide Procurement Division (hereinafter "TXMAS-17-6501"), attached hereto as Exhibit B, and incorporated by reference; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

1.1 Contractor shall render Services to County as defined in the Scope of Services and Agreement (attached hereto as Exhibit A), and incorporated by reference herein.

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is Seventy-nine Thousand Three Hundred thirty-eight dollars and 95/100 (\$79,338.95). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Seventy-nine Thousand Three Hundred thirty-eight dollars and 95/100 (\$79,338.95), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed Seventy-nine Thousand Three Hundred thirty-eight dollars and 95/100 (\$79,338.95).

Section 5. Term

The term of the agreement shall begin with receipt of the Notice to Proceed and end no later than September 30, 2019. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience

7.1.1 County may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their

obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County EMS
Attn: Deputy Chief - Clinical
4332 Highway 36 South
Rosenberg, Texas 77471

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

Contractor: CAE Healthcare, Inc.
6300 Edgelake Drive
Sarasota, FL 34240

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Warranty

16.1 Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Taxes

County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.

Section 24. Attorney's Fees

County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.

Section 25. Arbitration

County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.

Section 26. Certain State Law Requirements for Contracts

The Contents of this Section are required by Texas Law and are included by County regardless of content.

26.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code. By signature below, Contractor verifies that Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

26.2 Texas Government Code Section 2251.152 Acknowledgement. By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

Section 27. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 28. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

{EXECUTION PAGE FOLLOWS}

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IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date of full execution as indicated below.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

APPROVED:

Kathleen Hartley, Deputy Chief - Clinical
Fort Bend County EMS

CAE HEALTHCARE, INC.



Authorized Agent- Signature

Jennifer Julia

Authorized Agent- Printed Name

Legal

Title

2.19.19

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert E. Sturdivant, County Auditor

EXHIBIT A: Scope of Work/Quote No. Q-12573-4
EXHIBIT B: TXMAS Contract 17-6501

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EXHIBIT A:

SCOPE OF WORK/QUOTE NO. Q-12573-4



CAE Healthcare Inc.
 6300 Edgelake Drive
 Sarasota, FL 34240
 United States
 Fax: (941) 377-5590
 Tax ID # 22-3437089

Created Date: 12/14/2018
 Expiration Date: 6/30/2019
 Quote Number: Q-12573-4
 Currency: USD
 TXMAS Contract Number 17-6501

Prepared By	Scott Giroir	Prepared For	Kathleen Hartley
Phone	+1 2542428016	Phone	(281) 633-7094
Email	scott.giroir@cae.com	Email	kathleen.hartley@fortbendcountytexas.gov
Fax	(941) 377-5590		
Payment Terms	NET 30		
Shipping Terms			

Bill To Name	Fort Bend County EMS	Ship To Name	Fort Bend County EMS
Bill To	4332 Highway 36 South Rosenberg, Texas 77471 United States	Ship To	4332 Highway 36 South Rosenberg, Texas 77471 United States

Product	Description	Product Code	List Price	Qty	Total Price	Notes
PediaSIM ECS 120v	(120v/60Hz Voltage) Full Body Instrumented Pediatric Mannequin, Muse Operating Software, Air Compressor, 2 Pre-Configured Patients, 6 Simulated Clinical Experiences, and 4 SCE Development Licenses	FLEX-PECS	\$35,314.40	1	\$31,076.67	
Instructor's Workstation	Instructor's Workstation for PediaSIM ECS	147K240500	Included	1	\$0.00	(Included)
System Installation	Installation & System Orientation by a CAE Healthcare Technician	ISO	\$2,730.00	1	\$2,730.00	
Touch-Pro Wireless Patient Monitor	Touch-Pro Wireless Patient Monitor with Wall Mount	ACC-PTS001	Included	1	\$0.00	
Core On-Site Education Course for One Simulator	(PediaSIM ECS Patient Simulator) Core On-Site Education Course for One Simulator (Up to 10 Attendees - Minimum 2 days) - Quantity Represents Number of Days	TRN-064	\$3,117.40	2	\$6,234.80	

Product	Description	Product Code	List Price	Qty	Total Price	Notes
LearningSpace Enterprise One Room	LearningSpace Flex Bundle	Flex-Enterprise One Room	\$0.00	1	\$0.00	
LearningSpace Enterprise One Box	LearningSpace Enterprise One Box	LSP-002	\$15,995.00	1	\$14,395.50	
On-Site Installation (per day)	On-Site Installation (per day)	ISO-AVS	\$3,120.00	2	\$6,240.00	
Digital PTZ HD Camera	Digital PTZ HD Camera	ACC-AVS01	\$934.96	1	\$841.46	
LearningSpace Enterprise Specialized Training (Custom Two Day)	(LearningSpace Enterprise One Room) LearningSpace Enterprise Specialized Training (Custom Two Day): For those customers who have a specific use in mind, we offer a follow up two-day customizable training. Learn about additional modules available to you within the LearningSpace software that can enhance your simulation center management capabilities.	TRN-LSP126	\$8,764.20	1	\$8,764.20	
EMS 3 Learning Module for Apollo Pre-hospital	The Emergency Medical Services (EMS) 3 Learning Module for Apollo Pre-hospital includes 10 Simulated Clinical Experiences based on the US Department of Transportation Curriculum	EDU-055	\$3,068.00	1	\$3,068.00	
EMS 5 Learning Application for PediaSIM ECS Muse	The Emergency Medical Services (EMS) 5 Learning Application for PediaSIM ECS Muse includes 10 Simulated Clinical Experiences based on the US Department of Transportation Curriculum and Developed in Partnership with Fox Valley Technical College	EDU-273	\$3,068.00	1	\$3,068.00	
Tax	Sales tax for non tax-exempt accounts.	MISC. TAXES	\$0.00	1	\$0.00	Taxes, if applicable, will applied at time of Purchase Order
Shipping and Handling	Shipping and Handling charges for the items on this quote	SHIPPING	\$670.80	1	\$670.80	
					DISCOUNT:	\$5,930.73
					TOTAL:	\$77,089.43

Warranty Products
Invoice Currency: USD

Year 1

Product		Year 1
Premier Assurance for BabySIM/PediaSIM ECS	Product Code	WAR-050
	List Price	\$2,249.52
	Quantity	1
	Notes	<First Year Upgrade Pricing>
Year 1 DISCOUNT:		\$0.00
Year 1 TOTAL:		\$2,249.52

TOTAL: \$79,338.95

The sale of the Products and Services identified in this quotation is subject to CAE Healthcare's Healthcare Education Products General Terms and Conditions and its related End-User License; if an option for Maintenance Services is offered and accepted, it is subject to CAE Healthcare's Support and Maintenance Terms and Condition; if an option for Training is offered and accepted, it is subject to CAE Healthcare's Training Policy, all of the above being and available on the CAE Healthcare website at www.caehealthcare.com

In the event of the sale of a LearningSpace System, Customer will be required to sign CAE Healthcare's LearningSpace Agreement before any order is accepted by CAE Healthcare. The LearningSpace Agreement will be provided to Customer directly.

All sales are final. Any Training must be scheduled and completed within nine (9) months of the date in which any associated simulator is received by the customer or purchased installation is completed.

Accounts Payable Remit to Address:

CAE Healthcare Inc.
32955 Collection Center Drive
Chicago IL 60693-0329

EXHIBIT B:

TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)
CONTRACT NO.: TXMAS – 17-6501

**STATE OF TEXAS
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)
CONTRACT NO: TXMAS-17-6501**

THIS CONTRACT is entered into by and between the Texas Comptroller of Public Accounts (CPA), an agency of the State of Texas, through its Statewide Procurement Division located at 1711 San Jacinto Blvd., Austin, Texas 78774 and CAE Healthcare Inc. (Contractor) with its principal place of business located at 6300 Edgelake Dr. Sarasota, FL 34240-8817.

This Contract is effective as of the date of signature by CPA after having first been signed by Contractor.

1. BACKGROUND

Contractor has entered into a contract with the federal government or other governmental entity that was awarded using a competitive process (Base Contract). CPA has determined that the underlying Base Contract offers goods or services that may be of interest to Customers. CPA will use the Base Contract as a basis for a Texas multiple award schedule (TXMAS) contract with Contractor as permitted by Section 2155.501 *et seq* of the Texas Government Code. This TXMAS Contract establishes terms and conditions under which Customers may acquire Contractor's goods or services, but this Contract does not obligate any Customer to do so.

Customers are defined as those entities permitted to purchase from a TXMAS contract and consists of state agencies (as defined by Section 2151.002 of the Texas Government Code), local governments (as defined by Section 271.101 of the Texas Local Government Code), assistance organizations, special districts, MHMR community centers, Texas Rising Star Providers, or any qualified ordering entity participating in the cooperative purchasing program.

2. CONTRACT DOCUMENTATION

- (a) This Contract consists of the Base Contract as amended by this Contract (see Contract section entitled "Entire Agreement") and any subsequent contract amendments issued by CPA. To the extent there is a conflict between this Contract and the underlying Base Contract, this Contract controls.
- (b) The Base Contract consists of all documents and materials incorporated in that agreement with the governmental entity that awarded the Base Contract. Those documents include, but are not limited to, the governmental entity's competitively procured solicitation, Contractor's response to that solicitation, any resulting contract and all amendments thereto, and any authorized pricelists.
- (c) Additionally, all representations, clarifications, and certifications submitted by Contractor as a part of the Base Contract contracting process are also included. This includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Base Contract, including, as applicable, all Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and United States Code (USC) provisions, and any other applicable law or rule governing the contract relationship. By way of example, if the Base Contract is with the United States General Services Administration (GSA), such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among others.
- (d) Prices reflected on the Base Contract are maximum prices. A Customer may negotiate a lower price for goods and services than that listed on the Base Contract.

3. CERTIFICATION OF ACCURACY

Contractor hereby certifies that all copies of the Base Contract documents that were submitted to CPA are true, correct, current, and complete. Contractor further represents and warrants that all future Base Contract revisions submitted to revise this Contract will also be true, correct, current, and complete.

4. REPRESENTATIONS

Contractor warrants that all certifications and representations made as a basis for obtaining or as a part of the Base Contract were and still are true and accurate. Contractor further agrees that such representations are a basis for CPA entering into this Contract and that such representation and certifications inure to the benefit of the State of Texas, CPA, and all Customers under this Contract.

5. FUTURE NOTICE

- (a) Contractor acknowledges that any continuing obligation to notify the governmental entity that awarded Contractor's Base Contract of changes affecting the Base Contract (including, by way of example only, notices required under any price change provisions of the Base Contract) imposes a corresponding continuing obligation to notify CPA under this TXMAS Contract.
- (b) Contractor agrees to notify CPA within 30 calendar days of all changes in the status of or amendments to the Base Contract.
- (c) Contractor shall promptly notify CPA of any modifications to the Base Contract. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.

6. PARTIES TO THIS CONTRACT

- (a) For purposes of this Contract, all rights and obligations of Contractor and the governmental entity that awarded Contractor's Base Contract will be rights and obligations of Contractor and the State of Texas, CPA, and Customers, except to the extent that such would create an absurdity, are modified by this Contract, or would violate state or federal law. CPA is the contracting agency that is a party to this Contract, but may, as a state agency, also be a Customer under this Contract.
- (b) Unless expressly stated otherwise or unless the context clearly indicates otherwise, all Customers of this Contract will have the same rights and remedies of the State of Texas and CPA under this Contract including, but not limited to, the provisions regarding indemnification. Any order placed by a local government under this Contract will be between Contractor and the local government. Contractor will look solely to the local government for performance, including but not limited to, payment, and will hold the State of Texas harmless with regard to such orders. The State of Texas, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should Contractor fail to honor its obligations under an order from a local government.
- (c) In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the State of Texas, CPA, or Customers. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State of Texas, CPA, and Customers are 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 rendered under all subcontracts are rendered in compliance with this Contract.

7. TXMAS PROGRAM REQUIREMENTS

In addition to all other provisions in this Contract that constitute changes or modifications to the Base Contract, Contractor agrees to the following provisions, notwithstanding anything to the contrary contained in the Base Contract:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in Contractor's offer letter to the State.
- (c) Payments and invoicing will be in accordance with the terms discussed under the provisions in this Contract entitled "PAYMENT; TRAVEL EXPENSES" and "INVOICE REQUIREMENTS."
- (d) All shipping of equipment under warranty for repairs will be at Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Time.
- (f) Neither the State of Texas, nor CPA, nor Customers will purchase goods or services for overseas delivery or provide Contractor with overseas support.
- (g) Contractor may not sell and Customers may not purchase goods or services that are not included in this Contract. Therefore, to the extent the Base Contract contains terms that are not included in this Contract (such as blanket purchase agreements and contractor team arrangements), those terms are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a Customer may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the Base Contract to the extent permitted by applicable laws, rules, and regulations. The purchase of incidental items will be treated as an open market purchase and clearly labeled on the purchase order as open market items. These incidental items may not exceed \$5,000. If incidental goods or services exceed \$5,000, the purchase order may be void.
- (h) Contractor may only sell professional services to Customers as defined and mandated by Chapter 2254, Subchapter A, of the Texas Government Code. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (i) Contractor may not sell to state agency Customers under this Contract any consulting services available on Contractor's Base Contract that are subject to Chapter 2254, Subchapter B of the Texas Government Code. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (j) Contractor may not sell to Customers under this Contract any technology commodity items (defined under Section 2157.068 Texas Government Code) that are available on Contractor's Base Contract. This includes commercial software, hardware, or technology services that are generally available to businesses or the public. This Contract specifically excludes any technology commodity item listed in Contractor's Base Contract or Contractor's catalog or proposal. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this

Contract or pursue any other available contract remedy.

- (k) Contractor must submit a TxSmartBuy catalog to CPA with the exact same list of goods and services that the Base Contract permits Contractor to sell for uploading into the TxSmartBuy online ordering system. The TxSmartBuy catalog must reflect the goods and services listed on the base contract website. If a good or service is not visible online, then CPA will not list the good or service on the TxSmartBuy online ordering system.

8. TXSMARTBUY

- (a) **Online ordering.** CPA operates the TxSmartBuy online ordering system to allow Customers to order from the TXMAS Contract online. Customers may search for available goods and services, compare prices, and place orders through TxSmartBuy. Customers will exclusively access the goods or services available under Contractor's TXMAS contract through TxSmartBuy.
- (b) **Pricing and related information not confidential or proprietary.** The operation of TxSmartBuy requires CPA to publish all pricing information and other related information online. Consequently, by signing this agreement, Contractor agrees that the pricing (and other related information) submitted as part of Contractor's offer packet is not confidential or proprietary. By submitting an offer packet, Contractor consents to the publication of Contractor's pricing and related information on TxSmartBuy.
- (c) **TxSmartBuy administrative fee.** To cover the costs of operating TxSmartBuy, CPA will charge Contractor a 1.5% TxSmartBuy administrative fee. If Contractor wishes to recover this fee, CPA authorizes Contractor to charge up to 1.5228% additionally on its offer of goods or services. In CPA's review and evaluation of Contractor's pricing in its submitted offer packet, CPA assumes that Contractor has already considered and factored in no more than a 1.5228% maximum recoupment of the TxSmartBuy administrative fee.
 - (i) Contractor shall remit the 1.5% TxSmartBuy administrative fee on a monthly basis. The TxSmartBuy administrative fee is based on the amount of sales (based on the good's or service's delivery date) under this Contract for the previous month and is due upon receipt of the invoice that CPA will e-mail to Contractor the following month.
 - (ii) CPA will bill Contractor for this fee based on all sales under the Contract.
 - (iii) The TxSmartBuy administrative fee remittance should be identified as "TxSmartBuy Admin Fee" and made payable to **CPA**. The remittance address is: Texas Comptroller of Public Accounts, Attn: TxSmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106.
 - (iv) The TxSmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the TxSmartBuy administrative fee.
- (d) **TXMAS sales rebate.** Contractor shall remit to the State of Texas a sales rebate which will not exceed the GSA Industrial Funding Fee (IFF) that is in effect at the time of the submission. The current sales rebate is 0.73875%. Contractor shall remit the sales rebate on a quarterly basis, using the State of Texas Fiscal Calendar, which starts on September 1 and ends on August 31 of each year. The sales rebate will be for the amount of sales (based on the good's or service's delivery date) under this Contract for the previous quarter and is due upon receipt of the invoice that CPA will e-mail to Contractor the week following the end of the quarter.

(i) The Sales Rebate remittance should be identified as “TXMAS Sales Rebate” and made payable to **CPA**. The remittance address is: Texas Comptroller of Public Accounts, TXMAS Sales Rebate, P.O. Box 13186, Austin, TX 78711-3186.

(e) **Warrant hold for non-payment of fees or rebates.** Texas Government Code § 403.055 prohibits CPA from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor’s debt in accordance with Texas Government Code §403.0551.

9. DEALERS

(a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must provide a Letter of Authorization. Contractor shall provide a separate Letter of Authorization for each designated dealer.

(b) The Letter of Authorization must be submitted on Contractor’s official letterhead, signed by an authorized representative, and addressed to the attention of the Statewide Procurement Division Director at the address set forth in Contract section entitled “Notices.” The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and warrants the following:

(1) The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract and the Base Contract as modified by this Contract, and that such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor.

(2) Contractor agrees to remain liable under this Contract for any failure of the dealer to perform and for any breach of the dealer under this Contract. Any items sold by an authorized Dealer is subject to the fees set forth in Section 8 above. CPA will look solely to Contractor for payment of all applicable fees and Contractor will be responsible for payment of all applicable fees regardless of whether a dealer provided the goods or services to Customer.

(3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and Contractor will look solely to the dealer for any payments due Contractor once the State of Texas, CPA, or a Customer has paid the dealer.

(4) To the extent that there is any liability to the State of Texas, CPA, or any Customer arising from doing business with a dealer that has not signed the Letter of Acceptance required under this section with Contractor, Contractor will fully and unconditionally indemnify the State of Texas, CPA, and Customers for such liability.

(5) Contractor’s Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that the authorization to a dealer is withdrawn.

(c) The Letter of Acceptance must be submitted on the dealer’s official letterhead, signed by an authorized representative of the dealer, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Base Contract, it agrees to be bound by the terms and conditions of this Contract and the Base Contract, as both may be amended from time to time, and such agreement specifically provides that it is for the

benefit of the State of Texas, CPA, and Customers, as well as Contractor. The Letter of Acceptance must also include the following information:

- (1) the dealer's name and address;
 - (2) the dealer's point of contact name, telephone number, fax number, and e-mail address;
 - (3) the dealer's payment address;
 - (4) the dealer's purchase order e-mail address;
 - (5) the dealer's Federal Employer's Identification Number (FEIN); and
 - (6) the dealer's HUB Certificate, if the dealer is a Texas HUB.
- (d) Prior to CPA's approval of Contractor's designated dealer, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the submission of documentation is incomplete (*i.e.*, does not include all required documentation), CPA reserves the right to reject the Letter of Authorization and require re-submission by Contractor of the Letter of Authorization and all required documentation. Even if a submission is complete, CPA reserves the right to reject Contractor's designation of a dealer to provide services under this Contract on behalf of Contractor. Approval is at CPA's sole discretion

10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

In accordance with Chapter 2161 of the Texas Government Code and 34 Texas Administrative Code (TAC) §§20.281 *et seq.*, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services (including professional and consulting services), and commodities contracts.

Contractors are urged to utilize HUBs as defined in 2161.001 of the Texas Government Code Section or small businesses as defined in Section 2155.505(a) Texas Government Code Section to sell or provide services under the Base Contract. A Contractor's failure to make a good faith effort to use HUBs and small businesses under the Base Contract may result in exclusion of Contractor from participation in TXMAS. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

11. LIMITATION ON AUTHORITY; LIMITATION OF LIABILITY

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

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

12. PAYMENT; TRAVEL EXPENSES

- (a) Payment shall be made in accordance with Chapter 2251 of the Texas Government Code.
- (b) Except as provided for in Section 2251.021(b) of the Texas Government Code, payment by a state agency or local government is due within thirty (30) calendar days after the later of:
 - (1) the date the state agency or local government receives the goods under this Contract;
 - (2) the date the state agency or local government receives a proper invoice (see Paragraph below entitled "INVOICE REQUIREMENTS") for the goods or services; or
 - (3) the date the performance of the service under the contract is completed
- (c) Except as provided for in Section 2251.021(b) of the Texas Government Code, a payment will begin to accrue interest at a rate by CPA pursuant to the statute on the 31st day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the state agency or local government mails (postmark) or electronically transmits the payment.
- (d) Any travel or per diem required by Contractor to perform its obligations under this Contract and the Base Contract will be at Contractor's expense. All travel and per diem that a Customer requests in addition to what this Contract or the Base Contract requires Contractor to provide at Contractor's expense are subject to, and shall not exceed, the reimbursement limitations applicable to Texas state employees in conducting official state business as prescribed by applicable law, rules, and regulations including, but not limited to, Chapter 660 of the Texas Government Code, the General Appropriations Act and rules adopted by the Comptroller.

13. INVOICE REQUIREMENTS

- (a) In order to receive payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:
 - (1) Name and address of Contractor as designated in this Contract.
 - (2) Contractor's Federal Employer's ID Number (FEIN) as designated in this Contract.
 - (3) Contractor's invoice remittance address as designated in this Contract.
 - (4) The purchase order number authorizing the delivery of products or services.
 - (5) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.
- (c) If an invoice does not meet this section's requirements or if Contractor fails to give proper notice of a price increase (see Paragraph below entitled "NOTIFICATION OF PRICE INCREASE"), CPA will

send Contractor written notice with the improper invoice to the address designated for receipt of purchase orders. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.

- (d) In submitting an invoice to a Customer, Contractor certifies: that the invoice has been carefully reviewed for detailed description of the services performed or goods delivered; that the services have been performed or goods delivered in compliance with this Contract and the Base Contract; that the amount of the invoice and all previous invoices together do not exceed the contractual cap of this Contract, the Base Contract, or Contractor's negotiated fees; that the charges and expenses shown on the invoices are reasonable and necessary; and that all appropriate and required supporting documentation is attached. Customer may, in its sole discretion, require additional documentation to support payment and Contractor shall respond to any such requests within five (5) calendar days of receipt. Customer reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. Customer also reserves the right to refuse payments for invoices that exceed the rates specified in this Contract or the Base Contract or Contractor's negotiated fees.

14. AUDIT REQUIREMENTS

Pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office, or successor agency, 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's Office, 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 must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. This Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.154 of the Texas Government Code. **Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any dealer agreement or subcontract.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

15. NOTIFICATION OF PRICE INCREASES

For price increases authorized under this Contract, notification of such must be given to CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). Contractor must give these notices no later than 30 calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

16. NON-APPROPRIATION OF FUNDS

All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract.

Contractor acknowledges that the ability of CPA and the Customers to make payments under this Contract is contingent upon the continued availability of funds. Contractor further acknowledges that funds may not be specifically appropriated for the Contract and CPA's or Customers' continual ability to make payments under this Contract is contingent upon the funding levels appropriated for each particular appropriation period. CPA and the Customers will use all reasonable efforts to ensure that such funds are available. Contractor agrees that if future levels of funding for CPA or a Customer are not sufficient to continue operations without any operational reductions, CPA, in its discretion, may terminate this Contract, either in whole or in part, or the Customer, in its discretion, may terminate a pending order under this Contract, either in whole or in part. In the event of such termination, neither CPA nor Customers will be considered to be in default or breach under this Contract, nor shall CPA or Customers be liable for any further payments ordinarily due under this Contract, nor shall CPA or Customers be liable for any damages or any other amounts which are caused by or associated with such termination. CPA and Customers shall make best efforts to provide reasonable written advance notice to Contractor of any such Contract or order termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or this Contract, if this Contract is being terminated. CPA or the Customer, as applicable, shall be liable for payments limited only to the portion of work CPA or the Customer authorized in writing and which Contractor has completed, delivered to CPA or Customer, and which has been accepted by CPA or Customer. All such work shall have been completed, per Contract requirements of this Contract and the Base Contract, prior to the effective date of termination.

17. PUBLIC INFORMATION

The CPA is a governmental body subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code, as are other potential Customers of this Contract. The Base Contract and other information submitted to the CPA by Contractor are subject to release as public information by the CPA and by any Customer that is also subject to the PIA. The Base Contract and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Contractor to include proprietary or otherwise confidential information in its submitted information, Contractor must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire submission is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire submission subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the submitted information that are considered by Contractor to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by Contractor as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA and Contractor shall thereby be irrevocably deemed to have waived, and Contractor agrees to fully indemnify the State of Texas, CPA, and any Customer subject to the PIA from, any claim of infringement by CPA and any Customer subject to the PIA regarding the intellectual property rights of Contractor or any third party for any materials appearing in the submitted information.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Section 2252.907(d) of the Texas Government Code) pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, CPA, or Customers: portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

18. CONFIDENTIALITY AND SECURITY

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall

establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

19. RECORDS RETENTION

Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in this Contract. Contractor shall retain all such records for a period of seven (7) years after the expiration of this Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall grant access to all books, records and documents pertinent to this Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under this Contract.

20. INSURANCE AND OTHER SECURITY

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract and must cover any cargo being delivered to Customers.

Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request of a Customer or the CPA.

21. LIABILITY FOR AND PAYMENT OF TAXES

CPA and certain Customers are exempt from certain taxes. Customers will furnish proof of tax exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Base Contract including any federal, state, or local income, sales, excise, or property taxes. The State of Texas, CPA, and Customers does not have tax liability under this Contract and will not reimburse Contractor for the payment of such taxes incurred by Contractor in acquiring any goods or services as a part of any work called for in this Contract or the Base Contract. Contractor's invoice may not include any amount for such taxes.

22. TERM AND TERMINATION

This Contract shall become effective on the date countersigned by the appropriate CPA official. Unless otherwise sooner terminated as provided in this Contract, this Contract will terminate no later than five years from the date of execution. If the Base Contract expires less than five years from the date of Contract execution, this Contract will terminate upon the later to occur of (1) the expiration of the Base Contract or (2) the physical completion of the last outstanding task or delivery of the final order placed under, and prior to the expiration of, the Base Contract through this Contract. Except as otherwise provided in this Contract or the Base Contract or as determined by Customer, at Customer's sole option, all applicable service agreements that were entered into between Contractor and Customers under the terms and conditions of this Contract shall survive the cancellation or termination of this Contract and the cancellation or termination of the Base Contract. Absent Customer agreement to the contrary, in the event of termination of this Contract, Customers' sole and maximum obligation shall be to authorize payment to Contractor for previously authorized goods or services performed in

accordance with all requirements of this Contract and the Base Contract, up to the termination date.

(a) Termination for Convenience of the State of Texas

The CPA reserves the right to terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination.

(b) Termination for Cause

If Contractor fails to provide the goods or services contracted for according to the provisions of this Contract or the Base Contract, or fails to comply with any of the terms or conditions of this Contract or the Base Contract, the CPA may, upon written notice of default to Contractor, immediately terminate all or any part of this 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 this Contract and the Base Contract.

The CPA 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 this Contract or the Base Contract, or to recover damages for the breach of any agreement being derived from this Contract or the Base Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the CPA notifies Contractor in writing prior to the exercise of such remedy. Contractor shall remain liable for all covenants and indemnities under this Contract and the Base Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by the CPA with respect to the enforcement of any of the remedies listed herein.

(c) Change in Federal or State Requirements

If federal or state laws, rules, regulations, or requirements applicable to this Contract are amended, performance under this Contract will be subject to the laws, rules, regulations, or requirements applicable at the time of performance under this Contract. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the CPA or Contractor cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of this Contract, the Parties shall be discharged from any further obligations under this Contract.

(d) Termination for Non-Appropriation of Funds

CPA may terminate the Contract immediately for non-appropriation of funds as further detailed in the Contract section entitled, "Non-Appropriation of Funds."

(e) Property Rights upon Termination

For purposes of this Contract, the term "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. In the event that this Contract or the Base Contract is terminated for any reason, or upon the expiration of either this Contract or the Base Contract, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Base Contract through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

(f) No Liability Upon Termination

If this Contract is terminated for any reason, the State of Texas, CPA, and Customers shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. In the event of termination of this Contract, the sole and maximum obligation of the State of Texas, CPA, and Customers shall be to authorize payment to Contractor for previously authorized goods or services performed in accordance with all requirements of this Contract and the Base Contract, up to the termination date.

(g) Survival of Terms

Termination of this Contract or the Base Contract for any reason shall not release Contractor from any liability or obligation set forth in this Contract or the Base Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

(h) Lack of Contract Sales

If the Contract has a limited amount of sales over a period of 12 consecutive months, the contract may be subject to termination in CPA's sole discretion. CPA may, upon written notice to Contractor, immediately terminate the Contract. Contractor may not submit a new TXMAS offer packet within 12 months from the date of the termination notice.

(i) Misrepresentation of goods and services available under Base Contract

If Contractor sells goods or services through TXMAS that are not available on the Base Contract, excluding permitted incidental goods and services as further defined in this Contract, CPA may immediately terminate the Contract.

23. FORCE MAJEURE

CPA, any Customer, and Contractor will not be responsible for delays in performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of CPA, Customer, or Contractor. In the event of an occurrence under this Section, the CPA, Customer, or Contractor (Parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Party will immediately notify the other Party(ies) by telephone (to be confirmed in writing within five calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

24. VENDOR PERFORMANCE

- (a) CPA may use vendor performance to analyze whether a vendor is eligible for a TXMAS contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract to Contractor and during the entire term of a TXMAS contract.
- (b) CPA may consider the following conditions when awarding a TXMAS contract or when considering continued contract existence:
 - (i) A score of less than a C or Legacy Unsatisfactory in the Vendor Performance Tracking System (VPTS);

- (ii) Whether the vendor or Contractor is under a Corrective Action Plan with CPA or another state agency;
 - (iii) Having repeated negative vendor performance reports;
 - (iv) Having a record of repeated non-responsiveness to vendor performance issues; and
 - (v) Having purchase orders that have been cancelled in the previous 12 months for non-performance (such as late delivery or not meeting specifications).
- (c) In addition to evaluating performance through VPTS as authorized by 34 Texas Administrative Code § 20.217, CPA may examine other sources of Contractor performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Contractor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, CPA may initiate these examinations of Contractor's performance based upon media reports. Any investigations are at CPA's sole discretion, and any negative findings, as determined by CPA, may result in not awarding a TXMAS contract or enforcing remedies against Contractor, including contract termination. Information pertaining to VPTS is located on CPA's website at: http://www.window.texas.gov/procurement/prog/vendor_performance/.
- (d) Additionally, in accordance with Section 2155.089 of the Texas Government Code, CPA or state agency Customers will review successful Contractor's performance under a contract resulting from this solicitation after the Contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on VPTS as noted in Section 2262.055 of the Texas Government Code.

25. DELIVERIES

All deliveries for orders placed under this Contract shall be F.O.B. Destination.

If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

26. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

27. DRUG-FREE WORKPLACE ACT

Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act.

28. AMERICANS WITH DISABILITIES ACT

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

29. CIVIL RIGHTS

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

30. IMMIGRATION

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

31. INDEMNIFICATION

(a) Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) Infringements

(i) Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

(ii) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or

licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

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

(c) **Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

(i) **CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER 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.**

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

32. ADDITIONAL CONTRACTOR CERTIFICATIONS

- (a) **Gifts to a public servant.** Contractor certifies 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 this Contract or the Base Contract.
- (b) **Antitrust.** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly

the bid made to any competitor or any other person engaged in such line of business during the procurement process. Contractor hereby assigns to the State of Texas all of Contractor's rights, title and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.

- (c) **Deceptive Trade Practices; Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice 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 not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and further certifies that such officers have not been found to be liable for any such practices in such proceedings.
- (d) **Suspension and Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
- (e) **Child Support Obligations.** Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to Section 231.006 of the Texas Government Code, must provide names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the application for inclusion in the TXMAS program. This information must be provided to CPA in writing signed by Contractor's duly authorized representative prior to execution of this Contract. By submission of this Contract signed by Contractor without submission of required identity disclosures pursuant to § 231.006(d), Texas Family Code, constitutes a certification by Contractor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Contractor.
- (f) **Ineligibility due to preparation of specifications.** Pursuant to Section 2155.004(a) of the Texas Government Code, Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under Section 2155.004 of Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, payment withheld, or both if this certification is inaccurate.
- (g) **Debts and delinquent taxes.** CPA is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, CPA will apply any payments or other amounts Contractor is otherwise owed under this Contract or related to any order resulting from this Contract toward any debt Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor shall comply with all applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

- (h) **Contracting with executive head of a state agency.** In accordance with Texas Government Code §669.003 (relating to contracting with executive head of a state agency), by signature hereon, Contractor certifies that it (1) is not the executive head of CPA; (2) was not at any time during the past four years the executive head of CPA; and (3) does not employ a current or former executive head of a state agency. Contractor acknowledges that this Contract may be terminated at any time, and payments withheld, if this information is false.
- (i) **Buy Texas.** To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- (j) **Conflicts of interest.** Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (k) **Receipt of appropriated funds not prohibited.** Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (l) **Disaster Relief Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) **Fixed prices for term.** Contractor hereby certifies that all prices under the Base Contract are current prices and that such prices are guaranteed to remain current with any approved Base Contract pricing changes for the entire term of this Contract. In the event of a decrease in prices offered under the Base Contract, Contractor agrees to notify CPA within thirty (30) working days of such decrease and offer such pricing to the State of Texas, CPA, and Customers. If Contractor fails to notify CPA of such decrease in pricing as specified herein, CPA shall have the right to cancel this Contract and Contractor shall issue a refund for items procured under this Contract. Such refund shall be equal to the difference between the prices offered under the Base Contract submitted as a basis for this Contract and the lower price.
- (n) **Competitively awarded contract.** Contractor hereby certifies that the Base Contract was previously awarded using a competitive process by the federal government or another governmental entity in accordance with Section 2155.502 of the Texas Government Code and all other applicable laws, rules, and regulations.
- (o) **Franchise tax requirements.** Contractor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code. If Contractor is a qualifying business entity type per CPA guidelines and is not set up in the Texas Franchise Tax system, Contractor must do so prior to contracting with the State of Texas.
- (p) **Certifications apply to Customer purchase orders.** Contractor agrees that all affirmations and

certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that the all affirmations and certifications are true and correct.

If any Contractor certification in this Contract or the Base Contract is untrue, CPA shall have the right to cancel this Contract in its entirety.

- (q) In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

33. NO DEBT AGAINST THE STATE

This Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

34. COMPLIANCE WITH APPLICABLE LAWS AND OTHER REQUIREMENTS

Contractor must comply with all laws, regulations, requirements, and guidelines applicable to a Contractor providing goods and services to the State of Texas as these laws, regulations, requirements, and guidelines currently exist and as they are amended throughout the term of this Contract.

35. COOPERATION

Contractor must ensure that it cooperates with CPA and other local, state, or federal administrative agencies, at no charge to the State of Texas, CPA, or Customers for purposes relating to the administration of this Contract. Contractor agrees to reasonably cooperate with and work with CPA's contractors, subcontractors, and third party representatives as requested by CPA.

36. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES

Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from CPA.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

CPA may terminate this Contract due to any change to Contractor that materially alters Contractor's ability to perform under this Contract. The CPA has the sole discretion to determine if termination is appropriate. CPA may also, in its sole discretion, terminate this Contract for failure to provide notice or documentation or obtain approval as required in this Contract.

37. PUBLICITY

News releases pertaining to this Contract and advertisements, publications, declarations and any other pronouncements by Contractor using any means or media mentioning the State of Texas or CPA or a Customer must be approved in writing by the State of Texas, CPA, or the Customer, as applicable, prior to public dissemination. Contractor may not send out unsolicited electronic mail or facsimile transmissions to CPA or Customers without prior written approval of CPA, regardless of whether the proposed communication specifically references this Contract.

38. NOTICES

Each party must send any written notices required under this Contract to the party at the respective address indicated below:

- (a) The address for Contractor will be the address specified on Page 1 of this Contract.
- (b) The address for CPA will be as follows:

by Overnight/Express Mail:

Texas Comptroller of Public Accounts
Statewide Procurement Division
Attn: TXMAS Program
1711 San Jacinto Blvd.
Room 174-A (CPA mailroom, N.E. Back Door)
Austin, TX 78701

for U.S. mail:

Texas Comptroller of Public Accounts
Statewide Procurement Division
Attn: TXMAS Program
P.O. Box 13186
Austin, TX 78711-3186

Notices will be by U.S. Mail, addressed to the appropriate foregoing address. Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

39. DISPUTE RESOLUTION

Disputes under this Contract and, by virtue of this Contract, the Base Contract, are subject to Chapter 2260 of the Texas Government Code (Chapter 2260) as set forth below. Set forth below are terms and conditions for dispute resolution relating to claims involving Contractor and CPA. Except as otherwise provided by law or applicable rules, the same terms and conditions in this section shall apply to claims involving Contractor and any other Customer subject to Chapter 2260, substituting such other Customer for “CPA” when referenced below in this section.

The dispute resolution process provided for in Chapter 2260 and applicable CPA rules shall be used by CPA and Contractor to resolve any dispute arising under this Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by Contractor under this Contract. If Contractor’s claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to

the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in this Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by the CPA nor any other conduct of any representative of the CPA relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Contract, the CPA and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the CPA and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the CPA, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the CPA and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The CPA's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's termination rights; or (3) other termination provisions or expiration dates of this Contract.

Notwithstanding any other provision to the contrary, unless otherwise requested or approved in writing by the CPA, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

40. AMENDMENT

- (a) This Contract may be amended only upon written agreement between CPA and Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) Customers (other than CPA as set forth in this Contract) shall not have the authority to modify the terms of this Contract; however, additional Customer terms and conditions that do not conflict with this Contract and are acceptable to Contractor may be added in a Purchase Order and given effect. No term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of this Contract, regardless of whether such term or condition is acceptable to Contractor. In the event of a conflict between a Customer's Purchase Order and this Contract, this Contract shall control.
- (c) Comptroller reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for compliance with all applicable state and federal laws, regulations, requirements, and guidelines.

- (d) Contractor agrees to comply with the TXMAS standard terms and conditions as the terms may be amended in the future and as are published on the TXMAS website. Any sales under the Contract are made according to the standard terms and conditions for TXMAS at the time of the sale.

41. NO WAIVER

No provision of this Contract or the Base Contract is in any way intended to constitute a waiver by the CPA or the State of Texas or any Customer of any immunities from suit or from liability of the CPA or the State of Texas or any Customer.

Nothing in this Contract or the Base Contract shall be construed as a waiver of the sovereign immunity of the State of Texas, CPA, or Customers. Neither this Contract nor the Base Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers under this Contract or the Base 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. CPA does not waive any privileges, rights, defenses, or immunities available to CPA by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

42. HEADINGS

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

43. ORDER OF PRIORITY

If there is any inconsistency or conflict between this document and the Base Contract or any provision of any document incorporated by reference, this document will prevail.

44. ENTIRE AGREEMENT

This Contract consists of the Base Contract (see Paragraph entitled "BASE CONTRACT AND ADMINISTRATIVE FEE"), this Contract, any amendments approved by CPA and, if applicable, Contractor's dealer Letter(s) of Authorization and dealer Letter(s) of Acceptance, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing and signed by CPA.

45. GOVERNING LAW, VENUE

This Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Contractor agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the CPA under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

46. SEVERABILITY

In the event that any term, provision, covenant, or condition of this Contract is later determined to be invalid, void, or unenforceable, then 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.

[remainder of page intentionally left blank]

SIGNATORIES

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective counterparts. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

By: 
Mike Reissig, Deputy Comptroller

Date: 9.22.17

Contractor

By: 
Jennifer Jula (Aug 23, 2017)

Name: Jennifer Jula
Title: Legal Counsel

Date: Aug 23, 2017

2017-0823_TXMAS_no changes






Adobe Sign Document History

08/23/2017



Created:	08/23/2017
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