



INSTRUCTIONS TO RESPONDENTS

THE ATTACHED SOLICITATION SHOULD BE RETURNED AS FOLLOWS:

All responses for Solicitation No. _____ must be received before the hour and date specified

All reference to time in the solicitation shall mean Central Time.

Email responses must be sent to PRO_Bids@txdot.gov. Email responses must not exceed 20 MB and be in portable document format (PDF) or Excel format for pricing schedules, signed by respondent, and attached to the email to be considered for award. Emails exceeding 20 MB must be sent to PRO_Bids@txdot.gov through managed file transfer services such as, but not restricted to, Dropbox™. TxDOT will not be responsible for failure of electronic equipment, operator error, server delays, or system outages. Responses that are late, illegible, incomplete, file corrupted, flagged as a virus, or otherwise non-responsive will not be considered.

Respondent must place the following in the subject line of their email submission: Solicitation Number, Company Name.

The response must be sent only to PRO_Bids@txdot.gov. Any response sent to any email address other than PRO_Bids@txdot.gov - whether directly, courtesy copy (cc), or blind copy (bcc) - will be considered non-responsive.

For hand delivery or courier service, United States Postal Service, Federal Express, United Parcel Service, or other mail delivery service, contact the purchaser for assistance.

USE OF NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING CODE

The Texas Department of Transportation (TxDOT) uses the National Institute of Governmental Purchasing, Inc., (NIGP) code to standardize purchases by conforming to the class, item, and group structure of the code. The NIGP code is used to select vendors for our master vendor file from the Texas Comptroller of Public Accounts (CPA) Centralized Master Bidders List (CMBL).

New suppliers and other vendors wishing to furnish materials, equipment, supplies and services to TxDOT should apply to be on the CMBL to receive bidding opportunities.

Existing TxDOT vendors need only be concerned that the information listed on the CMBL file is correct, and that the applicable NIGP class and item are selected for those you can provide.

CMBL information is available online at: <https://comptroller.texas.gov/purchasing/vendor/cmb/> or by phoning 1-512-463-3459.

Early Payment Program - TxDOT is offering an important program to all respondents that provide prioritized invoice processing and payments (prior to the 30th day after receipt of a correct invoice). The program provides enrolled vendors enhanced benefits from improved invoice processing to priority handling to cash advancement and technology efficiencies.

Respondents offering a cash discount in exchange for TxDOT's priority invoice processing and early payment agreement should complete and return the attached form entitled "Priority Invoice and Early Payment Program" with the response.

Additional information may be found at the following website: <http://www.txdot.gov/business/vendors/epp.html>



Texas Department of Transportation

**Request for Offer
Solicitation No. 60144000032007
Version 1.0**

**Application Services: ERP Managed Application Services,
Application Development and Maintenance Services**

NIGP Class and Item: 920-03

Issued: June 7, 2021

Responses Due: July 9, 2021 at 3:00 p.m., Local Time

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1. RFO (this document)

Attachments

- Attachment 1: Respondent Information Form
- Attachment 2: HUB Subcontracting Plan
- Attachment 3: Exceptions
- Attachment 4: Respondent Release of Liability
- Attachment 5: Transition Plan Response
- Attachment 6: Data Room Access Nondisclosure Agreement
- Attachment 7: Schedule Template
- Attachment 8: HUB Participation Form

2. Contract Documents

Master Services Agreement (MSA) with Exhibits

- Attachment A: Form of Nondisclosure
- Attachment B: Insurance and Risk of Loss
- Attachment C: Form of Source Code Escrow (if applicable)
- Attachment D: Form of Parent Guarantee (if applicable)
- Attachment E: Form of Work Order (if applicable)

Exhibit 1.0 Operating Model

- Exhibit 1.1 Definitions
- Exhibit 1.2 Governance Model
- Exhibit 1.3 Service Management Manual (SMM)

Exhibit 2.0 Service Model

- Exhibit 2.1.1 Cross-functional Statement of Work
- Exhibit 2.1.2 ERP MAS Statement of Work
- Exhibit 2.1.3 ERP MAS Solution Document
- Exhibit 2.1.4 ADM Services Statement of Work
- Exhibit 2.1.5 ADM Services Solution Document
- Exhibit 2.2 Termination Assistance Services
- Exhibit 2.3 IT Service Continuity Management
- Exhibit 2.4 Key Personnel

Exhibit 3.0 Performance Model

- Exhibit 3.1 Service Level and Deliverable Matrix
- Exhibit 3.2 Service Level Definitions
- Exhibit 3.3 Reports
- Exhibit 3.4 Operating Agreements

Exhibit 4.0 Business Model

- Exhibit 4.1 Pricing Structure, Assets, 3rd Party Contracts
- Exhibit 4.2 Financial Responsibility Matrix

- Exhibit 4.3 Form of Invoice and Data Feed
- Exhibit 4.4 In-Flight Projects
- Exhibit 4.5 Skill Set Descriptions
- Exhibit 4.6 Personnel Projection Matrix

1. INTRODUCTION

1.1. Objective

The Texas Department of Transportation (TxDOT) seeks to solicit Responses from interested Service Providers to provide Application Services. As a result of this Request for Offer (RFO), TxDOT expects to receive and evaluate Responses and select one (1) or more qualified Service Providers with whom to enter into negotiations. [Section 4 EVALUATIONS, NEGOTIATIONS, AND AWARD](#), contains more information regarding the Response evaluation and Service Provider selection process.

TxDOT reserves the right to award one (1) contract per Service Component (i.e. ERP Managed Application Services and Application Development and Maintenance Services) from this RFO or one (1) contract for multiple Service Components as determined by TxDOT to achieve the highest overall value to the state.

1.2. Statutory Authority

The solicitation and contract are authorized by Government Code Title 10, Subtitle D (the “Purchasing Act”). The solicitation and contract are subject to all applicable requirements of the Purchasing Act [in particular, Government Code Chapter 2151 (General Provisions), Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2157 (Purchasing: Purchase of Automated Information Systems) and Chapter 2161 (Historically Underutilized Businesses, HUBs’)] and those requirements established by rule of the Texas Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD), as contained in Title 34, Chapter 20 of the Texas Administrative Code (“TAC”), and to other applicable Federal and State statutes and rules herein cited. Any references in this contract to the “Government Code” mean the Texas Government Code.

1.3. Business Background and Objectives

1.3.1 Executive Summary

While TxDOT oversees a comprehensive program, TxDOT intends to release Requests for Offer (RFOs) for each individual service component. The following is the proposed schedule for RFO release:

RFO	Estimated Release Month
Application Services	Released: June 2021
Desktop Hardware Lifecycle Services	Planned: June 2021
Managed Network Services	Planned: July 2021

TxDOT reserves the right to change the planned RFO(s), RFO list, and proposed schedule at any time.

1.3.2 ITD Transformation Program Desired Outcomes

The ITD Transformation Program Vision Statement is as follows:

Integrate ITD services in a secure, reliable, and responsive way that efficiently enables a customer-focused service within a best-of-breed sourcing model to continuously improve quality and value.

This vision is supported by five (5) key desired outcomes that are common to each of these RFOs:

- Customer Satisfaction: Improved customer experience
- Strategic Partnerships: Ecosystem of best-of-breed suppliers to deliver services
- Service Integration: Program assurance within a common framework
- Business Agility: Plug-and-play commercial model
- Proactive Governance: Establish strategy, monitor services, and foster relationships

1.3.3 TxDOT ITD: Operating Model Overview

TxDOT operates under a Multi-sourcing governance model because the services are provided by multiple Service Component Providers (SCPs), including both outsourced and insourced components. These services are integrated into a common service delivery model by an ITD Services Governance (ITD SG) function. The ITD SG provides the systems, processes, and service delivery oversight necessary to ensure consistent, quality service delivery. The figure below depicts the relationships between the service components, the ITD Service Governance, and the TxDOT customers.

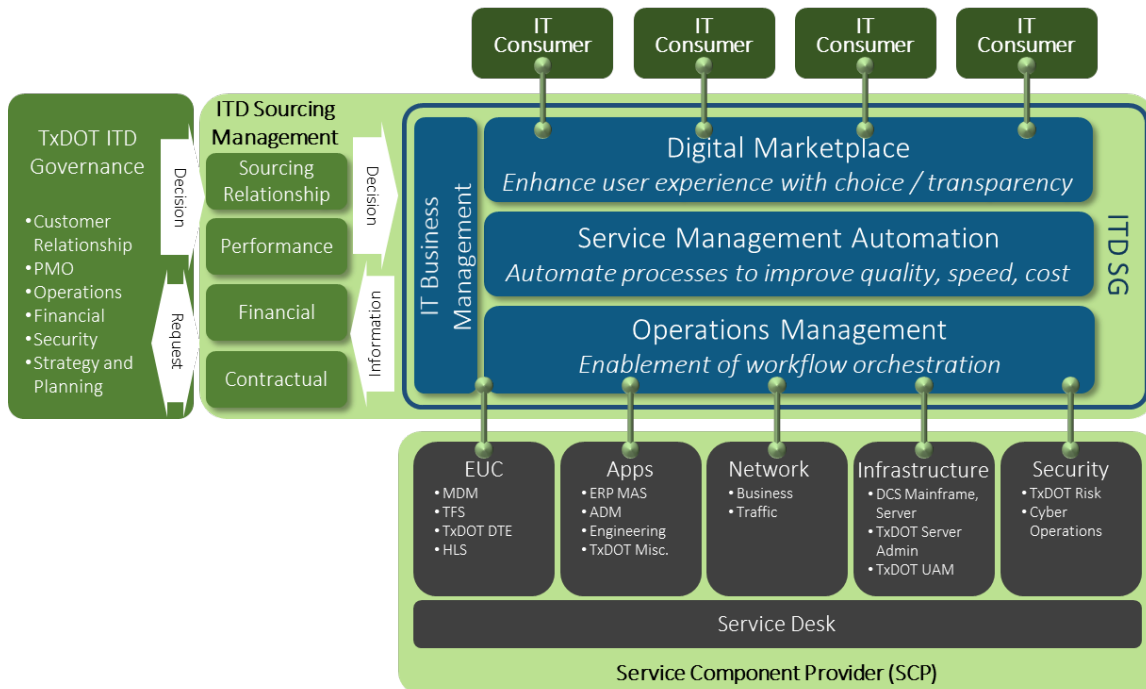


Figure 1: Operating Model

1.3.4 ITD Transformation: Service Component Overview

1.3.4.1 Enterprise Resource Planning (ERP) Managed Application Services

1.3.4.1.1 Introduction

ERP Managed Application Services includes application development and support services, ERP technical and functional support services and management of the necessary service enablement components that provide for effective service delivery for TxDOT. The Service Provider shall work in coordination with TxDOT, Service Component Providers, and TxDOT Contractors to effectively provide ERP Managed Application Services (Services).

The Service Provider shall be responsible for all activities necessary to ensure Services are performed in accordance with all standards and processes contained in the Agreement, **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual (SMM).

Service Provider shall provide Services, as described in the RFO, necessary to accomplish the following:

- a. Provide steady state application and development support for ERP FSCM and ERP HCM and ELM for TxDOT (Article 4 of **ERP MAS Exhibit 2.1.2 Statement of Work**);
- b. Provide infrastructure/operations support services (e.g., availability management, capacity management, load balancing, backups, disaster recovery, etc.) (**Exhibit 2.1.1 Cross Functional SOW** and Article 5 of **ERP MAS Exhibit 2.1.2 Statement of Work**);
- c. Provide periodic upgrade support for the ERP applications (Article 6 of **ERP MAS Exhibit 2.1.2 Statement of Work**);
- d. Provide onboarding/offboarding services for ERP modules, as determined and approved by TxDOT (Section 4.3 of **ERP MAS Exhibit 2.1.2 Statement of Work**);
- e. Perform all necessary tasks to successfully transition-in the ERP applications to Service Provider and to transition-out to a successor Service Provider at the conclusion of the contract (Article 3 of **ERP MAS Exhibit 2.1.2 Statement of Work**);
- f. Provide contract management services to facilitate daily activities to support the ERP applications (Articles 8 and 9 of the Agreement);
- g. Provide all necessary information security activities to protect the data contained within the ERP applications (Article 7 of **ERP MAS Exhibit 2.1.2 Statement of Work**);

- h. Provide optional services as requested by TxDOT upon written notice (Article 8 of **ERP MAS Exhibit 2.1.2 Statement of Work**);
- i. Meet or exceed Service Level Agreements (SLAs) as set forth in **Exhibit 3.1 Service Level and Deliverables Matrix**;
- j. Upon TxDOT's written notice, transition all Services identified within the SOW to On-Shore locations and personnel (Section 2.5.1 of ERP MAS Exhibit 2.1.2 Statement of Work);
- k. Utilize a collaborative governance framework to assist in the daily management of the Services (Exhibit 1.2 Governance Model); and
- l. Provide industry best practices and processes in delivering the Services to TxDOT, such as the IT Infrastructure Library (ITIL) framework.

The Service Provider shall work in coordination with TxDOT, Service Component Providers, and TxDOT Contractors to effectively provide ERP Managed Application Services. Services shall be performed in accordance with all standards and processes contained in the Agreement, the Service Levels as set forth in **Exhibit 3.1 Service Level and Deliverables Matrix** and the Service Management Manual.

1.3.4.1.2 Background

ProjectONE, the statewide ERP initiative mandated by the 80th legislative session in 2007, was implemented by the Texas Comptroller of Public Accounts (CPA) in September 2009, to develop an ERP system that would provide a single set of real-time books for the general ledger, accounts payable, accounts receivable, budgeting, inventory, asset management, payroll, projects, grants, human resources and procurement activities of State agencies and provide a foundation for the replacement of USAS, USPS, and various other legacy systems maintained by State agencies. Oracle/PeopleSoft products were selected to develop the ERP Applications. Later, Oracle/Taleo products were also added to the ERP applications.

TxDOT was a participant in the initial ProjectOne implementation of Centralized Accounting and Payroll/Personnel System (CAPPS) Financials, or ERP Finance Supply Chain Management (FSCM) as it is known at TxDOT. TxDOT subsequently implemented ERP Human Capital Management (HCM), Enterprise Learning Management (ELM), rolled out FSCM on an enterprise basis, and became an official CAPPS Hub-Agency in October 2014. Hub-Agencies maintain their own agency specific versions of CAPPS apart from the CAPPS Central Agencies supported by CPA because they are typically large and specialized. CPA provides a Statewide Code Baseline to the hub-agencies periodically to update for Legislative changes, and to maintain uniformity across the ERP applications. In its Statewide Code Baseline, CPA maintains the four core FSCM modules: Accounts Payable, Asset Management, General Ledger and Purchase Orders; and the four core HCM modules: Core HR, Payroll, Position Management, and Time and Labor. TxDOT is required to make a certification to CPA that these updates have been implemented to TxDOT's ERP instance per Article 6 of **ERP MAS Exhibit 2.1.2 Statement of Work**. TxDOT's Incumbent Service Provider presently maintains the ERP Applications independent from the Service Providers performing Upgrades or new development activities. TxDOT's objective is to consolidate all ERP Application activities under one

Service Provider who integrates with various other Service Providers supporting ERP. Appendix W – ERP Required Environments identifies the ERP environments that TxDOT requires Service Provider to support. The information provided in Appendix W – ERP Required Environments, applies to ERP applications with each FSCM, HCM and ELM application having its own set of environments.

The ERP applications currently contain the following Oracle/PeopleSoft modules:

- a. ERP FSCM
 - i. Accounts Payables
 - ii. Accounts Receivable
 - iii. Asset Management
 - iv. Billing
 - v. Commitment Control
 - vi. Customer Contracts
 - vii. eProcurement
 - viii. General Ledger
 - ix. Inventory
 - x. Project Costing
 - xi. Purchasing
 - xii. Workflow
 - xiii. Travel and Expense
- b. ERP HCM
 - i. Human Resources
 - ii. Payroll
 - iii. Position Management
 - iv. Time and Labor
 - v. ePerformance
 - vi. Profile Management
 - vii. Benefits
 - viii. Talent Acquisition Management
 - ix. Workflow
- c. Enterprise Learning Management (ELM)

TxDOT's ERP Infrastructure is currently part of DIR's Statewide Data Center. The existing ERP hardware will be approaching end of life within a year of releasing this RFO. TxDOT has requested that DIR provide options to TxDOT to leverage Oracle Cloud Infrastructure (OCI) Services to more closely align with CPA's CAPPS central systems. It

is anticipated that these Services will be made available during the term of this contract and a transition to OCI may occur. TxDOT may request Service Provider's assistance during this transition as detailed in Transformation Projects – Project 2: Transition ERP environment to Oracle OCI, Section 9.4 of **Exhibit 2.1.2** of this RFO.

1.3.4.1.3 Enterprise Resource Planning (ERP) Managed Application Services

ERP managed application services includes application development and support services, ERP technical and functional support services and management of the necessary service enablement components that provide for effective service delivery for TxDOT. The Service Provider shall work in coordination with TxDOT, Service Component Providers, and TxDOT Contractors to effectively provide ERP Managed Application Services (Services).

- Key Scope Elements
 - Provide steady state application development, specifically customization, enhancement and break-fix support, for ERP FSCM, HCM and ELM
 - Provide infrastructure/operations support services key service
 - Provide periodic upgrade support for ERP applications
 - Provide onboarding/offboarding services for ERP modules
 - Provide technology alignment to State defined Centralized Accounting and Payroll / Personnel Systems (CAPPS) Code Baseline
- Key Service Objectives
 - Develop strategic partnerships with Service Providers who understand the TxDOT customer and who deliver Services in a customer-centric manner and can quickly scale to meet changing demands;
 - Improved service delivery with alignment to industry trends and innovations measurable through a defined service evolution program;
 - Successful implementation of optionally executed transformation projects upon Service Commencement;
 - Delivery of highly available, reliable, scalable, secure and easily supportable Services that enable improved productivity;
 - Alignment of Services across the Service Provider ecosystem in a best in breed delivery governed by TxDOT;
 - Adherence to required reporting for State agencies and support of State audits;
 - Maintain the ERP applications, and all related components, to ensure they remain on supported software and database versions according to Oracle's PeopleSoft and PeopleTools support policy and the Agreement with CPA;
 - Successful transformation from internally hosted PeopleSoft implementation to an Oracle Cloud Infrastructure PaaS service;

- Centralization of application development and maintenance services across minor and major functional enhancements;
- Simplification, reduced cost and cost predictability for system maintenance and enhancements; and
- Reduce time to deploy applications and onboarding of application modules.

1.3.4.2 Application Development and Maintenance (ADM) Managed Application Services

1.3.4.2.1 Introduction

Application Development and Maintenance Services includes application development and support services, technical and functional support services and management of the necessary service enablement components that provide for effective service delivery for TxDOT. The Service Provider shall work in coordination with TxDOT, Service Component Providers, and TxDOT Contractors to effectively provide (Services).

The Service Provider shall be responsible for all activities necessary to ensure Services are performed in accordance with all standards and processes contained in the Agreement, **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual (SMM).

The Service Provider shall work in coordination with TxDOT, Service Component Providers, and TxDOT Contractors to effectively provide Application Development and Maintenance Services. Services shall be performed in accordance with all standards and processes contained in the Agreement, the Service Levels as set forth in **Exhibit 3.1 Service Level and Deliverables Matrix** and the Service Management Manual.

1.3.4.2.2 Application Development and Maintenance Managed Application Services

ADM Managed Application Services includes Application Development, Application Maintenance and Support Services, Application customization and enhancements, Application break-fix, and management of the necessary service enablement components that provide for effective service delivery for TxDOT. The Service Provider shall work in coordination with TxDOT, TxDOT Service Component Providers, and TxDOT Contractors to effectively provide ADM Managed Application Services (Services).

The Service Provider shall be responsible for all activities necessary to ensure Services are performed in accordance with all standards and processes contained in the Agreement, **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual.

The Service Provider shall work in coordination with TxDOT, TxDOT Service Component Providers, and TxDOT Contractors to effectively provide ADM Managed Application Services. Services are performing in accordance with all standards and processes contained in the Agreement, the Service Levels as

defined in **Exhibit 3.1 Service Level and Deliverables Matrix** and the Service Management Manual.

- Key Scope Elements
 - Provide development, specifically customization, enhancement and break-fix support
 - Provide infrastructure/operations support services key service
 - Provide application testing
 - Provide periodic upgrade support for applications
- Key Service Objectives
 - Develop strategic partnerships with Service Providers who understand the TxDOT Customer and who deliver Services in a Customer-centric manner and can quickly scale to meet changing demands
 - Improved Service delivery with alignment to industry trends and innovations measurable through a defined Service Evolution program
 - Delivery of highly available, reliable, scalable, secure and easily supportable Services that enable improved productivity
 - Alignment of Services across the Service Provider ecosystem in a best in breed delivery governed through a multi-sourcing services integration governance model
 - Adherence to required reporting for State agencies and support of State audits
 - Maintain the applications, and all related components, to ensure they remain on supported technology, programming languages, software and database versions as defined by TxDOT Product roadmaps
 - Centralization of Application Development and Maintenance Services across minor and major functional enhancements
 - Simplification, reduced cost and cost predictability for system maintenance and enhancements
 - Reduce time to deploy applications and enhancements

1.3.5 TxDOT ITD Information

The TxDOT Information Technology Division (ITD) supports the business operations of TxDOT with innovative IT and strategic information resource planning. The service governance is divided into eight (8) functional areas:

- **ITD Service Governance (ITD SG):** provides the systems, process leadership and service delivery oversight necessary to ensure consistent, quality service delivery: sub-sections are Service Management, Cross Functional Platform, and Supplier Performance Management.

- **ITD Planning and Engineering (P&E):** cross technology matrixed function responsible for alignment of policy to TxDOT technology standards and governance of Service Provider integration into TxDOT service ecosystem. P&E works in conjunction with Service Component Providers to develop product and technology lifecycle standards, technology plans, governance of service and technology evolution, and provide quality assurance and oversight of SCP solution design. The team is organized around products and technology and maintains end to end service expertise within the ITD operating model.
- **Business Relationship Management (BRM):** shares ownership with the business for both business strategy and business value results; owns and cultivates business relationships and serves as a single point of focus between IT and the line of business; works to understand the strategic direction of the business in order to stimulate and identify demand for IT capabilities and assets, ensures business value from IT capabilities and assets are captured, optimized, and recognized.
- **Project Management Office (PMO):** Establish centralized Project Portfolio Management (PPM) policy, process and tools to select, prioritize, assess, manage TxDOT enterprise business-driven solution projects.
- **Operations:** oversee service operations rollout, delivery, and escalations; deliverable and service level validation; technical service delivery compliance.
- **Vendor Management and Sourcing:** provides critical oversight and management of TxDOT's contracted IT services, working closely with agency procurement to ensure prescribed process are followed; sub-sections are Vendor Management and IT Sourcing.
- **Information Security:** lead in setting security policies, standards, and processes; manage overall security program; manage enterprise SIEM and CSOC and oversee security flaw remediation; sub-sections are Risk and Compliance, Cybersecurity Operations, and Toll Information Security.
- **Financial Management:** manage ITD funding, budgets and forecasts as well as IT purchase request approvals.

1.3.6 Respondent Note: RFO Data Room

To aid Respondents in preparing to respond to this procurement, a Digital Data Room has been created. Respondents may request access to the Digital Data Room by first attending the Pre-Proposal Conference and submitting an executed **Attachment 6 Data Room Access Nondisclosure Agreement** for each person requiring access and then registering.

Access to this Digital Data Room will require execution of TxDOT's Non-Disclosure Agreement from each Respondent personnel requiring access and is predicated on Respondent's attendance at the Pre-Proposal conference described in **Section 3.3.1 Mandatory Pre-Proposal Conference**. Proposed Sub-Contractors must request access to the Digital Data Room through the prime Respondent point of contact.

TxDOT will continue to add information to the Digital Data Room throughout this procurement. It is the Respondent's responsibility to regularly monitor the Digital Data Room for new

information. Check the Electronic State Business Daily ([ESBD](#)) regularly to avoid missing important procurement related information.

TxDOT makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFO, its Appendices and Attachments, and in the Data Room. The Respondent is responsible for making its own evaluation of information and data contained in this RFO and in preparing and submitting its Response.

2. SCOPE

2.1. Required Services

TxDOT intends to contract with the Service Provider to provide services, including but not limited to the following managing and operating the Application Services in accordance with the MSA and related Exhibits provided in this RFO.

2.2. Environmental Impact

It is TxDOT's intent to purchase equipment and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economic considerations in accordance with 34 TAC §20.306 and 20.307.

2.3. Specifications

The goods furnished and services performed shall be in accordance with the specifications set forth in the RFO. TxDOT will provide clarification of the specifications and determine the quality and acceptability of goods furnished or work performed. TxDOT will determine the manner of performance, the rate of progress of the work, and whether vendor's performance of the service is acceptable. No substitutions will be permitted without written approval from TxDOT.

Any catalog, brand name, or manufacturer's reference used in the RFO is descriptive only and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Government Code Section 2155.067. Respondent must show manufacturer, brand or trade name, and other description of the product offered in response to the RFO. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, respondent will be required to furnish brand names, numbers, etc., as specified.

Unless otherwise specified, all goods offered must be new and in first-class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.

Receipt of goods does not constitute acceptance. Goods and materials must be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to vendor at no cost to TxDOT. TxDOT reserves the right to inspect goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

2.4. Electronic and Information Resources (EIR) Accessibility

Products, applications, and websites that will be used by Texas state employees or members of the public must comply with EIR accessibility technical standards as defined in 1 TAC 206, 1 TAC 213, and Web Content Accessibility Guidelines (WCAG) 2.0 level AA. Accurate product Voluntary Product Accessibility Templates (VPATs) are required for Commercial Off-the-Shelf (COTS) offerings included in this contract. If development services are included, Service Providers will be required to complete the Vendor Accessibility Development Services Information Request (VADSIR) or other documents as requested that describe Service Provider's ability to produce accessible offerings. The Service Provider shall provide a solution that is compliant with the above referenced standards.

2.5. Form of Contract

The final terms and conditions of any Contract will be agreed upon during negotiation. However, the minimum standard terms and conditions that will be included in any awarded Contract are contained in the Master Services Agreement (MSA) included with the RFO documents.

2.6. Term of Contract

TxDOT anticipates that the term of the Contract will be an estimated four (4) years with up to four (4) optional renewals of up to one (1) year each to be exercised by TxDOT at its discretion. In the event of prolonged Contract negotiations due to the number and/or significance of exceptions taken, lack of responsiveness, or other failure to close Contract negotiations on the part of Respondent that are not due to a failure on the part of TxDOT, TxDOT may, in its sole discretion, bypass the Respondent and commence negotiations with another Respondent, or continue with the current Respondent with a shorter contract term.

[Section 3.6.12 Exceptions to Requirements \(including MSA Terms and Conditions\)](#) of this RFO contains the format for Respondents to note any exception to any provision, term, or condition specified in the RFO.

Any objections or exceptions should be noted in keeping with [Section 3.6.12 Exceptions to Requirements \(including MSA Terms and Conditions\)](#).

TxDOT reserves the right to make changes to the MSA and Exhibits if it is in the best interest of the State to do so. Should this occur prior to the award of any Contract as a result of this RFO, any Respondents selected for negotiations will be notified.

3. GENERAL INFORMATION

3.1. Point of Contact

Jennifer Texta is the sole point of contact for this procurement. Routine correspondence may be directed as follows:

Primary Contact: Jennifer Texta
 Texas Department of Transportation
 Procurement Services Division
 150 E. Riverside Drive
 Austin, Texas 78701

Phone: 214-320-6105

Email address: Jennifer.texta@txdot.gov

Respondents shall make no contact concerning this RFO with other TxDOT and contractor personnel. **Failure to comply with this requirement may result in disqualification.**

3.2. Response Integrity and Eligibility

3.2.1 False Statements

Respondent represents and warrants that all statements and information in its submitted response are current, complete, true, and accurate. Submitting a response to the solicitation with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract, and may result in removal of respondent from the Centralized Master Bidders List.

3.2.2 Deceptive Trade Practices; Unfair Business Practices

Respondent represents and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17 or the subject of allegations of any unfair business practice in any administrative hearing or court suit, and that respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practices violations or the subject of allegations of any unfair business practices in an administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

3.2.3 Collusion

Respondent has not colluded with, nor received any assistance from, any person who was paid by TxDOT to prepare specifications or a solicitation on which a respondent's bid is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded. Respondent should also refer to **Section 15.8(j)** of the Agreement attached to the solicitation.

3.2.4 Respondent Eligibility

- a) Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
- b) Respondent certifies that respondent is not an abortion provider or an affiliate of an abortion provider under Government Code 2272.003.
- c) Respondent certifies that it is not:
 - i. A person required to register as a lobbyist under Government Code Chapter 305.
 - ii. A public-relations firm.
 - iii. A government consultant.

3.3. Schedule of Events

It is TxDOT’s intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. TxDOT reserves the right to modify these dates at any time. Prospective Respondents will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Table 1: Schedule of Events

Activity	Date
Mandatory Pre-Proposal Conference	June 10, 2021
Deadline for Submitting RFO Questions	June 25, 2021, 2:00 p.m. Local Time
Deadline for Submitting Response	July 9, 2021, 3:00 p.m. Local Time
Evaluation, Clarification, and Amended Responses	July 2021 – August 2021
Integration sessions, due diligence, final negotiations	September 2021 – December 2021

3.3.1 Mandatory Pre-Proposal Conference

TxDOT will hold a mandatory pre-proposal webinar for all interested respondents to this procurement on the date and time specified in [Section 3.3 Schedule of Events](#). It is mandatory that at least one (1) Respondent representative be registered and present for the Conference. Respondents who arrive more than 15 minutes after the scheduled start time stated in the solicitation will not be allowed to participate. A respondent who fails to attend any portion of the mandatory pre-response conference, which may include site visits, or fails to sign the register, will be disqualified from further consideration.

TxDOT will provide attendees the opportunity to submit written questions at the conference. All questions submitted at the conference must reference the appropriate RFO or Exhibit page and section number.

The pre-proposal conference will provide overview information of the RFO and preliminary answers to questions submitted prior to the Pre-Proposal Conference. Although TxDOT may provide tentative verbal answers to questions at the conference, only answers provided in writing by TxDOT shall be considered official. Information in any form other than the materials constituting this RFO and its Exhibits, the Question and Answer Document(s), and any Addenda shall not be binding on TxDOT. TxDOT reserves the right to amend answers prior to the offer submission deadline.

ATTENDANCE AT THE PRE-PROPOSAL WEBINAR IS MANDATORY.

Date: June 10, 2021
Time: 1:00 p.m. Local Time

The mandatory pre-response conference information is shown below and will only be available live via the web:

All personnel attending pre-conference must log in to the WebEx using the following steps:

Respondent must list their name and company when attending the WebEx, as shown below:

Example: John Doe – TxDOT

Meeting number (access code): 172 679 0224

Meeting password: T922DiANZMR

Show actual link to the WebEx

WebEx Link:

<https://txdot.webex.com/txdot/j.php?MTID=md2f47dc129a954082af5e8f022b05f17>

Call-in number: +1-415-655-0003 United States TOLL

Conference Code: 172 679 0224

IMPORTANT NOTICE: Please note this WebEx service allows audio and other information sent during the session to be recorded, which may be discoverable in a legal matter. By joining this session, you automatically consent to such recordings. If you do not consent to being recorded, discuss your concerns with the host or do not join the session.

Persons with special needs or disabilities who plan to participate in this conference who require auxiliary aids or service should contact the purchaser noted in [Section 3.1 Point of Contact](#) as the point of contact a minimum of three (3) Business Days prior to the meeting so arrangements can be made.

3.3.2 Written Questions and Official Answers

Using **Schedule 1 of Attachment 7 Schedules Template**, Respondents shall submit all questions regarding this RFO by e-mail or in writing to the Point of Contact listed in [Section 3.1 Point of Contact](#). **Questions regarding this RFO will be accepted until the date and time specified Section 3.3 Schedule of Events.** Official answers will be posted as an Addendum to this RFO, on the Electronic State Business Daily (ESBD), available at <http://www.txsmartbuy.com/sp>. To ensure all documents are available, access this previous link using Google Chrome.

By submission of a question, Service Providers acknowledge that the applicable question will be posted with each official answer and therefore Service Providers should not include any confidential or proprietary information in such questions. TxDOT will not publish the identity of any Service Provider that submitted any particular inquiry.

3.4. Federal and State Requirements

3.4.1 Federal Requirements

3.4.1.1 Terrorists and Terrorist Organizations

State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Respondent listed in the Federal Excluded Persons List System (EPLS) authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, available at <https://www.state.gov/j/ct/rls/other/des/143210.htm>, published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. The Service Provider must agree that if at any time during the term of the contract the Service Provider is listed on the Terrorism List, the Service Provider shall promptly

notify TxDOT. As part of TxDOT's contract management, periodic checks will be performed to ensure the Service Provider remains in compliance with these federal requirements. TxDOT shall have the absolute right to terminate the contract without recourse in the event the Service Provider becomes listed on the EPLS.

3.4.1.2 Federal Suspension or Debarment

Should the Service Provider become suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM), available at <https://www.sam.gov/>, maintained by the General Services Administration, the Contract may be terminated without recourse, at DIR's sole discretion.

3.4.1.3 Immigration

- a) The Service Provider shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.
- b) Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Service Provider shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:
 - i. all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Service Provider during the term of this Contract to perform duties within Texas; and
 - ii. all Subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the Subcontractor during the term of this Contract and assigned by the Subcontractor to perform work pursuant to this Contract.
- c) Each Service Provider shall require its subcontractors to comply with the requirements of this Section and the Service Provider is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by any Service Provider and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

3.4.2 State requirements

Texas law prohibits state agencies from doing business with a company that conducts business with Iran, Sudan, or a foreign terrorist organization. If Respondent is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required. Any Respondent listed in the divestment list maintained by the Texas Safekeeping Trust Company and posted to the Texas Comptroller of Public Accounts website, available at <https://comptroller.texas.gov/purchasing/publications/divestment.php>, shall not be awarded a

Contract as a result of this RFO. The Service Provider must agree that if at any time during the term of the contract the Service Provider is listed on the divestment list, the Service Provider shall promptly notify TxDOT. As part of TxDOT's contract management, periodic checks will be performed to ensure the Service Provider remains in compliance with these state requirements. TxDOT shall have the absolute right to terminate the contract without recourse in the event the Service Provider becomes listed on the divestment list, described above.

3.4.3 Performance and Debarment

In accordance with 34 TAC, Part 1 Chapter 20, Subchapter G, any vendor that is debarred from doing business with the State of Texas will not be awarded a contract under this solicitation. The list of debarred vendors is located on the Comptroller of Public Accounts (CPA) Web site at <https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>.

3.4.4 Disclosure of Restricted Employment

Respondent acknowledges that under Government Code Section 572.069, a former state officer or employee of a state agency who, during the period of state service or employment, participated in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

3.4.5 Required Service Provider and Subcontractor Current and Former State Employee Disclosures

The Respondent shall disclose in its transmittal letter and executive summary, for itself and on behalf of all its Subcontractors, the following:

- a) Respondent will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting or employing with the current or former executive head of a state agency. If Section 669.003 applies, Respondent will complete the following information for the Response:
 1. Name of Former Executive;
 2. Name of State Agency;
 3. Date of Separation for State Agency;
 4. Position with Respondent; and
 5. Date of Employment with Respondent.
- b) In addition, the Respondent shall disclose, for itself and on behalf of all of its Subcontractors, in its Response, all of the following:
 1. Any Respondent proposed personnel who are current employees of the State or who were former employees of the State; and
 2. Any Respondent proposed personnel who are related within three (3) degrees of consanguinity or two (2) degrees of affinity to any current employees of the State or any former employees of the State.

3.5. Response Deadline and Submission Requirements

Respondents are required to submit Responses in accordance with the requirements outlined in this document and as required by the Instructions to Respondents page. Responses must be received by TxDOT on or before **the date and time specified in [Section 3.3 Schedule of Events](#)**. **No late Responses will be reviewed.** Responses must be delivered electronically as described in [Section 3.6.2 Response organization](#).

Official Timepiece

The clock in the TxDOT Purchasing Office Austin, TX is the official timepiece for determining compliance with the deadline.

3.6. Response Instructions

Respondent must carefully examine the solicitation. Respondent is responsible for securing any additional information from the purchaser needed to gain a clear and full understanding of the requirements.

Electronic Responses are preferred. Respondents shall follow the specific naming conventions detailed in this section. Respondent must use a three-letter identifier preceding each named file (e.g., Big Service Company, Inc., “BSC”). This three-letter identifier shall replace the “ABC” referenced in the file names below. **All files submitted by the Respondent must use the same three-letter identifier.**

Non-submission of any of the requested information may disqualify the Respondent’s Response from further consideration by TxDOT.

3.6.1 No Marketing Materials Desired

Unnecessarily elaborate brochures or other presentations beyond those requested and sufficient to present a complete Response **are not desired**. Respondents are encouraged not to provide materials beyond what is required in the RFO.

3.6.2 Response organization

Respondent shall organize its Response as follows:

1. Administrative Submission Requirements
2. Response to Service Requirements
3. Pricing
4. HUB Subcontracting Plan
5. Exceptions
6. Any attachments containing response materials which Respondent asserts are confidential or proprietary*.
7. Any attachments containing copyrighted materials in the Respondent's Response*.
8. Any attachments containing non-proprietary/non-confidential and non-copyrighted materials in the Respondent’s Response (redacted copy for public release).

* If Respondent's Response does not contain such materials, then attachments for these items are not required.

3.6.3 Administrative Submission Requirements – Response Package 1

3.6.3.1 Transmittal Letter and Executive Summary

- a) Respondent shall submit a transmittal letter on company letterhead, signed by an individual with authority to bind the company in a contract with TxDOT. The transmittal letter shall include a statement that the person signing is empowered to contractually bind the firm. The transmittal letter should include an executive summary and include a brief written overview of the Respondent's company and proposed solution.
- b) The executive summary shall not exceed ten (10) pages in length (excluding title page). No appendices or specific references to additional information will be accepted. The executive summary should be written to communicate a summary of the Respondent's Response. **The Respondent must not include any pricing information or estimated savings in the executive summary.**
- c) For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled “**ABC_Exec_Summary.docx.**”

3.6.3.2 Executed Offer Form

- a) The Respondent shall complete and sign the Executed Offer Form found in **RFO Attachment 1 Respondent Information Form**. This form must be completed and signed or the Response may be disqualified as noncompliant.
- b) For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled: “**ABC_RIF_Attachment_1.docx.**”

3.6.3.3 Texas Family Code – Section 231.006

- a) Under Section 231.006, Family Code, respondent certifies that respondent and any other individual or business entity named in the contract, bid, or application are eligible to receive the specified grant, loan, or payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Any respondent subject to Section 231.006 must complete and sign the Form found in **Schedule 2 of Attachment 7 Schedules Template Texas Family Code – Section 231.006**. This form must be completed and signed or the Response may be disqualified as noncompliant.
- b) For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled: “**ABC_TFC_Attachment_1.docx.**”

3.6.3.4 Respondent Qualifications

- a) The Respondent must clearly state how it meets the following qualification preferences in the form of **Schedule 3 of Attachment 7 Schedules Template**:
 1. The Respondent must be a company engaged or whose partners are engaged in the business of providing similar services as Stated in Exhibits 2.1.1, 2.1.2 and 2.1.4 Statements of Work for a minimum of three (3) or more years'. Years of experience

of an individual(s) or partner(s) with a minimum of 25% ownership of the company can be applied to the company's years in business. Recent start-up businesses do not meet the requirements of this solicitation.

Note: A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business.

2. The Respondent must have entered into at least two (2) similar major projects within the last five (5) years where the following is true:
 - a. The annual contract value was at least \$10,000,000.
 - b. The Respondent was the prime contractor.
- b) For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled: “**ABC_Qualifications.docx.**” in the form of Schedule 3 of Attachment 7 Schedules Template.

3.6.4 Financial Information

The Respondent must include the following items in its Response. Failure to include any of the items listed for the appropriate company type may result in disqualification of the Respondent's Response. **If the failure to disclose is not learned until a Contract has been awarded to the Service Provider, the Contract may be terminated. In the event of such termination, the Service Provider shall be liable for all costs associated with the re-procurement, including any increased costs for the services originally awarded.**

3.6.4.1 Publicly Traded Companies:

1. Exact name of the Respondent on title page of the most currently filed SEC forms 10K and 10Q. Fully explain the reason(s) why any reports have not been timely filed within the past three (3) years;
2. For the last three (3) fiscal years most recently ended, audited financial statements prepared in accordance with Generally Acceptable Accounting Practices (GAAP);
3. Any official document displaying current proof of authority to conduct business in the State. Examples: State Franchise Tax Certification of Account Status and State Sales Tax Permit, both available from the State Comptroller of Public Accounts and the Certification of Fact, that is available from the Secretary of State (SOS Direct), available at: www.sos.state.tx.us.
4. Certificate of Insurance that sets forth limits of liability to include all insurance coverage of the company. If awarded a Contract, the Service Provider shall provide a certificate of insurance to protect TxDOT for the coverages and in the amounts as described in **MSA Attachment B Insurance and Risk of Loss**.

3.6.4.2 Privately Owned Companies (C and S corporations, LLCs and similar forms of ownership):

1. For the last three (3) fiscal years most recently ended, audited financial statements prepared in accordance with GAAP. If audited financial statements are not prepared, un-audited financial statements will suffice as long as Service Provider affirms that it

is not required to have its financial statements audited and therefore does not currently have audited financial statements to provide in response to this RFO;

2. Latest two (2) quarters internally prepared financial statements;
3. Any official document displaying current proof of authority to conduct business in the State. Examples: State Franchise Tax Certification of Account Status and, State Sales Tax Permit, both available from the State Comptroller of Public Accounts and the Certification of Fact, that is available from the Secretary of State. See Section 7.1.9 (Proof of “Good Standing”).
4. Certificate of Insurance that sets forth limits of liability to include all insurance coverage of the company. If awarded a Contract, the Respondent shall provide a certificate of insurance to protect TxDOT and its Customers for the coverages and in the amounts as described in **MSA Attachment B Insurance and Risk of Loss**.

For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled: “**ABC_Financial_Information.docx**”.

3.6.5 Addenda to the RFO

TxDOT will not be bound by any oral statement or representation contrary to the written specifications of the RFO. Any revision, clarification, or interpretation pertaining to the RFO will be in writing and issued by TxDOT as an addendum. Any change or interpretation not in an addendum will not legally bind TxDOT. Any addendum must be issued through TxDOT’s Procurement Division.

To acknowledge receipt of all Addenda, the Respondent shall provide a completed and signed “page one” of each Addendum. Addenda may be grouped into a single file entitled “**ABC_Addenda (.docx or pdf)**.”

3.6.5.1 Administrative Response Package 1 Submission

The following table summarizes the files to be included in the Administrative Submission with the corresponding file names.

Table 2: Response Package 1 Files

RFO Reference	Form of Response
Transmittal Letter and Executive Summary	“ABC_Executive_Summary.docx”
Respondent Information Form (Attachment 1)	“ABC_RIF_Attachment_1.docx”
Schedule 2 of Attachment 7 Texas Family Code – Section 231.006	“ABC_TFC_Attachment.docx”
Schedule 3 of Attachment 7 Respondent Qualifications	“ABC_Qualifications.docx”
Financial Information	“ABC_Financial Information.docx” (.docx or .pdf)
Addenda to the RFO	“ABC_Addenda.docx” (.docx or .pdf)

3.6.6 Response to Service Requirements – Response Package 2

3.6.6.1 Solution Document

Respondent shall complete **Exhibit 2.1.3 ERP Managed Application Services Solution Document** and/or **Exhibit 2.1.5 Application Development and Maintenance Solution Document** per the instructions provided in the Exhibit. This Exhibit is intended to be updated in stages throughout the procurement process. The Exhibit contains an outline of key topic areas that Service Provider is required to address as part of its response. The response will include a thorough description of its solution and overall approach to implementing the Services and successfully transitioning responsibility from the Incumbent Service Provider.

- a) Respondent may be able to leverage the assets, processes, and services described in **Exhibit 4.1 Pricing Structure** as well as the information available in the Data Room, **Section 1.3.8 Respondent Note: RFO Data Room** as part of its solution response. TxDOT requests that Respondents evaluate the feasibility of leveraging these existing State investments to minimize transition timelines and maximize cost efficiencies.
- b) For the Response, the Respondent must provide, as separate Microsoft Word documents, a file entitled “ABC_ Exhibit_2.1.3_ERPMAS_Solution.docx” and/or a file entitled “ABC_ Exhibit_2.1.5_ADM_Solution.docx” depending on whether the Respondent is responding to one (1) or both Service Components to this RFO. The Response to each document shall be limited to no more than 125 pages; this page limit includes any graphics, tables, etc., and Respondents shall not alter the font of the document in providing their Response.

3.6.6.2 Transition Plan

Respondent shall complete **RFO Attachment 5: Transition Plan Response** per the instructions provided in the Attachment. This Attachment is intended to be updated in stages throughout the procurement process. The Attachment contains an outline of key topic areas that Service Provider is required to address as part of its transition response. The response will include a thorough description of its Transition Plan, solution and overall approach to implementing the Services and successfully transitioning responsibility from the Incumbent Service Provider.

For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled “ABC_ Transition_Plan_Response.docx”. The Response shall be limited to no more than twenty (20) pages; this page limit includes any graphics, tables, etc., and Respondents shall not alter the font of the document in providing their Response

3.6.6.3 Transition Project Plan

Respondent shall provide a Transition Project Plan in Microsoft Project format including all milestones and high-level activities necessary for the successful completion of transition. The file, which should include timing and milestones, must be in Microsoft Project format and entitled “ABC_ Transition_ Project_Plan.mpp”.

3.6.6.4 Respondent References

Using **Schedule 4 – Past Performance Reference Information form of Attachment 7 Schedules Template**, Respondent shall provide the name, title, contact number, and description of services provided for three (3) references for which the Respondent provided technical solution services as the prime Service Provider. The services provided to the references should meet the requirements of **Section 3.6.3.4 Respondent Qualifications** of this RFO. For each reference provided, Respondent shall provide a signed RFO **Attachment 4, Respondent Release of Liability**.

3.6.6.5 Canceled Contract References

Using **Schedule 5 Canceled Contracts form of Attachment 7 Schedules Template**, Respondent shall provide the name, title, contact number and description of services provided for any contract that was canceled or prematurely terminated in the past ten (10) years. Respondent shall include details on the reason for the cancelation and the Respondent's position relevant to the cancelation, including the final resolution, including any lawsuits or settlements of the contract cancelation. For each company or entity listed, Respondent shall provide a signed RFO **Attachment 4, Respondent Release of Liability**. Respondent shall add additional rows to **Schedule 5** as necessary to provide all canceled contracts within the required timeframe.

Respondent shall provide contact information for individuals able to address questions concerning the cancelation. **Failure to fully disclose canceled contract within the scope of this requirement may result in disqualification. If the failure to disclose is not learned until a Contract has been awarded to the Service Provider, the Contract may be terminated. In the event of such termination, the Service Provider shall be liable for all costs associated with the re-procurement, including any increased costs for the services originally awarded.**

If there are no canceled contracts, the Respondent shall affirm such in this section.

For the Response, the Respondent must provide completed **Schedule 4** and **Schedule 5** consolidated into one (1) Microsoft Word document entitled, "ABC_References.docx."

3.6.6.6 Proposed Account Organization

Respondent shall complete **Exhibit 2.4 Key Personnel** per the instructions provided in the Exhibit. This Exhibit is intended to be updated in stages throughout the procurement process. The Exhibit contains a section to include a proposed organization chart for the service relationship, indicating positions considered Key Personnel with a description of responsibilities of key positions and departments.

Respondent must include in its Response the resumes and qualifications of all proposed Respondent Key Personnel, including their specific experience working on related projects. Resumes should specifically detail experience working on projects and services of similar scale and complexity as the Services sought through this RFO, including work on projects used as references. Resumes shall be no more than two (2) pages in length.

The Account Organization must include actual names of Key Personnel initially assigned to the account and their resumes, not simply generic resumes with the types of skills sought. The Respondent must provide these resumes as attached pages at the end of the document.

For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled “ABC_Exhibit_2.4_Key Personnel.docx”.

3.6.7 Service Requirements Response Package 2 Submission

The following table summarizes the files to be included in the Statement of Work Submission with the corresponding file names.

Table 3: Response Package 2 Files

RFO Reference	Form of Response
Exhibit 2.1.3 ERP MAS Solution Document*	“ABC_Exhibit_2.1.3_ERPMAS_Solution.docx”
Exhibit 2.1.5 ADM Solution Document*	“ABC_Exhibit_2.1.5_ADM_Solution.docx”
Attachment 5 Respondent Transition Plan	“ABC_Transition_Plan_Response.docx”
Respondent Transition Project Plan	“ABC_Transition_Project_Plan.mpp.”
Schedules 4 and 5 of Attachment 7 Respondent References and Canceled Contract References	“ABC_References.docx”
Proposed Account Organization	“ABC_Exhibit_2.4_KeyPersonnel.docx”
Attachment 4: Respondent Release of Liability	“ABC_Release_of_Liability.docx”

*Respondent shall include one (1) or both Solution Response documents as part of the submission based on Respondent’s decision to respond to one (1) or both Service Components to this RFO.

3.6.8 Response to Pricing – Response Package 3

Respondent shall use the electronic version of **Exhibit 4.1 Pricing and Volumes** (including all subordinate attachments) to provide a detailed written response. Respondent shall not alter the format of the pricing templates or associated Exhibits.

For the Response, the Respondent must provide, as a separate Microsoft Excel document pursuant to instructions in **Exhibit 4.0 and Exhibit 4.1**, a file entitled “ABC_Exhibit 4.1 Pricing and Volumes.xlsx”.

3.6.9 Pricing Response Package 3 Submission

The following table summarizes the files to be included in the Pricing submission with the corresponding file names.

Table 4: Response Package 3 Files

RFO Reference	Form of Response
Exhibit 4.1 Pricing and Volumes	“ABC_Exhibit_4.1_Pricing_and_Volumes.xlsx”

3.6.10 HUB Subcontracting Plan – Response Package 4

Respondent shall utilize RFO **Attachment 2 HUB Subcontracting Plan** to submit Respondent HUB Subcontracting Plan.

3.6.10.1 HUB Purpose

The purpose of the Historically Underutilized Business (HUB) Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency must make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.2% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders’ contracts;
3. 32.9% for all special trade construction contracts;
4. 23.7% for professional services contracts;
5. 26.0% for all other services contracts;
6. 21.1% for commodities contracts.

It is the policy of TxDOT to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Respondents who meet the qualifications are strongly encouraged to apply for certification as HUBs.

3.6.10.2 HUB Subcontracting Plan

TxDOT has determined that subcontracting is probable under any contract awarded as a result of this RFO (Reference **Attachment 8 Historically Underutilized Business Participation Form**).

3.6.11 HUB Response Package 4 Submission

Table 5: Response Package 4 Files

RFO Document/Section	Form of Response
Attachment 2 HUB Subcontracting Plan (Completed)	“ABC_HUB_Subcontracting_Plan.pdf”

3.6.12 Exceptions to Requirements (including MSA Terms and Conditions) – Response Package 5

The final terms and conditions of any Contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that will be

included in any awarded Contract are contained in the Master Services Agreement (MSA) included in the RFO documents.

3.6.12.1 Exceptions Details

This section contains the format for Respondents to note any exception to any standard provision, term, or condition specified in the RFO. **Respondents should note that TxDOT expects each Respondent to comply with the requirements of this RFO as written, and to price its Response accordingly. TxDOT strongly discourages any Respondent from indicating that it does not agree or does not comply with a provision because the Respondent is unwilling to price it (for risk, liability, or any other reason).** An explanation as to why the Respondent **cannot** comply with the provision, term, or condition **and** why the proposed alternative language **must** be included in the Response. Examples of nonresponsive explanations include:

1. Referencing negotiation of revised language in another TxDOT or other state agency contract;
2. Referring to an internal division's need for the revised language without a valid reason as to why the exception is necessary;
3. Indicating the proposed language is "negotiable;" and
4. Referencing an internal Respondent terms and conditions document.

Exceptions must include:

1. RFO document title (RFO, SOW, MSA, etc.), section number, and section title;
2. Explanation as to why Respondent cannot comply with the term or condition; and
3. Proposed alternate language (redline).

If Respondent fails to note any exception within its Response, Respondent may not be allowed to request an exception throughout the procurement process. No exceptions will be considered after negotiations or Contract Award.

3.6.12.2 Exceptions Response

Refer to RFO **Attachment 3 Exceptions**. The Respondent shall complete **Attachment 3 Exceptions** as described below:

1. The column labeled # shall be a sequential number;
2. The column labeled Respondent shall include Respondent's three-letter identifier;
3. The column labeled Doc, Respondent shall use the Dropdown defined; "MSA" for MSA and MSA Attachments, SOW for any exceptions to **Exhibit 2.0 Service Model**, SLA for any exceptions to **Exhibit 3.0 Performance Model**, "FIN" for any exceptions to **Exhibit 4.0 Business Model**.
4. The column labeled "Location/Specific Section Reference" should be used to identify the specific RFO document and the location(s) (section number or other identifiable reference) within the RFO documents that the language addresses.

5. The column labeled Objection/Issue shall describe the Respondents issue and/or objection to the term defined in the requirement documents, including the required explanation described in [Section 3.6.12.1 Exceptions Details](#).
6. The column labeled Proposed Alternative Language (redline) shall be updated as follows: copy the term “as-is” from the associated RFO document, use strikethrough function in Excel for any removed text, use blue underlined text for any added text.
7. Respondent should not modify or remove any of the columns in the template, including the hidden columns.
8. For the Response, the Respondent must provide, as a separate Microsoft Excel document, a file entitled: “ABC_Exceptions.xlsx”.

Respondents are encouraged not to request exceptions to standard contract terms and conditions; TxDOT, in its sole discretion, may or may not accept the Respondent’s requested exceptions. Exceptions will be one (1) factor considered by TxDOT in determining best value for the State.

Prior to the final award of a Contract, TxDOT reserves the right to make changes to the Master Services Agreement. Should this occur, any Respondent selected for negotiations will be notified. If any changes are made prior to the RFO Response deadline, TxDOT will address the changes in an Addendum posted to the ESBD.

If there are no exceptions, the Respondent shall explicitly state the Respondent takes no exception to any part of this RFO.

Any exception may result in the Contract not being awarded to the Respondent. TxDOT reserves the right to exclude a Respondent based upon the quality and substance of any exception(s).

In addition to completing [Attachment 3 Exceptions](#), Respondent shall include in its Response a red-lined version of the MSA containing only those Exceptions specific to MSA material. Further, Respondent shall include a comment with each redline providing the above described explanation for why the redlined language is necessary and why the Respondent cannot comply with the original language. For the Response, the Respondent must provide, as a separate Microsoft Word document, a file entitled: “ABC_MSA_Exceptions.docx”.

3.6.13 Exceptions Response Package 5 Submission

Table 6: Response Package 5 Files

RFO Document/Section	Form of Response
Redlined version of Master Services Agreement	“ABC_MSA_Exceptions.docx”
RFO Attachment 3: Exceptions	“ABC_Exceptions.xlsx”

3.7. Response Format

3.7.1 Document Formatting

All documents created by the Respondent shall be formatted as follows:

1. **Paper size:** 8.5 x 11 inch; or 8.5 x 14 inch where appropriate;
2. **Minimum font size:** 11 point (except for footnotes, headers, or footers);
3. **Maximum number of pages:** as specified for each document as applicable in [Section 3.6 Response Instructions](#) above (single-sided pages);
4. **Ready for printing:** all electronic files submitted must be pre-formatted for printing;
5. **Software:** all electronic files submitted should be created (or fully compatible) with any of the following software suites or packages: Microsoft Office 365. Respondents should NOT use .pdf files unless otherwise allowed above. Respondents shall not submit password protected files.

3.8. Rejection of Responses

TxDOT has sole discretionary authority and reserves the right to reject any and all Responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements may be rejected. Responses that fail to comply with the instructions contained in [Section 3.6.12 Exceptions to Requirements \(including MSA Terms and Conditions\)](#) may be disqualified. Responses that, in TxDOT's sole discretion, contain an excessive quantity of exceptions or exceptions that are so substantive as to pose a substantial risk to the successful achievement of a Contract may be removed from further consideration. In addition, TxDOT reserves the right to accept or reject, in whole or in part, any Responses submitted, and to waive minor technicalities when in the best interest of the State.

3.9. Right to Amend or Withdraw RFO

TxDOT reserves the right to alter, amend, or modify any provision of this RFO, or to withdraw this RFO, in whole or in part, at any time prior to the award of a Contract if doing so is in the best interest of the State. TxDOT reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an Addendum on the ESBD, at <http://www.txsmartbuy.com/sp>. It is the responsibility of Respondents to monitor the web site for Addenda. Respondent's failure to periodically check the ESBD will in no way release the Respondent from Addenda or additional information resulting in additional costs to meet the requirements of the RFO.

3.10. Pre-agreement Costs

TxDOT shall not be responsible or liable for any cost incurred by any Respondent in the preparation and submission of its Response to this RFO or for other costs incurred by participating in this procurement process.

3.11. Ownership of Responses

All Responses become the property of TxDOT. TxDOT reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Respondent's

Response does not eliminate this right.

3.12. Public Information

TxDOT is a government agency subject to the Texas Public Information Act. Responses submitted to TxDOT as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Respondent may not mark its complete Response “copyrighted” or mark every page as proprietary or confidential, but if a Respondent believes that its Response, or parts of its Response, may be exempted from disclosure under Texas law, the Respondent must specify page-by-page and line-by-line the parts of the Response that it believes are exempt. In addition, the Respondent must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s). **Any part of Respondent’s Response not specifically marked as confidential by Respondent is subject to release as public information without review by the Office of the Attorney General (OAG).** Pursuant to Texas Government Code section 2252.907, Respondent is required to make any information created, exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

The Office of the Texas Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act. TxDOT shall comply with all decisions of the OAG.

TxDOT assumes no responsibility for asserting legal arguments on behalf of any Respondent. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

3.13. News Release

Respondent-initiated news releases pertaining to this RFO shall not be made without prior written approval of TxDOT, in its sole and absolute discretion. A minimum of ten (10) Business Days written notice is required for such approval.

4. EVALUATIONS, NEGOTIATIONS, AND AWARD

4.1. Evaluation of Responses

TxDOT will review Responses to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All Responses determined to be responsive will go through a financial review overseen by the TxDOT Financial Management Division. **The financial review (here, a review of the financial solvency of the Respondent) and Completed HUB Subcontracting Plan is a pass/fail determination, failure may result in a vendor be found non-responsive.** Only Responses that pass will be considered for award.

At any time during the evaluation process, TxDOT may ask any or all Respondents to elaborate on or clarify specific points or portions of their Response. TxDOT’s request and Respondent’s response shall be in writing.

4.2. Evaluation Criteria

4.2.1 Pass/Fail Criteria

In addition to the weighted criteria listed below TxDOT also reviews additional Pass/Fail criteria as follows:

1. Financial Information is a Pass/Fail review conducted by the Financial Management Division;
2. Completion and signing of RFO Attachment 1 Respondent Information Form.
3. Completion and signing of HUB Subcontract Plan; and
4. In accordance with §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code, Respondents may fail this selection criterion for any of the following conditions:
 - a. A score of less than a C or Legacy Unsatisfactory in the Vendor Performance System;
 - b. Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports; and
 - c. Having purchase orders that have been cancelled in the previous twelve (12) months for non-performance (including but not limited to late delivery, etc.).

4.2.2 Weighted Evaluation Criteria

TxDOT will use the following criteria (listed in order of priority) to determine the best value for TxDOT:

1 Solution Quality	40%
2 Experience and Past Performance	40%
3 Service Integration Approach	10%
4 Pricing	10%
5 Exceptions*	N/A

*Exceptions will be considered. The Respondent may be removed from further consideration if TxDOT determines its exceptions are excessive in quantity or substance. See [Section 3.6.12 Exceptions to Requirements \(including MSA Terms and Conditions\)](#) for additional information regarding Exceptions.

TxDOT’s evaluation of Respondent’s history and experience may include consideration of Respondent performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.115. TxDOT may also conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 TAC §20.115) TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and nonrenewals of contracts. Any such investigations will be at the sole discretion of TxDOT and

any negative findings, as determined by TxDOT, may result in non-award to respondent. Throughout the evaluation process, TxDOT may elect to evaluate other aspects of the Respondent's performance, such as Clarification sessions, including Respondent's presentation and proposed key staff's performance, Requests for Revised Offer (RFRO), etc. TxDOT will notify applicable Respondents when additional scoring will occur and will provide updated weights, etc., as appropriate.

* TxDOT will not score Exceptions; however, Exceptions will be considered in light of a Respondent's scores on the other weighted criteria.

4.3. Clarification and Integration Sessions

Based on Respondent evaluation scores and prior to Award, TxDOT in its discretion may hold a series of clarification, discussion, and/or integrations sessions with selected Respondents to ensure complete and accurate understanding of Responses to this RFO. These sessions may include oral presentations, solution/product demonstrations, and integration discussions with other Service Component Providers.

TxDOT, in its discretion, may also hold a series of Integration sessions between select Respondent(s) and TxDOT Service Component Providers, to align the proposed solutions with current offerings as well as with potential Service Component Providers responding to other related solicitations. To facilitate these sessions, the State may distribute Respondent Solution Document to participants as appropriate.

NOTE: The Solution Document or other Response material will not be shared with other Respondents during the solicitation process. After Contract Award, TxDOT will follow the process described in [Section 3.12 Public Information](#).

Respondent shall not mark any of the Respondent Solution Document as confidential or copyright material. Failure by Respondent to allow such distribution of its solution may disqualify the Respondent from inclusion in further procurement discussions.

This RFO is intended to provide Respondent with enough information to build its Response, but it is the Respondent's responsibility to obtain any additional information deemed necessary for the Respondent to meet its obligations under the terms of this RFO. Respondents participating in Clarification sessions will submit a written Due Diligence plan to TxDOT as part of its amended Response.

4.4. Revised Offer

After the initial scoring, TxDOT may determine which responses may reasonably be considered for award selection and, at its discretion, may narrow the field of respondents that may participate in subsequent evaluation activities such as additional discussion sessions or a Revised Offer process. To the extent that the Revised Offer process is employed, TxDOT will evaluate revised offers in a manner consistent with the established best value scoring criteria.

TxDOT reserves the right to continue to evaluate Responses until such point as the best value, as defined by Texas Government Code, Sections 2157.003 and 2155.074, is obtained for the State.

4.5. Negotiations

At the conclusion of the evaluation, as described within [Sections 4.1 Evaluation of Responses](#)

and [4.4 Revised Offer](#) and above, TxDOT will determine the number of Respondents with which it will start Contract negotiations. Negotiations will continue until TxDOT, in its sole discretion, determines that the best value for the State has been obtained.

4.6. Award of Contract

TxDOT reserves the right to make award or awards to best serve the interest of the state.

Award will be made to the respondent(s) providing the best value to the state. Any award for this RFO shall be posted under solicitation number in the header of this document on the ESD, <http://www.txsmartbuy.com/sp>, upon execution of a Contract. All Responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all Contracts resulting from this RFO have been executed.

The issuance of this RFO does not imply that TxDOT is making an offer to do business with any RFO recipient or Respondent. No agreement or other binding obligation on TxDOT is implied or will occur unless and until a definitive agreement is executed. The issuance of this RFO and the submission of the Respondent's Response do not create any obligation upon TxDOT to purchase goods or Services from the Respondent, or to enter into any binding legal relationship with one (1) or more of the Respondents.

5. Appendix

5.1. Summary Response Package Files

Table 7: Summary of Response Package Files

Response Package 1 Administrative		
	RFO Reference	Form of Response
1	Transmittal Letter and Executive Summary	“ABC_Executive_Summary.docx”
2	Respondent Information Form (Attachment 1)	“ABC_RIF_Attachment_1.docx”
3	Schedule 2 of Attachment 7 Texas Family Code – Section 231.006	“ABC_TFC_Attachment_1.docx”
4	Schedule 3 of Attachment 7 Respondent Qualifications	“ABC_Qualifications.docx”
5	Financial Information	“ABC_Financial_Information.docx” (.docx or .pdf)
6	Addenda to the RFO	“ABC_Addenda.docx” (.docx or .pdf)
Response Package 2 Service Requirements		
	RFO Reference	Form of Response
7	Exhibit 2.1.3 ERP MAS Solution Document*	“ABC_Exhibit_2.1.3_ERPMAS_Solution.docx”
8	Exhibit 2.1.5 ADM Solution Document*	“ABC_Exhibit_2.1.5_ADM_Solution.docx”
9	Attachment 5 Respondent Transition Plan	“ABC_Transition_Plan_Response.docx”
10	Respondent Transition Project Plan	“ABC_Transition_Project_Plan.mpp.”
11	Schedules 4 and 5 of Attachment 7 Respondent References and Canceled Contract References	“ABC_References.docx”
12	Proposed Account Organization	“ABC_Exhibit_2.4_Key Personnel.docx”
13	Attachment 4: Respondent Release of Liability	“ABC_Release_of_Liability.docx”
Response Package 3 Pricing		
	RFO Reference	Form of Response
14	Exhibit 4.1 Pricing and Volumes	“ABC_Exhibit_4.1_Pricing_and Volumes.xlsx”
Response Package 4 HUB		
	RFO Reference	Form of Response
15	Attachment 2 HUB Subcontracting Plan (Completed)	“ABC_HUB_Subcontracting_Plan.pdf”
Response Package 5 Exceptions		
	RFO Reference	Form of Response
16	Redlined version of Master Services Agreement	“ABC_MSA_Exceptions.docx”
17	RFO Attachment 3: Exceptions	“ABC_Exceptions.xlsx”

*Respondent shall include one (1) or both Solution Response documents as part of the submission

based on Respondent's decision to respond to one (1) or both Service Components to this RFO.
<End of RFO>

Attachment 1: Respondent Information Form

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Respondent.

1. Company Name: _____

2. Texas Comptroller of Public Accounts (TCPA) Vendor Identification Number:

3. Current Federal Employer Identification Number (EIN): _____

4. Principal place of business

Address:

City:

State:

Zip Code:

5. Facility responsible for servicing the Contract

Address:

City:

State:

Zip Code:

6. Contact Person regarding Respondent's Response to the RFO

Name:

Title:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

The names and positions of any additional persons granted authority to contractually bind, Respondent if Respondent is selected for further negotiations with TxDOT:

7. Contact Person responsible for contract negotiation

Name:

Title:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

By signature hereon, Respondent certifies that: All statements and information prepared and submitted in the response to this RFO are current, complete, and accurate. By signing this response, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

Signature of Officer or Agent empowered to contractually bind the Respondent

Title

Date



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Rev. 2/17

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

IMPORTANT: If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
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	- Yes - No		\$	%
	- Yes - No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 2/17

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable

RFO Attachment 8

Historically Underutilized Business Participation

I.3 Historically Underutilized Business Participation

In accordance with Texas Government Code [§2161.252](#), a proposal that **does not** contain a [HUB Subcontracting Plan \(HSP\)](#) is non-responsive and will be rejected without further evaluation. In addition, if the Department determines that the HSP was not developed in good faith, it will reject the proposal for failing to comply with material specifications based on the solicitation.

I.3.1 Introduction

The Department is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. The Department encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means.

Pursuant to [Texas Government Code §2161.181](#) and [§2161.182](#), and the Department's HUB policy and rules, the Department is required to make a good faith effort to increase HUB participation in its contracts. The Department may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

I.3.2 Department's Administrative Rules

The Department has adopted the CPA's HUB rules as its own. The Department's HUB rules are located in [Title 43, Part 1, Chapter 9, Subchapter L](#) of the Texas Administrative Code, and the CPA rules are located in [Title 34, Part 1, Chapter 20, Subchapter D, Division 1](#). If there are any discrepancies between the Department's administrative rules and this solicitation, the rules shall take priority.

I.3.3 HUB Participation Goal

The CPA has established statewide HUB participation goals for different categories of contracts in [34 T.A.C. §20.284](#). To meet or exceed the HUB participation goals, the Department encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This contract is classified as a commodity contract under the CPA rule, and therefore has a HUB Annual Procurement Utilization Goal of 26.0% per fiscal year.

I.3.4 Required HUB Subcontracting Plan

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including

any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

In accordance with [34 T.A.C. §20.285\(a\),\(1\),\(C\)](#) of the HUB Rules. State agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

The Department has determined that subcontracting opportunities are probable for this solicitation. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

The Department shall review the documentation submitted by the respondent to determine if a good faith effort has been made, in accordance with solicitation and HSP requirements. During the good faith effort evaluation, The Department may, at its discretion, allow clarifications or enhancements to information submitted with the HSP.

If the Department determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with the advertised specifications. The reasons for rejection shall be recorded in the procurement file.

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

I.3.5 CPA Centralized Master Bidder's List

Respondents may search for HUB subcontractors in the CPA's [Centralized Master Bidders List \(CMBL\)/HUB Directory](#). For this procurement, the Department has identified the following class and item codes for potential subcontracting opportunities:

NIGP Class/Item Code: 920-03

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

The Department does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

I.3.6 HUB Subcontracting Procedures – If a Respondent Intends to Subcontract

An HSP must demonstrate that the respondent made a good faith effort to comply with the Department's HUB policies and procedures. The following subparts outline the items that the Department will review

in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

I.3.6.1 Identify Subcontracting Areas and Divide Them into Reasonable Lots

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

I.3.6.2 Notify Potential HUB Subcontractors

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs that have an active HUB certification. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

I.3.6.2.1 Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

I.3.6.2.2 Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, or 3:

I.3.6.3 Method 1: Respondent Intends to Subcontract with only HUBs:

The respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms **100%** of all available subcontracting opportunities will be performed by one or more HUBs; **or**,

I.3.6.4 Method 2: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):

The respondent must identify in the HSP and submit written documentation that one or more HUBs, with an active HUB certification, will be utilized; and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. Only HUB subcontractors that have an existing contract with the respondent for less than five years may be used to comply with the good faith effort requirements under this method.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; **or**,

I.3.6.5 Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to minority or women trade organizations or development centers to assist in identifying potential HUBs of the subcontracting opportunities the respondent intends to subcontract.

Respondents must give minority or women trade organizations or development centers at least seven (7) working days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of minority and women trade organizations is located on the CPA's website under the [Minority and Women Organization link](#).

- written notification to at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
 - a description of the scope of work to be subcontracted,
 - information regarding the location to review project plans or specifications,
 - information about bonding and insurance requirements,
 - required qualifications and other contract requirements, and
 - a description of how the subcontractor can contact the respondent.

Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the respondent's response unless circumstances require a different time-period, which is determined by the agency and documented in the contract file;

Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in identifying qualified applicants for the HUB program.

I.3.6.6 Written Justification of the Selection Process

The Department will determine if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. The Department may require the respondent to submit additional documentation explaining how the respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders, and did not reject qualified HUBs, with an active HUB certification.

I.3.7 Method 4: Respondent Does Not Intend to Subcontract

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the "Self-Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes

identified in Section I.3.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by the Department:

- provide evidence of sufficient respondent staffing to meet the solicitation requirements,
- provide monthly payroll records showing the respondent staff fully dedicated to the contract,
- allow the Department to conduct an onsite review of company headquarters or work site where services are to be performed, and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

I.3.8 Post-award HSP Requirements

The [HUB Subcontracting Plan \(HSP\)](#) shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, the Department will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records documenting compliance with the HSP, and must submit monthly subcontract reports to the Department by completing the HUB [“Prime Contractor Progress Assessment Report”](#) and **“HUB Subcontracting Plan (HSP) Progress Compliance Form - 2579”**. This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency’s Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, the Department will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for the Department’s review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from the Department before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section I.3.6 of this solicitation (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, or participate in the Mentor Protégé Program).

For this reason, the Department encourages respondents to identify, as part of their HSP, multiple subcontractors able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow the Department to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract, and will be subject to remedial actions. The Department may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program ([see 34 T.A.C. §20.585 relating to Debarment](#)) and ([see 34 T.A.C. §20.586 relating to Procedures for Investigations and Debarment](#)).

**ATTACHMENT 4
RESPONDENT RELEASE OF LIABILITY**

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE AND SUBMITTED WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION

To company providing the reference:

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

Enter name of company (Respondent) or key staff person's name needing a reference

to the:

Texas Department of Transportation
Solicitation Evaluation Team

Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.

Signed the _____ day of _____, 20____.

(Respondent Signature)

(Respondent Printed Name)

(Respondent Title)

Signed the _____ day of _____, 20____.

(Key Staff Signature or "N/A" if Respondent-level release)

(Key Staff Printed Name)



Texas Department of Transportation

Application Services

RFO Attachment 5

Transition Plan Response

Version 1.0

Solicitation No. 601440000032007

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1.0 Service Provider Guidelines

This Attachment supplies specific information for the Service Provider's use when responding to the RFO. This **Attachment 5 Application Services Transition Plan Response** is intended to be updated in stages throughout the procurement process. This Attachment contains an outline of key topic areas that Service Provider is required to address as part of its response to this RFO. The response will include a thorough description of its Transition Plan, solution and overall approach to implementing the Services in the TxDOT environment and successfully transitioning responsibility from the Incumbent Service Provider.

Service Provider Instructions

1. Service Provider shall modify the electronic version of this Attachment to respond to the requirements herein by completing all sections while refraining from modifying section titles or removing sections.
2. Although some sections are related, the Service Provider should minimize repeated responses (copy/paste) in subsequent sections, ensuring the response for each section is specific to the requirements therein.
3. Assumptions will not be included in this response and must be documented as instructed in the **RFO Instructions Section 3.6** within the defined structure of **Exhibit 4.1 Pricing Structure**.
4. The Service Provider shall refrain from providing "marketing materials" and background information already provided to TxDOT or otherwise available in the public domain.
5. The Service Provider shall return the completed file as part of its overall response to the RFO package, in accordance with the **RFO Response Instructions Section 3.6**.

2.0 Transition Overview

Service Provider shall describe its plan for taking over the Services from the Incumbent provider at the Commencement Date, including, but not limited to, documenting pre-Commencement activities that must occur, how transition will take place at the Commencement Date, and what post-Commencement Date activities will be required to fully transfer all components of the Services from the Incumbent (e.g., assets, software licenses and operational documentation). Service Provider shall include Knowledge Transfer requirements and associated activities and schedule for such activities.

Service Provider will describe its transition overview in the space below.

2.1 Transition Guiding Principles and Critical Success Factors

Service Provider shall describe the guiding principles that will protect the key interests of TxDOT during Transition and the characteristics, conditions, or variables it believes will have a direct and critical impact on the effectiveness, efficiency, and viability of the Service Provider's solution.

Service Provider shall describe its transition guiding principles and success factors in the space below.

2.2 High Level Transition Timeline

The Service Provider shall describe the high-level timeline and critical milestones from the start of pre-Transition activities through the point at which the Service Provider expects it will be delivering predictable, repeatable results that meet the requirements of the RFO. This solution timeline shall be a summary of the Transition Project Plan submitted as required in response to the RFO.

Service Provider shall describe the high level transition timeline in the space below.

2.3 Critical Success Factors and Dependencies

Service Provider shall describe three (3) to five (5) characteristics, conditions, or variables it believes will have a direct and critical impact on the effectiveness, efficiency, and viability of its proposed solution. The Service Provider shall describe its approach to mitigating risks and ensuring these critical factors are successfully executed.

Service Provider shall identify the information or activities needed from TxDOT other SCPs or the Incumbent Service Provider as part of transition planning, solution development, transition readiness assessment, and work turnover.

Service Provider shall describe the Critical Success Factors and Dependencies in the space below.

3.0 Transition Plan

3.1 Transition Approach and Methodology

Service Provider shall describe the overall approach and methodologies that they intend to employ in the Transition of the Services and implementation of the requirements of this RFO.

Service Provider shall describe its transition approach and methodology in the space below.

3.2 People, Skills and Training

Service Provider shall describe their overall approach to acquiring and retaining the necessary resources and skills to transition the Services from the Incumbent Service Provider.

Service Provider shall describe its approach to resourcing, equipping and training the transition and delivery teams in the space below.

3.3 Service Integration and Cross Functional Services

Service Provider shall describe its plans for integrating and complying with the various ITIL Service Management processes that are set forth in the existing SMM, **Exhibit 2.1.1 Cross Functional Services SOW** and related documents. Additionally, the Service Provider shall describe how it will conform to the requirements set forth in **Exhibit 1.3 Service Management Manual**. Include Service Provider's expectations for what systems will be in place at the Commencement Date and what systems or changes will be put in place subsequently.

Service Provider shall describe how it will successfully integrate into the TxDOT Operating environment, cross-functional processes, services and systems in the space below.

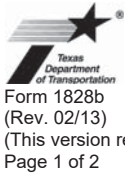
3.4 Transition Assistance Support

The Service Provider shall describe the support it will require from the Incumbent Service Provider to prepare for and execute a smooth transition. Including the following:

1. **Personnel Support** - Service Provider shall describe the personnel and organizational support required from the Incumbent Service Provider and applicable Third Party vendors that are critical to planning, preparation and turnover of Services.
2. **Critical Information** - Service Provider shall describe critical information and knowledge transfer required from the Incumbent Service Provider(s) as part of transition planning, solution development, transition readiness assessment and work turnover.
3. **Contingency Plans** - Service Provider shall describe areas for which contingency plans will be developed, under what conditions and in what timeframe they would be invoked to address inadequate information or support capabilities from the Incumbent Service Provider.

4. **Technology Support** – Service Provider shall describe the technology assistance required from the Incumbent and SCPs to support in the transition and effective integration of tools and systems.

Service Provider shall describe the Transition Assistance Support requirements in the space below.



Information Resources Security Compliance and Confidentiality Agreement (External User)

Printed Name

Payroll Unit No.

I understand that the Texas Department of Transportation ("TxDOT") collects and maintains confidential and privileged information.

I understand that TxDOT permits access to data containing confidential and privileged information by contractual agreement with external users not employed by TxDOT.

I understand and agree that any and all information that may come to my knowledge while using the TxDOT's information resources¹ may not be used or disclosed except as expressly authorized by TxDOT's management.

I understand and agree that I will observe the standards of confidentiality that must be maintained as I exchange business and technical information and that a breach of those standards may result in termination of my contract.

I understand and agree that any and all information system password(s) or access procedure(s) I receive or devise for use with TxDOT's information systems are confidential and reserved for official state agency business only. I will not disclose to any unauthorized person any password(s) or access procedure(s) I am given or devise, and I will not post these procedure (s) or written password(s) where persons who are not authorized to use TxDOT's system may view them.

I understand and agree that unauthorized release of confidential information, or actions deemed negligent resulting in damages/loss of information resources, will result in termination of my contract and may also result in legal action.

I understand and agree that I am responsible for all information system transactions performed as a result of access authorized by the use of my password(s) or procedure(s).

I understand and agree that my use of any access procedure(s) or password(s) not specifically issued to me or to a group of which I am a member is expressly prohibited and that attempts to access and utilize TxDOT's information systems for other than their intended purposes may result in prosecution under the Computer Fraud and Abuse Act of 1986 as well as any other applicable statutes and regulations.

I agree **not** to attempt to circumvent information system security devices or procedures by using or attempting to use any transaction, software, files, or other resources that I am not authorized to use.

I understand that intentionally failing to observe these requirements or intentionally bypassing them may constitute a breach of information systems security as defined in the Texas Penal Code §33.02 and may result in immediate loss of information system access.

I understand and agree that I may have access in the performance of job duties to any other intellectual property (trademarks, patents, trade secrets and materials and documents included there under) belonging to TxDOT and acknowledge that the source codes, programs, and related documentation constitute valuable intellectual property of TxDOT.

I understand and agree that these materials, including but not limited to commercial computer software and any accompanying documentation, that may be made available to me for my use by TxDOT are confidential and protected by intellectual property and copyright laws and are not to be disclosed, copied or shared with any unauthorized person(s)² without the written permission of TxDOT.

I understand and agree that the violation of intellectual property and copyright laws, including those applicable to computer software, may result in fines and/or other legal action.

I understand and agree that I may be required to develop, create or modify materials protected by intellectual property laws and that this is work for hire that is solely the intellectual property of TxDOT and as such may not be disclosed, copied or shared with unauthorized person(s) without the written permission of TxDOT.

I understand that using TxDOT's intellectual property for other than their intended purposes is prohibited and may result in termination of employment and prosecution pursuant to Texas Penal Code §31.05, as well as TxDOT's pursuit of any other legal remedies.

I understand and agree that any TxDOT-owned, developed, or licensed software will be returned to TxDOT upon termination of my contract.

I agree to abide by all TxDOT information security policies, procedures, and practices as outlined in the *External TxDOT User Policies*, which are located at ftp://ftp.dot.state.tx.us/pub/txdot-info/isd/external_txdot_user_policies.doc

I acknowledge receipt of this agreement, understand its contents, and agree to abide by the terms set forth herein. Additionally, I have been informed that questions regarding this agreement and/or issues related to the release or disclosure of confidential information should be directed to the director of TxDOT's Technology Services Division.

Signature

Date

Original to project manager for inclusion in the user's file.

Copy to be retained by security administrator for inclusion in user's security file.

¹ Information resources include computer systems, telephone systems, voicemail systems, fax systems, and regular mail systems as well as the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

² Unauthorized person(s) include anyone who is not bound by a written confidentiality agreement expressly covering TxDOT's intellectual property and related documentation.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

QUESTIONS AND ANSWERS TEMPLATE
SOLICITATION NO. 60144000032007

Solicitation Name: Application Services

Dated:

	Reference	Question
1.	Document /Exhibit Reference: Section #/Paragraph #:	
2.	Document /Exhibit Reference: Section #/Paragraph #:	
3.	Document /Exhibit Reference: Section #/Paragraph #:	
4.	Document /Exhibit Reference: Section #/Paragraph #:	
5.	Document /Exhibit Reference: Section #/Paragraph #:	
6.	Document /Exhibit Reference: Section #/Paragraph #:	
7.	Document /Exhibit Reference: Section #/Paragraph #:	

TEXAS FAMILY CODE – SECTION 231.006

Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts

Respondent shall fill out the appropriate information, sign and return the schedule.

Under Family Code §231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate. Any Offer submitted under this RFO shall contain the names and the last four (4) digits of the social security numbers of person or entity holding at least a twenty-five percent ownership interest in the business entity submitting the Offer. Respondents meeting the ownership must complete the following;

Name Last Four (4) Digits of Social Security Number

Name Last Four (4) Digits of Social Security Number

Name Last Four (4) Digits of Social Security Number

If respondent does not meet the ownership criteria under Texas Family code - Section 231.006, check the box below, sign and return the schedule.

This Schedule is not applicable

Signature

Title

THIS PAGE SHALL BE RETURNED WITH THE RESPONSE. FAILURE TO RETURN THIS PAGE WILL RESULT IN THE RESPONSE BEING CONSIDERED NON-RESPONSIVE. ANY NEGATIVE RESPONSE(S) MAY RESULT IN DISQUALIFICATION OF THE RESPONSE.

RESPONDENT QUALIFICATIONS AND EXPERIENCE
SOLICITATION NO. 60144000032007

Respondent shall use this schedule or a facsimile to clearly show how they meet the requirements set forth in RFO section 3.6.3.

Respondent Name:	
<u>Addresses</u> Physical: Mailing:	
Phone Number: Fax Number: E-mail address:	
Legal Status: Type of Organization, i.e., corporation, partnership, sole proprietorship	
Name: Phone Number: Email Address: Of person to contact with questions regarding the solicitation.	
Number of years in business and scope of operation.	
Name and title of person signing the response:	
DOCUMENTATION OF COMPANY QUALIFICATIONS AND EXPERIENCE:	
Experience and capabilities in the areas of services to be provided. Respondent should address the requirements specified in the RFO:	

This form may be modified as needed to comply with the requirement to document company information.

RESPONDENT PAST PERFORMANCE REFERENCE INFORMATION
SOLICITATION NO. 60144000032007

Respondent Name: _____

Reference No. 1

Name of Client Organization:			
Business Address			
Business City			
Business State		Zip	

Contact Person Name			
Contact Person Title			
Phone Number		Fax	

Contract Title			
Contract Description (including description of services, contract number and award date)			
Operations Start Date		Operations End Date	

Reference No. 2

Name of Client Organization:			
Business Address			
Business City			
Business State		Zip	

Contact Person Name			
Contact Person Title			
Phone Number		Fax	

Contract Title			
Contract Description (including description of services, contract number and award date)			
Operations Start Date		Operations End Date	

Reference No. 3

Name of Client Organization:			
Business Address			
Business City			
Business State		Zip	
Contact Person Name			
Contact Person Title			
Phone Number		Fax	
Contract Title			
Contract Description (including description of services, contract number and award date)			
Operations Start Date		Operations End Date	

RESPONDENT CANCELED CONTRACTS FORM
SOLICITATION NO. 60144000032007

Respondent Name: _____

Company or Entity Name and Address	Contract Description (including contract award date, operations start and end dates)	Reason for Cancellation	Contact Information
1.			Contact Name: Contact Title: Contact Phone Number: Contact e-mail:
2.			Contact Name: Contact Title: Contact Phone Number: Contact e-mail:
3.			Contact Name: Contact Title: Contact Phone Number: Contact e-mail:

ADDITIONAL RESPONDENT INFORMATION

Early Payment Program

TxDOT is offering an important program to all respondents that provide prioritized invoice processing and payments (prior to the 30th day after receipt of a correct invoice). The program provides enrolled vendors enhanced benefits from improved invoice processing to priority handling to cash advancement and technology efficiencies.

Respondents offering a cash discount in exchange for TxDOT's priority invoice processing and early payment agreement, should complete and return the attached form entitled "Priority Invoice and Early Payment Program" with the response.

Additional information may be found at the following website:

<http://www.txdot.gov/business/vendors/epp.html>.



TxDOT has partnered with Oxygen Finance Americas, Inc. to offer all bidders and active TxDOT vendors the opportunity to enroll in the Early Payment Program (EPP). The EPP gives vendors more flexibility and control of their business and finances. Benefits include:

- Electronic invoice submissions sent to one email address for all TxDOT divisions
- Invoices are time-stamped upon receipt
- Rejection notices are usually sent within 1 business day with instructions on how to revise & resubmit for payment
- Payments are typically made within 10 business days*, providing you cash sooner
- Monthly remittance statements are provided to EPP vendors for reconciliation
- Live supplier support specialists are available to help EPP vendors through all stages of invoicing and payments

Please fill out the information below and return this form with your completed response

Company: _____	Tax ID/EIN: _____
Contact Name: _____	Title: _____
Address: _____	
Email: _____	Phone: _____
Billing Contact: _____	Title: _____
Address: _____	
Email: _____	Phone: _____

OPTIONS (Please check one):

- Yes, I would like to enroll in the EPP with the following terms for all future invoices: _____ % / 10 Days / Net 30 **
 Texas State Agencies are allowed to make early payments to vendors, but are required to take a discount in return. (Texas Government Code, Chapter 2155.382). TxDOT allows EPP vendors to determine the invoice discount rate (%) that best suits their business needs.
- I confirm that I am an authorized representative of this company and that if TxDOT pays any Invoiced Debt owed to the aforementioned company under or in connection with any Contract prior to the date by which such payment would otherwise be required to be made under the terms of that Contract, TxDOT shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, an Early Payment Discount which it will deduct and retain from that Invoiced Debt. These terms will apply to all invoices unpaid as of the date of signature as printed on this form. Early payment discounts are dynamically calculated, with a target payment date of 10 days from the date of invoice acceptance. The final discount taken is proportionate to the number of days the payment is accelerated. A discount is taken ONLY if payment is made before 30 days from the date of invoice acceptance.
 - I confirm that I am an authorized representative of this company and agree to the Oxygen Network Supplier Terms of Use found at <http://ftp.dot.state.tx.us/pub/txdot-info/fin/early-pmt/oxygen-network-terms.pdf>
- I'm interested in the EPP, but would like a supplier support specialist to call me at this number _____
- I am already enrolled in the EPP
- No, I am not interested at this time

Printed Name _____ Signature _____ Date _____

*Please note: Direct deposits post 1-3 business days after the payment date and paper checks could take up to 5 business days to receive

**TxDOT reserves the right to approve or reject any proposed rates.

To learn more about the program and its benefits, visit www.txdot.gov/business/vendors/epp.html

To speak with a supplier support specialist, call 844.893.6837 or email at earlypay@txdot.gov

THIS PAGE SHOULD BE RETURNED WITH YOUR COMPLETED RESPONSE



Master Services Agreement

Between

Texas Department of Transportation (TxDOT)

and

Service Provider

RFO Name: Application Services
Solicitation No. 601440000032007

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- Attachment B: Insurance and Risk of Loss
- Attachment C: Form of Source Code Escrow
- Attachment D: Form of Parent Guaranty
- Attachment E: Form of Work Order

Exhibit 1.0 Operating Model (series name only – no document)

- a. Exhibit 1.1 Definitions
- b. Exhibit 1.2 Governance
- c. Exhibit 1.3 Service Management Manual (SMM)

Exhibit 2.0 Service Model (series name only – no document)

- a. Exhibit 2.1.1 Cross Functional Statement of Work
- b. Exhibit 2.1.2 ERP MAS Statement of Work
- c. Exhibit 2.1.3 ERP MAS Solution Document
- d. Exhibit 2.1.4 ADM Services Statement of Work
- e. Exhibit 2.1.5 ADM Services Solution Document
- f. Exhibit 2.2 Termination Assistance Services
- g. Exhibit 2.3 IT Service Continuity Management
- h. Exhibit 2.4 Key Personnel

Exhibit 3.0 Performance Model

- a. Exhibit 3.1 Service Level and Deliverables Matrix
- b. Exhibit 3.2 Service Level Definitions
- c. Exhibit 3.3 Reports
- d. Exhibit 3.4 Operating Agreements

Exhibit 4.0 Business Model

- a. Exhibit 4.1 Pricing Structure
- b. Exhibit 4.2 Financial Responsibility Matrix
- c. Exhibit 4.3 Form of Invoice and Data Feed
- d. Exhibit 4.4 In-Flight Projects
- e. Exhibit 4.5 Skill Set Descriptions
- f. Exhibit 4.6 Personnel Projection Matrix

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "MSA" or "Agreement") is entered into as of the Effective Date by and between the Texas Department of Transportation ("TxDOT"), on behalf of the State of Texas, with its principal place of business at 125 East 11th Street, Austin, Texas 78701, and _____ ("Service Provider"), with a principal place of business _____.

WHEREAS, in accordance with the Laws of the State, TxDOT issued the "Request for Offers (RFO) for _____" on the Texas Comptroller of Public Accounts' "Electronic State Business Daily (ESBD)" Web site, Request for Offer No. _____ (the "RFO");

WHEREAS, in response to the RFO, the Service Provider submitted Service Provider's Response, dated _____, as amended and supplemented thereafter (the "Response");

WHEREAS, after evaluation of all Responses and a determination that the Service Provider should be invited to negotiations, TxDOT invited the Service Provider to engage and the Service Provider has engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement; and

WHEREAS, TxDOT desires to procure from the Service Provider, and the Service Provider desires to provide to TxDOT on the terms and conditions specified in this Agreement, the Services described in this Agreement, on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, TxDOT and the Service Provider (collectively, the "Parties" and each, a "Party") hereby agree as follows:

1 INTRODUCTION

1.1 Provision, Performance and Management by the Service Provider.

TxDOT desires that certain services presently provided, performed and managed by or for TxDOT in accordance with this Agreement.

The Service Provider has carefully reviewed TxDOT's requirements, has performed all due diligence it deems necessary, has received all information requested and required of TxDOT, and desires to deploy, perform, and manage such services for TxDOT. If Service Provider later discovers such due diligence was insufficient or lacking in certain information, Service Provider shall assume any associated costs or expenses.

1.2 Service Provider's Experience and Qualifications.

Service Provider represents and warrants that it is an established provider of the Services (as defined in [Section 4.1 Overview.](#)) as awarded under this Agreement and has the skills, qualifications, expertise, financial resources and experience necessary to provide the Services (including the plans, reports, and other deliverables) described in this Agreement.

1.3 Other Terms.

The terms defined in this Agreement include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Exhibit, Attachment, or other subdivision. Article, Section, Subsection, Exhibit and Attachment references refer to articles, sections and subsections of, and exhibits and attachments to, this Agreement. The words "include" and "including" shall not be construed as terms of limitation. Unless otherwise modified, the words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year. As stated in [Article 21 GENERAL](#), the word "notice" and "notification" and their derivatives means notice or notification in writing. References in this Agreement to any Law shall be to such Law in changed or amended form or to a newly adopted Law replacing a prior Law. All references to this Agreement shall include the

Exhibits and Attachments to this Agreement unless otherwise provided. Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.

1.4 Definitions.

Except as otherwise expressly provided in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed to them in **Exhibit 1.1 Definitions**. Capitalized terms used in this Agreement but not defined in **Exhibit 1.1 Definitions** shall have the meanings ascribed to them in ITIL. Words having well-known technical or trade meanings, but not otherwise defined in **Exhibit 1.1 Definitions**, ITIL, or TOGAF shall be accorded such meaning unless expressly defined otherwise herein. Terms or phrases that are not capitalized are to be given their usual meaning.

1.5 Compliance with Procurement Laws.

This Agreement is the result of compliance with applicable procurement Laws of the State. TxDOT issued the RFO for the Services. Service Provider provided the Response and after an evaluation and a determination by TxDOT that Service Provider was invited into negotiations, TxDOT and Service Provider engaged in extensive negotiations, discussions and due diligence that culminated in the formation of the contractual relationship described in this Agreement. TxDOT shall post a notice of award for an agreement arising from the RFO on the Electronic State Business Daily website.

2 CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

This Agreement includes each of the Exhibits, Attachments, and other documents attached to this Agreement which are hereby incorporated into and deemed part of this Agreement, and unless otherwise expressly stated all references to this Agreement shall include the Exhibits, Attachments and other documents attached to this Agreement. A listing of Exhibits and certain of the Attachments is included in the table of contents. Unless otherwise expressly stated, references to specific Exhibits and Attachments include all numbered subsidiary Exhibits and Attachments (e.g., references to **Exhibit 3.0 Performance Model** include not only **Exhibit 3.0 Performance Model**, but also all sub-exhibits in that series (i.e., 3.1, 3.2, etc.).

In the event of a conflict between or among the various documents comprising the Agreement, the following order of precedence shall control:

1. Article 1 through Article 21 of this Agreement;
2. **Exhibits 1.0 (Operating Model), 2.0 (Service Model), 3.0 (Performance Model), and 4.0 (Business Model)**;
3. Request for Offer _____ and any Revisions of Addenda thereto;
4. The Response.

3 TERM

3.1 Initial Term.

The initial term of this Agreement shall commence as of 12:00:00 a.m., Central Time on the Effective Date and continue until 11:59:59 p.m., Central Time, on _____, unless this Agreement is terminated earlier as provided herein, in which case the initial term of this Agreement shall end at 11:59:59 p.m., Central Time, on the effective date of such termination (the "**Initial Term**").

3.2 Extension.

By giving notice to the Service Provider no less than ninety (90) days prior to the expiration date of the Initial Term or the then-current Renewal Term, TxDOT shall have the right to extend the Term for _____ extension periods (each, a "**Renewal Term**") of up to one (1) year each (the exact period of which shall be specified in TxDOT's notice of extension) on the terms and conditions of this Agreement that are then in effect.

4 SERVICES

4.1 Overview.

- (a) **Services.** Commencing on the Commencement Date, the Service Provider shall provide the Services to TxDOT, and, upon TxDOT's request, to Authorized Users. The Services shall consist of any or all of the following, as they may evolve during the Term or be supplemented, enhanced, modified or replaced, in each case in accordance with and within the scope of this Agreement.

The services, functions and responsibilities described in this Agreement and its Exhibits and Attachments and the following:

- (1) the Transition Services, as further described in [Section 4.2 Transition Services](#), and the approved Transition Plan as described in **Exhibit 3.1 Service Level and Deliverable Matrix**;
 - (2) the services, functions and responsibilities described in **Exhibit 1.0 Operating Model**, **Exhibit 2.0 Service Model**; **Exhibit 3.0 Performance Model**, and **Exhibit 4.0 Business Model**;
 - (3) any New Services, upon TxDOT's authorization of such New Services in accordance with the terms of this Agreement; and
 - (4) Termination Assistance Services, as further described in [Section 4.3 Termination Assistance Services](#), and **Exhibit 2.2 Termination Assistance Services**.
- (b) **Included Services.** If any services, functions, or responsibilities not specifically described in this Agreement are an inherent, necessary, or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement, such services, functions, or responsibilities are deemed to be included within the scope of the Services to be delivered for the Charges, as if such services, functions, or responsibilities were specifically described in this Agreement
- (c) **Pre Commencement Services.** TxDOT and Service Provider may agree that performance of certain Services by Service Provider prior to the Commencement Date is necessary to avoid adverse impact on activities, operations, facilities, processes, or systems of TxDOT. In such event, the Parties shall mutually agree to the scope of Services, roles and responsibilities of the Parties, deliverables and deliverable acceptance criteria associated with the Services, charges, and the timeframe for performance of the Services. Service Provider shall invoice TxDOT after the Commencement Date for any Services provided prior to the Commencement Date.
- (d) **Service Notices.**
- (i) **Notification of Problems.** Service Provider shall provide to TxDOT written notice of any acts or omissions (whether by TxDOT, a Service Component Provider, TxDOT Contractor, Service Provider, or any third party), any failure to perform any of each such party's obligations under the Agreement and any other events that may affect Service Provider's performance of Service Provider's obligations under the Agreement. Service Provider shall provide such written notice promptly after Service Provider first knew or should have known of such acts, omissions, or failures or other events. Such written notice shall describe in reasonable detail such acts, omissions, failures, or other events and the manner in which the foregoing may affect Service Provider's performance.
 - (ii) **Notification of Defaults.** TxDOT and Service Provider shall promptly inform the other Party in writing of any breach of, misuse, or fraud in connection with any Third Party Contract, Equipment Lease, or Third Party Materials license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse, or fraud.
 - (iii) **Notice of Adverse Impact.** If Service Provider becomes aware of any failure of Service Provider to comply with its obligations under this Agreement or any other situation (a) that has impacted or reasonably could impact the maintenance of TxDOT's financial integrity or internal controls, the accuracy of TxDOT's financial, accounting or other records and reports, or compliance with

TxDOT Rules, TxDOT Standards or applicable Laws, or (b) that has had or reasonably could have any other material adverse impact on the Services in question or the impacted operations of TxDOT, then, Service Provider shall immediately inform TxDOT in writing of such situation and the impact or expected impact and Service Provider and TxDOT shall meet to formulate an action plan to minimize or eliminate the impact of such situation.

- (e) **Corrective Action Plan.** In the event that either (i) TxDOT reasonably determines that Service Provider has failed or is reasonably likely to fail to deliver the Services; or (ii) Service Provider has determined that it has failed or is reasonably likely to fail to deliver the Services, then TxDOT or Service Provider, as applicable, shall promptly (but not more than two (2) Business Days from the time in which such Party first becomes aware of any such situation) notify the other Party of such failure or anticipated failure (a “**change**”). Within five (5) Business Days following Service Provider’s receipt or delivery of a CAP Notice Service Provider will (A) perform a Root Cause Analysis (“**RCA**”) and identify the problems causing the failure, (B) report to TxDOT on the nature and scope of the problems identified, and (C) prepare a Corrective Action Plan to correct the problems as soon as practicable, including an estimated timeline therefore. Following delivery of a Corrective Action Plan and Acceptance of such Corrective Action Plan by TxDOT, Service Provider shall, within the timeline set forth in the Corrective Action Plan correct the problems in accordance with the Corrective Action Plan, advise TxDOT of the progress of correction efforts at stages determined by TxDOT, and demonstrate to TxDOT that all reasonable action has been taken to prevent a recurrence of the failure.
- (f) **Additional Remedies.** In the event that Service Provider fails to identify and resolve any problems within its control that may impede or delay the timely delivery of the Services, without prejudice to TxDOT’s other rights and remedies under the Agreement or at law or equity, Service Provider shall immediately provide, at its sole cost and expense, all such additional resources as are necessary to identify and resolve any such problems that may impede or delay the delivery of the Services. In addition, without prejudice to TxDOT’s other rights and remedies under the Agreement or at law or equity, TxDOT may equitably reduce the Charges in an amount reasonably estimated by TxDOT to account for the Services that TxDOT is not receiving or did not receive.

4.2 Transition Services.

- (a) **Transition.** The Service Provider shall perform the Transition Services, including provision of the deliverables described in the Transition Plan. Unless otherwise agreed, TxDOT shall not incur any charges, fees, or expenses payable to Service Provider or any third party engaged by the Service Provider in connection with the Transition Services, other than those charges, fees and expenses specified in **Exhibit 4.0 Business Model**.
- (b) **Transition Plan.** The preliminary Transition Plan is incorporated by reference to the Service Provider’s preliminary Response. The Service Provider shall complete, and submit to TxDOT for review, a final Transition Plan on or before the date set forth in **Exhibit 3.1 Service Level and Deliverables Matrix**. . TxDOT will review the submitted Transition Plan according to the procedures and criteria set forth in **Exhibit 2.1 Statement of Work** and **Exhibit 3.1 Service Level and Deliverables Matrix**. If a Transition Plan submitted by the Service Provider is not acceptable to TxDOT, Service Provider shall address and resolve any questions or concerns TxDOT may have and promptly incorporate any modifications, additions, or deletions requested by TxDOT. The Service Provider shall revise and resubmit the Transition Plan until Accepted by TxDOT. Upon TxDOT’s Acceptance, the Transition Plan shall automatically be incorporated into this Agreement by reference and shall supersede and replace all prior Transition Plans.
- (c) **Performance.** The Service Provider shall perform the Transition Services in accordance with the timetable set forth in the Transition Plan. Service Provider shall assist TxDOT in connection with TxDOT’s ’ evaluation or testing of the deliverables set forth in the Transition Plan. Except as otherwise expressly stipulated in the Transition Plan (which will appropriately acknowledge that some element of disruption may be inevitable as in any such transition, but shall in all events be minimized), Service Provider shall perform the Transition Services in a manner that shall not (A) disrupt or have an unnecessary adverse impact on the activities or operations of TxDOT, (B) degrade the Services then being received by TxDOT or (C) disrupt or interfere with the ability of TxDOT to obtain the full benefit of the Services. Without limiting its obligations or responsibilities, prior to undertaking any transition

- activity, Service Provider shall discuss with TxDOT all known TxDOT-specific material risks and shall not proceed with such activity until TxDOT is reasonably satisfied with the plans with regard to such risks (provided that, neither Service Provider's disclosure of any such risks to TxDOT, nor TxDOT's acquiescence in Service Provider's plans, shall operate or be construed as limiting Service Provider's responsibility under this Agreement). Service Provider will, at TxDOT's request, participate in transition meetings with other Service Component Providers.
- (d) **Notification of Problems.** Service Provider shall provide to TxDOT written notice of any acts or omissions (whether by TxDOT, a Service Component Provider, TxDOT Contractor, Service Provider or any third party), any failure to perform any of each such party's obligations under the Agreement and any other events that may affect Service Provider's performance of the Transition Services. Service Provider shall provide such written notice within thirty (30) days after Service Provider first knew or should have known of such acts, omissions, or failures or other events. Such written notice shall describe in reasonable detail such acts, omissions, failures or other events and the manner in which the foregoing may affect Service Provider's performance.
- (e) **Remedies for Transition Failures.** In the event that Service Provider fails to identify and resolve any problems that may impede or delay the timely completion of each task in the Transition Plan, without prejudice to TxDOT's other rights and remedies under the Agreement or at law or equity, (i) Service Provider will provide, at its sole cost and expense, all such additional resources as are necessary to identify and resolve any problems that may impede or delay the timely completion of each task in the Transition Plan, and (ii) TxDOT may equitably reduce the Charges set forth in **Exhibit 4.0 Business Model** in an amount reasonably estimated by TxDOT to account for the Services that TxDOT is not receiving or did not receive. Service Provider represents and warrants to TxDOT that, as of the Commencement Date, it is ready to commence performing the Services in accordance with the terms of this Agreement, including with respect to pricing, applicable Service Levels and other performance obligations. In the event that such representation and warranty is not true and correct, Service Provider will reimburse TxDOT for any costs or expenses incurred by TxDOT as a result of the failure of such representation and warranty to be true and correct. In the event that Service Provider is required to perform any Transition activities following the Commencement Date, Service Provider will complete such activities at its own cost and expense and in such a manner so as to not materially disrupt or cause any material adverse impact on TxDOT's operations or activities.

4.3 Termination Assistance Services.

- (a) **General.** Upon TxDOT's request, Service Provider shall provide Termination Assistance Services directly to TxDOT, its successors or assignees and any of their designee(s).
- (i) **Period of Provision.** Service Provider shall provide Termination Assistance Services commencing on the date a determination is made by TxDOT that there shall be an Assistance Event, which date may be up to twenty-four (24) months prior to effective date of such Assistance Event or on such earlier date as TxDOT may request, and continuing for up to three (3) months after the effective date of such Assistance Event, as designated by TxDOT, subject to such further extensions as permitted in [Section 4.4 Use of Third Parties](#).
- (ii) **Notice of an Assistance Event.** TxDOT will provide Service Provider with written notice of an Assistance Event. Such notice will include a description of the Services that are to be terminated or discontinued and the anticipated effective date of the Assistance Event. TxDOT may modify or update any of the information provided in the initial notice of an Assistance Event from time to time by a supplemental notice from TxDOT to Service Provider.
- (iii) **Extension of Termination Assistance Services.** TxDOT may elect to end the period for performance of Termination Assistance Services (in whole or in part), in its sole discretion, and restart the period for performance of Termination Assistance Services provided that the total of all such delays shall not result in Termination Assistance Services being performed for no more than a total of twenty-seven (27) months without Service Provider's consent.
- (iv) **Firm Commitment.** Service Provider shall provide Termination Assistance Services regardless of the reason for the Assistance Event (including a termination for cause by Service Provider). Service Provider shall maintain capability on at least thirty (30) days notice at all times during

the Term to deploy all necessary resources to perform any Termination Assistance Services.

- (v) **Performance.** Service Provider shall provide all Termination Assistance Services subject to and in accordance with the terms and conditions of this Agreement. Service Provider shall perform Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it is or was required to provide the same or similar Services in accordance with this Agreement. The quality and level of performance of Termination Assistance Services provided by Service Provider shall continue to meet or exceed the Service Levels and shall not be degraded or deficient in any respect. Service Level Credits shall be assessed for any failure to meet Service Levels during any period in which Termination Assistance Services are provided. If any period for performing any Termination Assistance Services extends beyond the expiration or the effective date of any termination of this Agreement, the provisions of this Agreement shall remain in full effect for the duration of such period.
- (b) **Scope.** As part of the Termination Assistance Services, Service Provider shall timely transfer the control and responsibility for Services previously performed by or for Service Provider to TxDOT and/or their designee(s), and upon TxDOT request, shall execute any documents reasonably necessary to effect such transfers. Service Provider shall also provide any and all information and assistance requested by TxDOT required for: (i) the Systems and processes associated with the Services to operate and be maintained and enhanced efficiently; (ii) the Services to continue without interruption or adverse effect; and (iii) the orderly transfer of the Services (or replacement or supplemental services) to TxDOT and/or their designee(s).
- (c) **General Support.**
 - a. Prior to the Termination Assistance event, Service Provider shall (i) assist TxDOT and/or their designee(s) in developing a written plan for the migration of the Services to TxDOT and/or their designee(s), which plan shall include (as requested by TxDOT) capacity planning, process planning, facilities planning, human resources planning, technology planning, telecommunications planning and other planning necessary to effect the transition, (ii) perform programming and consulting services as requested to assist solely in implementing the transition plan, (iii) train personnel designated by TxDOT and/or their designee(s) in the use of any processes or associated Equipment, Materials, Systems or tools used in connection with the provision of the Services as needed for such personnel to assume responsibility for performance of the Services, (iv) provide a catalog of all processes, Materials, TxDOT Data, Equipment, Third Party Contracts, automation scripts, and tools used to provide the Services, (v) provide machine readable and printed listings and associated documentation for source code for Software owned by TxDOT and source code to which TxDOT is entitled under this Agreement and assist in its re-configuration, (vi) provide technical documentation for Software used by Service Provider to provide the Services as needed for continuing performance of the Services, (vii) analyze and report on the space required for the TxDOT Data and the Software needed to provide the Services, (viii) assist in the execution of data migration and testing process until the successful completion of the transition to TxDOT and/or their designee(s), (ix) create and provide copies of the TxDOT Data in the format and on the media reasonably requested by TxDOT and/or their designee(s), (x) provide a complete and up-to-date, electronic copy of the Service Management Manual (SMM) in the format and on the media reasonably requested by TxDOT and/or their designee(s) and (xi) provide other technical and process assistance, documentation and information as requested by TxDOT and/or their designee(s).
 - b. After the Assistance Event and during the Termination Assistance Period, Service Provider shall answer any questions that may arise concerning the Services previously performed by the Service Provider. TxDOT may request Service Provider to provide certain discontinued Services after the Assistance Event; however, such Termination Assistance Services may include a charge as described in **Exhibit 4.0 Business Model**.
- (d) **Certain Materials.** Service Provider shall provide source code and artifacts (e.g., documentation, use cases, test scripts, design models, activity diagrams and systems configuration) which Service Provider has in its possession, or Service Provider Agents have in their possession, for:

- (i) any modification or enhancement made hereunder by Service Provider to TxDOT Software,
 - (ii) any Software developed pursuant to this Agreement which TxDOT owns or with respect to which TxDOT is otherwise entitled to source code and
 - (iii) as otherwise provided in an applicable Statement of Work; provided that Service Provider shall provide such source code and artifacts (A) upon any request from TxDOT during the Term and any Termination Assistance period, (B) upon termination or expiration of this Agreement or the applicable Statement of Work and (C) upon the End Date.
- (e) **Right to Acquire.** TxDOT and/or their designee(s) shall have the right (but not the obligation) to purchase any or all Software as a Service (SaaS) type systems and on premise software licenses that are owned by Service Provider and implicated by the relevant Assistance Event subject to the requirements set forth in this Agreement.
- (f) **Personnel**
- (i) **List of Service Provider Personnel.** Service Provider shall promptly provide to TxDOT a list, organized by location, of the Service Provider Personnel assigned to the performance of the Services that are implicated by each Assistance Event. Such list shall, subject to applicable Laws, specify each such Service Provider Personnel's name, job title, compensation package, leave status, years of service and job responsibilities. TxDOT agrees not to disseminate the personally identifiable information contained in such list without Service Provider's consent. Service Provider shall not terminate, reassign or otherwise remove from the performance of the Services any such dedicated Service Provider Personnel until after the end of the applicable Termination Assistance Services period.
 - (ii) **Right to Hire.** TxDOT and/or their designee(s) shall be permitted, without interference (including through counter-offers) from Service Provider (subject to [Section 4.3\(f\)\(iii\) Subcontractor Employees](#) below), to meet with, solicit and hire, effective after the later of (A) the date of TxDOT's notice of an Assistance Event and (B) the completion of the Termination Assistance Services requiring such Service Provider Personnel, any Service Provider Personnel substantially dedicated to the performance of the Services during the twelve (12) month period prior to the date of TxDOT's notice of an Assistance Event who are implicated by that Assistance Event. Service Provider hereby waives its rights, if any, under contracts with such Service Provider Personnel restricting the ability of such Service Provider Personnel to be recruited or hired by TxDOT and/or their designee(s) (including waiving any right to restrict such personnel via non-compete agreements or other contractual means). Service Provider shall provide TxDOT and/or their designee(s) with reasonable assistance in their efforts to meet with, solicit and hire such Service Provider Personnel, and shall give TxDOT and/or their designee(s) reasonable access to such Service Provider Personnel for interviews, evaluations and recruitment. TxDOT shall endeavor, and shall cause their designee(s) to endeavor, to conduct the above-described activities in a manner that is not unnecessarily disruptive of Service Provider's performance of its obligations under this Agreement.
 - (iii) **Subcontractor Employees.** With respect to Subcontractors, Service Provider shall (A) obtain for TxDOT and their designee(s) the rights specified in [Section 4.3\(f\)\(ii\) Right to Hire](#) and (B) ensure that such rights are not subject to subsequent Subcontractor approval or the payment of any fees, charges or other amounts. If Service Provider is unable to obtain any such rights with respect to a Subcontractor, it shall notify TxDOT in advance and Service Provider shall not subcontract any Services to such Subcontractor without TxDOT's prior approval (and absent such approval, Service Provider's use of any such Subcontractor shall obligate Service Provider to obtain or arrange, at no additional cost to TxDOT, the rights specified in [Section 4.3\(f\)\(ii\) Right to Hire](#), for TxDOT and their designee(s)).
- (g) **Materials.** TxDOT shall have the rights and licenses set forth in [Sections 14.6\(b\) Service Provider Owned Materials](#), and [14.6\(c\) Third Party Materials](#) in respect of Service Provider owned Materials and Third Party Materials.
- (h) **Equipment**

- (i) **List of Equipment.** Service Provider shall promptly provide to TxDOT a list, organized by location, of the Equipment that is implicated by each Assistance Event. Such list shall specify information reasonably requested by TxDOT, including all fields tracked by Service Provider in any asset management system used by Service Provider for tracking and managing Equipment, such Equipment's function, manufacturer, model number, age, and other pertinent information.
- (ii) **Right to Acquire.** TxDOT and/or their designee(s) shall have the right (but not the obligation) to purchase or (subject to [Section 6 FACILITIES, MATERIALS, EQUIPMENT AND CONTRACTS](#)) assume the lease for any or all Equipment that is owned or leased by Service Provider and that is implicated by the relevant Assistance Event. Subject to [Section 6 FACILITIES, MATERIALS, EQUIPMENT AND CONTRACTS](#), such Equipment shall be transferred in good working condition, reasonable wear and tear excepted, as of the later of the effective date of the relevant Assistance Event and the completion of the Termination Assistance Services requiring such Equipment. Service Provider shall maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program. In the case of Service Provider-owned Equipment (including Equipment owned by Service Provider Affiliates and Subcontractors and further including any such Equipment leased to Service Provider), Service Provider (or such Affiliate or Subcontractor) shall grant to TxDOT and/or their designee(s) a warranty of title and a warranty that such Equipment is free and clear of all liens, security interests, and other encumbrances. Such conveyance by Service Provider (or Affiliate or Subcontractor) to TxDOT and/or their designee(s) shall be at fair market value (as shall be determined by an agreed-upon appraisal); provided, however, in the case of any item of Equipment for which the acquisition cost has been the basis of Charges to TxDOT provided in **Exhibit 4.0 Business Model**), such conveyance shall be at an amount not exceeding the amount of any then unrecovered acquisition cost computed in accordance with the method used to charge TxDOT therefor. At TxDOT's request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of leased Equipment, Service Provider shall (1) represent and warrant that the lease is not in default, (2) represent and warrant that all payments thereunder have been made through the date of transfer and (3) notify TxDOT and/or their designee(s) of any lessor defaults of which it is aware at the time.
- (i) **TxDOT Facilities, Equipment, and Materials.** Service Provider shall vacate the TxDOT Facilities and return to TxDOT, if not previously returned, any resources that are implicated by the relevant Assistance Event and that are owned, leased or licensed by TxDOT, or any TxDOT Contractor, including TxDOT owned or leased Equipment, TxDOT Owned Materials and TxDOT licensed Materials, in condition at least as good as the condition of such facilities and resources when they were made available to Service Provider, ordinary wear and tear excepted. Such facilities and resources shall be vacated and/or returned as of the later of the effective date of the relevant Assistance Event and the completion of the Termination Assistance Services requiring such facilities or resources.
- (j) **Third Party Contracts.** Service Provider shall promptly, but no less than thirty (30) days from TxDOT's issuance of notice of an Assistance Event, provide to TxDOT a list of the Third Party Contracts that are implicated by the relevant Assistance Event. Except for the Third Party Contracts specified on **Exhibit 4.1 Pricing Structure**, subject to [Section 6 FACILITIES, MATERIALS, EQUIPMENT AND CONTRACTS](#), Service Provider shall, at TxDOT's request, cause the counter-parties to such Third Party Contracts to permit TxDOT and/or their designee(s) to assume prospectively any or all such Third Party Contracts or to enter into new contracts with TxDOT and/or their designees on substantially the same terms and conditions, including price. Service Provider shall transfer or assign those Third Party Contracts that TxDOT elects to assume prospectively to TxDOT and/or their designee(s) as of the later of the effective date of the relevant Assistance Event and the completion of the Termination Assistance Services requiring such Third Party Contracts. Such transfers or assignments shall be on terms and conditions acceptable to all applicable parties, provided that (A) there shall be no fee, charge or other amount imposed on TxDOT and/or their designee(s) by Service Provider or the counter-parties to such Third Party Contracts for such transfer or assignment and (B) Service Provider shall: (1) promptly cure and, in accordance with [Section 17.1 \(c\) Licenses, Leases and Contracts](#), indemnify TxDOT against any default under such Third Party Contracts relating to the period prior to such transfer or assignment; (2) represent and warrant that all payments thereunder through the date of transfer or assignment are

- current; and (3) notify TxDOT and/or their designee(s) of any counter-party's default with respect to such Third Party Contracts of which it is aware at the time of such transfer or assignment.
- (k) **Other Subcontracts and Third Party Contracts.** With respect to Third Party Contracts implicated by the relevant Assistance Event that are not otherwise transferred or assigned to TxDOT and/or their designee(s) pursuant to [Section 4.4 \(b\) Service Provider Cooperation](#), Service Provider shall make available to TxDOT and/or their designee(s), pursuant to reasonable terms and conditions, any Third Party services then being utilized by Service Provider in the performance of the Services. Service Provider shall retain the right to utilize any such Third Party services in connection with the performance of services for other Service Provider customers. TxDOT shall retain the right to contract directly with any third party previously utilized by Service Provider to perform any Services.
- (l) **Rates and Charges.** Except as provided in this Subsection and [Section 4.4 \(b\) Service Provider Cooperation](#), Service Provider shall provide all Termination Assistance Services at no additional charge. The Parties anticipate that Termination Assistance Services requested by TxDOT shall be provided by Service Provider using Service Provider Personnel already assigned to the performance of the Services and without adversely affecting Service Provider's ability to meet its performance obligations. To the extent TxDOT requests that Service Provider perform only a portion (but not all) of the Services included in a particular Charge, the amount to be paid by TxDOT shall be equitably adjusted downward in accordance with **Exhibit 4.0 Business Model**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4.0 Business Model** does not provide for such reduction. If and to the extent Termination Assistance Services requested by TxDOT cannot be provided by Service Provider using Service Provider Personnel then-assigned to the performance of the Services without adversely affecting Service Provider's ability to meet its performance obligations, TxDOT, in its sole discretion, may (i) forego or delay any work activities or temporarily or permanently adjust the work to be performed by Service Provider, the schedules associated therewith or the Service Levels to permit the performance of such Termination Assistance Services using such personnel or (ii) authorize Service Provider to use additional Service Provider Personnel to perform Termination Assistance Services. To the extent TxDOT authorizes Service Provider to use additional Service Provider Personnel to perform Termination Assistance Services requested by TxDOT, TxDOT shall pay Service Provider the applicable rates and charges specified in **Exhibit 4.0 Business Model** for such Full-time Equivalent (FTEs) or, if no such rates and fees are specified in **Exhibit 4.0 Business Model**, a negotiated fee for the additional Service Provider Personnel required to perform such Termination Assistance Services (determined on the basis of pricing no less favorable to TxDOT than the pricing and labor rates set forth herein for comparable Services), provided that Service Provider notifies TxDOT in advance of any such charges, obtains TxDOT's approval prior to incurring such charges, and uses commercially reasonable efforts to minimize such charges. Notwithstanding the foregoing, TxDOT will not be obligated to pay Service Provider for any such additional Service Provider Personnel if at any time prior to TxDOT's issuance of the notice of Assistance Event, Service Provider failed to sufficiently staff the Services that are the subject of the Assistance Event (both with respect to number of personnel and personnel with the necessary skills and training).
- (m) **Proprietary Communications Network.** If TxDOT authorizes Service Provider to use a proprietary communications network to provide the Services, then for a period of up to two (2) years following the effective date of the relevant Assistance Event, Service Provider shall, if requested by TxDOT, continue to provide such proprietary communications network and other network Services to TxDOT and/or their designee at the rates, and subject to the terms and conditions, set forth in this Agreement.
- (n) **Information.** Upon the occurrence of any breach by Service Provider under this Agreement or if TxDOT elects to evaluate re-procurement of all or any portion of the Services, Service Provider will provide to and/or make available for TxDOT review any and all reports, data and information that TxDOT deems necessary in order to evaluate all options related to such breach and/or re-procurement, including without limitation, all reports, data and information specified in [Section 4.4 Use of Third Parties](#). For the avoidance of doubt, Service Provider will be obligated to provide all such reports, data and information regardless of whether TxDOT has provided notice of or otherwise declared an Assistance Event.

4.4 Use of Third Parties.

(a) Right of Use.

- (i) Notwithstanding anything to the contrary contained in this Agreement, Service Provider acknowledges and agrees that (i) this is not a requirements contract and TxDOT shall not be required to obtain their requirements for any of the Services from Service Provider and (ii) Service Provider is not the exclusive provider to TxDOT of any of the Services and TxDOT may at any time themselves and/or through third parties (each, a "TxDOT Contractor") provide and/or obtain any services (including services to supplement, replace or render unnecessary the Services).
- (ii) Nothing in this Agreement shall be construed or interpreted as limiting TxDOT's right or ability during the Term to change requirements, move parts of Services in and out of scope, or to increase or decrease their demand for Services. To the extent TxDOT obtains from TxDOT Contractors, or provides to itself, any of the Services, the Charges and Termination Charges shall be adjusted downward in accordance with Exhibit 4.0 Business Model, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that Exhibit 4.0 Business Model does not provide for such reduction. Such equitable adjustments shall include, if applicable, the unrecovered amounts set forth in **Exhibit 4.0 Business Model** in proportion to the portion of the Services that Service Provider shall not be providing; provided, however, that such unrecovered amounts have been incurred by Service Provider in good faith and with a reasonable expectation of providing the Services pursuant to this Agreement.
- (iii) TxDOT may elect to solicit and receive bids from third parties to perform any New Services. If TxDOT elects to use third parties to perform New Services:
 - (1) such New Services shall not be deemed "Services" under the provisions of this Agreement; and
 - (2) Service Provider shall cooperate with such third parties as provided in [Section 4.4 Use of Third Parties](#).

(b) Service Provider Cooperation.

- (i) Service Provider shall perform the Services in a manner that shall not (i) disrupt or have an adverse impact on the activities or operations of TxDOT or a TxDOT Contractor, (ii) degrade the Services then being received by TxDOT, or (iii) disrupt or interfere with the ability of TxDOT to obtain the full benefit of the Services. Service Provider acknowledges that its provision of the Services shall require significant cooperation with third parties, and Service Provider shall fully cooperate and work in good faith with third parties as described in this Agreement and to the extent otherwise requested by TxDOT. Such cooperation shall include providing (i) access to Service Provider Facilities (as necessary for the third parties to perform their work); (ii) access to Service Provider owned or leased Equipment and Service Provider owned or licensed Software (to the extent permitted under any underlying agreements with third parties); (iii) such information regarding the operating environment, System constraints and other operating parameters as a person with reasonable commercial skills and expertise would find reasonably necessary for the third parties to perform their work, including after expiration or termination of this Agreement; (iv) assistance to third parties and/or new SCPs in order to migrate to new solutions or to continue running existing solutions arising out of or relating to the Services provided by Service Provider, including following the expiration or termination of the Agreement, and (v) assisting TxDOT in obtaining any required third-party consents. For the avoidance of doubt, such companies, consultants, advisors or contractors of TxDOT are not authorized to bind TxDOT in any way or enter into any commitments on behalf of TxDOT. Service Provider will treat Sensitive Information, Confidential Information, and Regulated Information received from such TxDOT Contractors, third-party companies, consultants, advisors and contractors in connection with the provision of Services in accordance with the terms of this Agreement.
- (ii) TxDOT personnel and TxDOT Contractors shall comply with Service Provider's reasonable security and confidentiality requirements and shall, to the extent performing work on Software,

Equipment or Systems for which Service Provider has operational responsibility, comply with Service Provider's reasonable standards, methodologies, and procedures as communicated in writing to such third parties by Service Provider.

- (c) **Notice by Service Provider.** Without limiting its obligations under this Agreement, Service Provider shall expeditiously notify TxDOT when it becomes aware that an act or omission of TxDOT personnel or a TxDOT Contractor shall cause, or has caused, a problem or delay in providing the Services, and shall use commercially reasonable efforts to work with TxDOT and the TxDOT Contractor to prevent or circumvent such problem or delay. Service Provider shall cooperate with TxDOT and TxDOT Contractors to resolve differences and conflicts arising between the Services and other activities undertaken by TxDOT and TxDOT Contractors.

4.5 Acceptance.

- (a) **Deliverables:** A Service Provider-provided tangible item or outcome that TxDOT reviews and approves at a specified date/frequency during the term of the contract, excluding reports that are managed/monitored through other defined processes. Deliverables may have certain attributes that impact the review and acceptance. The attributes for each of the Deliverables are detailed in **Exhibit 3.1 Service Level and Deliverable Matrix** and summarized below.
- (i) Critical (C) (flagged within the Agreement and referenced in **Exhibit 3.1 Service Level and Deliverable Matrix**). Deliverables that are critical have associated Deliverable Credits payable TxDOT in the event Service Provider fails to successfully complete and submit such Deliverables to TxDOT on or before the due dates identified in **Exhibit 3.1 Service Level and Deliverable Matrix**. For further clarity, successfulness is measured by whether the Deliverables meet the associated Acceptance Criteria.
 - (ii) Payment (P) Payment Deliverables are the deliverables that have associated payments due to the Service Provider after TxDOT approval of such Deliverables. Payment will be provided in accordance with **Exhibit 4.0 Business Model**.
 - (iii) Time-Critical (T) – Deliverables that are designated as time-critical will have an expedited review period of five (5) Business Days.
- (b) **Deliverable Acceptance Criteria.** In order to eliminate the potential for frequent submission and rejection of Deliverables, the Service Provider shall meet with TxDOT and reach agreement on the construct and content for Deliverables prior to creation. The Service Provider shall coordinate fully and appropriately with TxDOT and its partners throughout the development of Deliverables and reviews of Deliverables prior to formal submission as requested. At a minimum, Deliverables shall meet the acceptance criteria defined in **Exhibit 3.1 Service Level and Deliverable Matrix**. Unless otherwise agreed, and as applicable, Service Provider shall perform comprehensive testing (e.g., unit, string, integration, stress, volume, system testing) on each such Deliverable prior to submitting such item to TxDOT for Acceptance. TxDOT considers the Deliverable due date to be the day by which the Deliverable is ready for acceptance and formally submitted. The Service Provider shall use the SMM process to formally submit final versions of Deliverables in accordance with TxDOT-approved Deliverable schedule and ensuring the Deliverable meets requirements and Acceptance Criteria outlined in the Agreement and referenced in **Exhibit 3.1 Service Level and Deliverable Matrix**.
- (c) A specific Deliverable's attributes may be changed upon mutual agreement by the Parties and through the appropriate contract change request process as determined by the material nature of changes.
- (d) **Project Milestones.** Project milestones are those produced and delivered as part of a Request for Solution process and are specific to a project being delivered. TxDOT shall have the right to review and accept or reject the milestones in accordance with the project's milestone completion criteria and the SMM.
- (e) TxDOT shall have the right to review and accept or reject all Materials, Equipment, Systems and other deliverables and milestones (each a "Deliverable") to be provided by Service Provider to TxDOT pursuant to the methodology set forth in this [Section 4.5 Acceptance](#). TxDOT will determine, in their reasonable discretion, when a Deliverable will be deemed "Accepted" following the implementation, installation, testing and execution in the production environment (as applicable) and confirmation that such Deliverables are in Compliance with defined Deliverable Acceptance Criteria. Unless otherwise

requested by TxDOT, each Deliverable shall be provided by Service Provider and subject to TxDOT "Acceptance" as described below in [Section 4.5\(e\) \(i\)](#) through [\(v\)](#).

- (i) **Acceptance Review Period.** For each Deliverable, TxDOT shall have either (1) the period of time set forth in the applicable plan, if any, or (2) if no such period is set forth in a TxDOT-approved plan, ten (10) Business Days following Service Provider's notification to TxDOT that Service Provider has completed any Deliverable, which shall include Service Provider's internal testing as required under this Agreement, to determine whether it Complies with its Acceptance Criteria (such period of time, the "Acceptance Review Period"). The Acceptance Review Period shall begin on the date that Service Provider provides written notification to TxDOT that the Deliverable is ready to be reviewed by TxDOT.
- (ii) **Acceptance Review.** During the Acceptance Review Period, TxDOT shall review and may further test each Deliverable, individually and/or collectively, to determine whether such item(s) contain any type of Noncompliance. Service Provider shall cooperate with such review and testing efforts, provide a technical environment to facilitate such review, and provide all applicable documentation that may assist in such review and testing.
- (iii) **Acceptance.** If TxDOT does not identify any Noncompliance relating to a Deliverable during its Acceptance Review Period, TxDOT shall inform Service Provider in writing that the Deliverable is Accepted, subject to the other provisions of this Agreement. If TxDOT does not Accept a Deliverable, TxDOT shall provide Service Provider a notice of Noncompliance as described below. If TxDOT does not Accept or deliver a notice of Noncompliance to Service Provider by the end of the Acceptance Review Period, Service Provider shall so inform the Designated TxDOT Representative in writing and provide TxDOT an additional Acceptance Review Period of at least five (5) Business Days. If TxDOT does not Accept or deliver a notice of Noncompliance by the end of such additional Acceptance Review Period, Service Provider may escalate such issue for resolution through governance in accordance with **Exhibit 1.2 Governance Model**. TxDOT's use in a live production environment shall not constitute Acceptance, affect any rights and remedies that may be available to TxDOT, and/or constitute or result in "acceptance" under general contract Laws, the State's Uniform Commercial Code or any other Laws.
- (iv) **Noncompliance.** If TxDOT delivers to the Service Provider a written notice of Non-Compliance, the Service Provider shall correct all deficiencies identified in TxDOT's notice and within five (5) Business Days for written Deliverables, or such other time as mutually agreed to, at no additional charge to TxDOT. Beginning upon receipt of notice from Service Provider that the Deliverable resubmission is ready to be Accepted, an Acceptance Review Period of ten (10) Business Days shall begin again and the Parties shall perform their obligations as described above in Acceptance Review Period and Acceptance Review. For Time-Critical Deliverables as designated in **Exhibit 3.1 Service Level and Deliverable Matrix**, within two (2) Business Days or as otherwise mutually agreed, after receiving such notice from TxDOT, and at no charge to TxDOT, Service Provider shall correct such Noncompliance, satisfy the Acceptance Criteria as outlined in the Noncompliance notification. Beginning upon receipt of notice from Service Provider that a Deliverable resubmission is ready to be Accepted, an Acceptance Review Period of two (2) Business Days or as otherwise mutually agreed, shall begin and the Parties shall perform their obligations as described above in Acceptance Review Period and Acceptance Review.
- (v) **Failure to Cure a Noncompliance.** If Service Provider (1) requires more than two (2) attempts to cure a particular Noncompliance, (2) does not correct a Noncompliance within the timeframes defined in [Section 4.5\(e\)\(i\) Acceptance Review Period](#) or as otherwise mutually agreed, or (3) cures a particular Noncompliance and such cure results in another Noncompliance and Service Provider is not able to collectively cure such Noncompliance(s) within one (1) attempt in five (5) Business Days, then TxDOT may, in its sole discretion, apply any remedies including Deliverable Credits.
- (vi) Upon completion of the cure process stated above, upon written notification to Service Provider, TxDOT in its sole discretion may (A) provide Service Provider an additional cure period to fix the Noncompliance; (B) conditionally Accept the Deliverable and require Service Provider to

develop a remediation plan, subject to TxDOT's acceptance and within time frames reasonably requested by TxDOT whereby Service Provider shall design and implement a workaround solution that mitigates the Noncompliance; (C) correct the Noncompliance itself or hire a third party to correct the Noncompliance at Service Provider's expense (all such out-of-pocket expenses and costs of TxDOT to be subject to set-off as set forth in [Section 12.3 Set Off](#)); (D) implement and use the Deliverable despite the Noncompliance and equitably reduce the Charges; or (E) exercise any of its other rights and remedies under this Agreement or available at law or in equity. If TxDOT elects options (A) or (B) above and Service Provider fails to cure the Noncompliance in accordance with the foregoing, TxDOT may thereafter elect any of the foregoing options (A) through (E). The remedies above are in addition to and shall not limit TxDOT's other remedies, whether at law, in equity, or under this Agreement.

- (vii) **Remediation of Defects in Previously Accepted Items.** In the event of a discovery of a latent defect in a previously Accepted Deliverable or other Deliverable, where such latent defect would have qualified as a Noncompliance at the time of Acceptance, upon discovery, the Service Provider will, at no additional charge, repair or replace or otherwise correct the Noncompliance to the level of performance specified in the Agreement. Further, should any modification or rework of a previously Accepted Deliverable or other Deliverable be required for Acceptance of a subsequent deliverable, then Service Provider shall perform such modification or rework at no charge and each Party's obligations, rights, and remedies described herein shall continue to apply.

4.6 Projects.

- (a) **Procedures and Performance.** Service Provider will perform Projects as directed by TxDOT, in accordance with the terms of this Agreement and the process described in this [Section 4.6](#). From time to time and at TxDOT's sole discretion, TxDOT may request Service Provider to perform Projects. TxDOT may initiate a request for a new Project by providing such request in writing (each such request, a "Project Request") to Service Provider. Service Provider shall justify to TxDOT when it has insufficient resources to perform such work, including through reprioritization or rescheduling of Project activities of Service Provider Personnel. The TxDOT Representative will request, define and set the priority for Projects. Service Provider shall maintain appropriate continuity of personnel assigned to perform Projects.
- (b) **Project Work Order.** Service Provider shall, within the time frame specified in such Project Request (and in no event more than five (5) Business Days from receipt of such request unless another time frame is approved by TxDOT), at no charge to TxDOT, prepare and deliver to TxDOT a proposed Project Work Order (each, a "Project Work Order"), as described below. Each proposed Project Work Order prepared by Service Provider will contain the following information: (i) a detailed description of the scope of work to be performed by Service Provider to complete and implement the Project, including any required Deliverables and/or milestones; (ii) any specific performance standards that will apply to the completion and implementation of such Project, including Service Provider's agreement to meet applicable Service Levels; (iii) an anticipated schedule for completing and implementing the Project and any related Deliverables, including milestones and credits for failing to achieve Acceptance of milestones and Deliverables; (iv) a description of the Service Provider positions that will be assigned to each activity specified in the Project Work Order, including the location of Service Provider Personnel assigned to such positions (i.e., onsite, offsite, onshore, offshore) and sufficient detail to allow TxDOT to audit the assignment and billings related to such Service Provider Personnel; (v) a description of the Acceptance Criteria and User Acceptance Testing procedures to be used by TxDOT in connection with any User Acceptance Testing of such Project and any related Deliverables and milestones; (vi) the estimated number of personnel hours needed to complete the Project; (vii) one (1) or more fee quotes, based on the following pricing mechanisms: (a) the applicable hourly rate, in accordance with the Rate Card, (b) if the Project consists of multiple units of work for which there are pre-defined one-time Charges, the number of pre-defined work units multiplied by the applicable pre-defined one-time Charge, or (c) if requested by TxDOT, a fixed fee or other pricing mechanism. TxDOT may, at its option, choose which pricing mechanism will apply to the Project. Service Provider will not commence performing any services in connection with a Project, and TxDOT will not be responsible for any Charges applicable to such Project, until the Parties have executed the applicable Project Work Order. Any change to a Project Work Order will be made pursuant to the Change Control Procedure.

- (c) **Approval of Projects and TxDOT Requests.** The Designated TxDOT Representative may accept or reject Project proposals in his or her sole discretion. Service Provider shall not agree to provide Projects to TxDOT without the prior approval of Designated TxDOT Representative. TxDOT shall not be obligated to pay for any Projects not properly authorized by the Designated TxDOT Representative. Without limiting TxDOT's other rights under this Agreement or applicable Law, if Service Provider fails to comply strictly with this **Section 4.6(c)**, it shall receive no compensation for any services rendered to TxDOT in violation of this **Section 4.6(c)**.
- (d) **Reprioritization, Termination, and Suspension.** Service Provider acknowledges and agrees that TxDOT will have the right based on valid business reasons to reprioritize, terminate, or suspend any Project at any time upon informing the Service Provider Account Director. TxDOT will not be obligated to pay Service Provider any additional compensation associated with such action unless the corresponding Project Work Order expressly provides otherwise. If TxDOT decides to terminate a Project Work Order, Service Provider will stop performing the Project work in an orderly manner as of the date specified by TxDOT, and Service Provider will only be entitled to charge TxDOT for actual performance provided by Service Provider for chargeable Project work up to the date specified in TxDOT's notice.

5 REQUIRED CONSENTS

5.1 Service Provider Responsibility.

At no additional cost to TxDOT, Service Provider shall undertake all administrative activities necessary to obtain all Required Consents. At Service Provider's request, TxDOT shall cooperate with Service Provider in obtaining the Required Consents by executing appropriate TxDOT approved written communications and other documents prepared or provided by Service Provider. The Parties shall cooperate in minimizing or eliminating any costs associated with obtaining Required Consents.

5.2 Financial Responsibility.

Except to the extent expressly provided otherwise in **Section 6.4 (c) General Rights** and **Exhibit 4.2 Financial Responsibility Matrix**, Service Provider shall pay all transfer, re-licensing, termination charges and other costs or expenses associated with obtaining any Required Consents or terminating any licenses or agreements as to which Service Provider is unable to obtain such Required Consents.

5.3 Contingent Arrangements.

If, despite using commercially reasonable efforts, Service Provider is unable to obtain a Required Consent, then with respect to TxDOT licensed Third Party Materials, Service Provider shall implement a work-around, reasonably satisfactory to TxDOT that may include:

- (a) replace the TxDOT license for such Third Party Materials with a Service Provider license;
- (b) replace such Third Party Materials with other Materials offering equivalent features and functionality;
or
- (c) Otherwise arrange to rightfully manage the TxDOT licensed Third Party Materials on behalf of TxDOT.

5.4 Termination.

If Service Provider fails to obtain any Required Consent within ninety (90) days of the Commencement Date or to implement adequate contingent arrangements in accordance with **Section 5.3 Contingent Arrangements**, and such failure has a material adverse impact on the use or enjoyment of the Services, then TxDOT may, upon notice to Service Provider, terminate this Agreement for cause in its entirety or in part with respect to, or any affected portions of, the Services, as of the termination date specified in the notice.

6 FACILITIES, MATERIALS, EQUIPMENT AND CONTRACTS

6.1 Service Facilities

- (a) **Service Facilities.** The Services shall be provided at or from (i) TxDOT Facilities, (ii) Service Provider Facilities, or (iii) any other service location requested by Service Provider and approved in advance by TxDOT. In connection with the delivery of the Services, unless otherwise set forth in **Exhibit 2.1 Statement of Work Model**, Except in the event that the Designated TxDOT Representative provides Service Provider with advance written authorization to the contrary, Service Provider will not provide or otherwise utilize any support services situated outside of the United States of America and any staff necessary to provide the Services (e.g., operate the hosting facility, support center, and any other operational support) shall reside within the geographical boundaries of the United States of America. Service Provider shall obtain TxDOT's prior written approval for any proposed relocation of the performance of any Service from a new or different service location. Failure to obtain such approval will result in a breach of this Agreement. Service Provider shall be financially responsible for all additional costs, taxes, or expenses related to or resulting from any Service Provider-initiated relocation to a new or different Service Provider Facility, including any costs or expenses incurred by TxDOT as a result of such relocation. Service Provider acknowledges and agrees, that unless otherwise expressly agreed by TxDOT in writing, that any key personnel and services necessary to provide the Services (e.g., operate the support center, and any other operational support), shall provide such Services Monday through Friday during normal business hours within the geographical boundaries of the Austin, Texas metropolitan area.
- (b) **TxDOT Facilities.** TxDOT shall provide Service Provider with the use of and access to the space in the TxDOT Facilities for the periods of time specified in the Statement of Work, or otherwise as agreed to by Service Provider and TxDOT. Service Provider shall ensure that any Managed Third Parties and Subcontractors use TxDOT Facilities in compliance with applicable Laws and TxDOT Rules and, upon request by TxDOT, shall demonstrate to TxDOT's reasonable satisfaction Service Provider's compliance with the foregoing. All TxDOT-owned or leased assets provided for the use of Service Provider under this Agreement, except for any laptops (or other portable hardware devices) issued by TxDOT to Service Provider Personnel, shall remain in TxDOT Facilities unless TxDOT otherwise agrees in advance in writing. In addition, all improvements or modifications to TxDOT Facilities requested by Service Provider shall be (i) subject to review and approval in advance by TxDOT in its sole discretion, (ii) in strict compliance with TxDOT Rules, and (iii) performed by and through TxDOT at Service Provider's expense. Service Provider acknowledges and agrees that the TxDOT Facilities are sufficient for performing the Services and for satisfying Service Provider's responsibilities under this Agreement. **THE TXDOT FACILITIES ARE PROVIDED BY TXDOT TO SERVICE PROVIDER ON AN "AS-IS", "WHERE-IS", AND WITH ALL FAULTS BASIS. TXDOT EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE TXDOT FACILITIES, INCLUDING WARRANTIES OF HABITABILITY, FITNESS FOR PARTICULAR PURPOSE, OR THEIR CONDITION OR SUITABILITY FOR USE BY SERVICE PROVIDER.**
- (c) **Furniture, Fixtures and Equipment.** Service Provider may use the office furniture and fixtures located in the portions of the TxDOT Facilities that Service Provider is entitled to access and use pursuant to [Section 6.1 \(b\) TxDOT Facilities](#). Service Provider Personnel using the TxDOT Facilities shall be provided with reasonable access to the communications wiring in such facilities (for example, fiber and copper wiring, wall jacks, and wireless access points, subject to [Section 6.1 \(d\) Responsibilities Regarding TxDOT's Network](#)) and the use of certain shared office equipment and services; provided, however, that such access and usage shall be solely for and in connection with the provision of Services by such Service Provider Personnel.
- (d) **Responsibilities Regarding TxDOT's Network.** To the extent any Equipment provided or used by Service Provider or Service Provider Personnel is connected directly to the network(s) of TxDOT, such Equipment (and all Software installed thereon) shall be (i) subject to review and approval in advance by TxDOT in the manner determined by TxDOT (Service Provider shall cooperate with TxDOT in the testing, evaluation and approval of such Equipment) and (ii) in strict compliance with TxDOT Rules and TxDOT Standards. Service Provider shall not install or permit the installation of any other software on such Equipment without TxDOT's prior written approval. Service Provider shall immediately

- investigate any Security Incident of TxDOT's networks or Systems associated with Service Provider Personnel or the performance of the Services of which it becomes aware. Service Provider shall notify TxDOT of each such Security Incident and permit TxDOT to participate in the planning and conducting of any audit or investigation of any such Security Incident. Service Provider shall promptly (A) report the findings of any such audit or investigation to TxDOT, (B) provide TxDOT with a copy of any final written report prepared in connection therewith, and (C) to the extent in Service Provider's areas of responsibility and control, prepare and, following TxDOT's approval, implement a remediation plan to remediate the effects of the Security Incident and prevent its recurrence. Service Provider acknowledges and agrees that, to the extent permitted by applicable Law, TxDOT has the right to monitor, record and investigate all uses of TxDOT's networks by Service Provider, including all email or other communications sent to, from, or through TxDOT's networks, regardless of the content of such communications, and Service Provider hereby consents to such monitoring, recording and investigating. Service Provider acknowledges and agrees that it does not have any expectation of privacy with respect to any information or communications made by or to it through TxDOT's networks and shall not assert or claim any privacy right thereto.
- (e) **Residual Responsibility.** Except as provided in [Sections 6.1 \(a\), \(b\), and \(c\) and Section 6.4 Materials, Equipment, and Third Party Contracts](#), Service Provider shall be financially and operationally responsible for providing all furniture, fixtures, equipment, connectivity, space, and other facilities required to perform the Services and all upgrades, improvements, replacements, and additions to such furniture, fixtures, equipment, connectivity, space and facilities. Without limiting the foregoing, Service Provider shall provide (i) all maintenance, site management, site administration and similar services for the Service Provider Facilities, (ii) uninterrupted power supply services for the Service Provider Facilities, and (iii) telecommunications transport (voice and data) between Service Provider Facilities and the TxDOT Facilities.
- (f) **Physical Security.** TxDOT is responsible for the physical security of the TxDOT Facilities; provided, however, that Service Provider shall (i) be responsible for the acts and omissions of Service Provider Personnel with respect to the safety and physical access and control of the areas that Service Provider is using in performing the Services and (ii) not permit any person to have access to, or control of, any such area in a TxDOT Facility unless approved by TxDOT. Service Provider shall be solely responsible for compliance by Service Provider Personnel with such control procedures, including obtaining advance approval to the extent required.
- (g) **Use of TxDOT Facilities.**
- (i) Service Provider shall use the TxDOT Facilities, and the office furniture, Equipment and fixtures provided or made available by TxDOT therein, only for the purpose of providing the Services.
 - (ii) TxDOT reserves the right to, upon thirty (30) days' written notice to Service Provider, (A) relocate any TxDOT Facility from which the Services are then-being provided to another geographic location from which the Services will be provided, and (B) direct Service Provider to cease using all or part of the space in any TxDOT Facility from which the Services are then-being provided.
 - (iii) In cases described in subsection (ii) above, Service Provider shall be relieved of responsibility for providing the Services, and TxDOT shall be relieved of all obligation to pay fees otherwise owed to Service Provider for the provision of such Services, during the relocation for the period of time agreed to in advance by TxDOT if and to the extent Service Provider is unable to provide the Services in accordance with the Service Levels during the actual relocation of Service Provider's operations; provided that such relocation is not expressly contemplated in this Agreement as of the Effective Date, that the relocation period does not exceed fifteen (15) Business Days, and that Service Provider (A) notifies TxDOT in advance of its inability to perform during such relocation, (B) gives TxDOT a reasonable opportunity to address Service Provider's concerns and thereby avoid such Service Provider non-performance, (C) identifies and pursues commercially reasonable means to avoid or mitigate the impact of such relocation, and (D) uses commercially reasonable efforts to perform notwithstanding such relocation.
- (h) **Conditions for Return.** When the TxDOT Facilities are no longer to be used by Service Provider as contemplated by this [Section 6.1](#) or are otherwise no longer required for performance of the Services,

Service Provider shall notify TxDOT as soon as practicable and shall vacate and return such TxDOT Facilities (including any improvements to such facilities made by or at the request of Service Provider) to TxDOT in substantially the same condition as when such facilities were first provided to Service Provider, subject to reasonable wear and tear.

- (i) **No Violation of Laws.** Service Provider shall treat, use and maintain the TxDOT Facilities in a reasonable manner. Service Provider shall not commit, and shall use all reasonable efforts to ensure that no business visitor or invitee of Service Provider commits, any act (i) in violation of any applicable Laws or (ii) in breach of any applicable TxDOT insurance policies or in breach of TxDOT's obligations under the applicable real estate leases for such TxDOT Facilities (to the extent Service Provider has received notice of such insurance policies or real estate leases or should reasonably be expected to know of such obligations or limitations).

6.2 Use of Service Provider Facilities

Service Provider shall provide to TxDOT at no additional charge (i) reasonable access to and use of Service Provider Facilities and (ii) access to reasonable work/conference space at Service Provider Facilities for use in connection with TxDOT's performance and exercise of rights under this Agreement.

6.3 TxDOT Rules/Employee Safety.

- (a) **TxDOT Rules and Compliance.** In performing the Services and using the TxDOT Facilities, Service Provider shall observe and comply with all TxDOT policies, rules, and regulations applicable at or to TxDOT Facilities or the provision of the Services which have been communicated to Service Provider or Service Provider Personnel in advance in writing (which may include email communications and notices of information contained on web sites or conspicuously posted at TxDOT Facilities to the extent consistent with the way in which TxDOT disseminate such information to their own employees) or by such means as are generally used by TxDOT to disseminate such information to its employees or contractors and those applicable to specific TxDOT Facilities (collectively, "**TxDOT Rules**"). The Parties acknowledge and agree that, as of the Commencement Date the Service Provider is fully informed as to the TxDOT Rules that have been communicated to it consistent with the foregoing. Service Provider shall be responsible for the promulgation and distribution of TxDOT Rules to Service Provider Personnel as and to the extent necessary and appropriate. Additions or modifications to the TxDOT Rules may be (i) disclosed to Service Provider and Service Provider Personnel in writing (which may include email communications and notices of information contained on web sites to the extent consistent with the way in which TxDOT disseminate such information to their own employees), (ii) conspicuously posted at a TxDOT Facility, (iii) electronically posted or (iv) communicated to Service Provider or Service Provider Personnel by means generally used by TxDOT to disseminate such information to its employees or contractors (including oral communications in immediately applicable or emergency situations). Service Provider and Service Provider Personnel shall observe and comply with such additional or modified TxDOT Rules.
- (b) **Safety and Health Compliance.** Service Provider and Service Provider Personnel shall familiarize themselves with the premises and operations at each TxDOT Facility at, to or from which Services are rendered and the TxDOT Rules applicable to each such facility. Service Provider and Service Provider Personnel also shall observe and comply with all TxDOT Rules with respect to safety, health, security and the environment and shall take commercially reasonable precautions to avoid injury, property damage, spills or emissions of hazardous substances, materials or waste, and other dangers to persons, property or the environment. To the extent required by TxDOT, Service Provider Personnel shall receive prescribed training prior to entering certain TxDOT Facilities.

6.4 Materials, Equipment, and Third Party Contracts

- (a) **Financial Responsibility.** Each Party shall be financially responsible for any third party fees or expenses incurred on or after the Commencement Date associated with Materials, Equipment, Equipment Leases and Third Party Contracts for which such Party is financially responsible under **Exhibit 4.2 Financial Responsibility Matrix** (excluding Third Party Contracts administered by Service Provider on a Pass-Through basis, which are addressed in **Exhibit 4.0 Business Model**). Unless otherwise expressly provided, each Party also shall be financially responsible for any third party fees or expenses on or after the Commencement Date associated with new, substitute or replacement Materials,

- Equipment, Equipment Leases or Third Party Contracts (including Upgrades, enhancements, new versions or new releases of Software or Equipment) for which such Party is financially responsible under **Exhibit 4.2 Financial Responsibility Matrix**. With respect to Third Party Material licenses, Equipment Leases and Third Party Contracts that are assigned to Service Provider by TxDOT for which Service Provider otherwise assumes financial responsibility under this Agreement, Service Provider shall:
- (i) pay all amounts becoming due under such licenses, leases or contracts, and all related expenses, for periods on or after the Commencement Date;
 - (ii) rebate to TxDOT any payment of such amounts in accordance with **Exhibit 4.2 Financial Responsibility Matrix**;
 - (iii) pay all modification, termination, cancellation, late payment, renewal or other fees, penalties, charges, interest or other expenses attributable to periods on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of TxDOT, prior to assignment to Service Provider);
 - (iv) pay all costs associated with the transfer of such licenses, leases and contracts to Service Provider, including all taxes associated with such transfer; and
 - (v) be responsible for curing any defaults in Service Provider 's performance under such licenses, leases and contracts on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of TxDOT, prior to assignment to Service Provider).
- (b) **Operational Responsibility.** With respect to Materials, Equipment, Equipment Leases and Third Party Contracts for which Service Provider is operationally responsible under **Exhibit 4.2 Financial Responsibility Matrix**, Service Provider shall be responsible for:
- (i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Materials, Equipment, Equipment Leases and Third Party Contracts;
 - (ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Materials, Equipment, Equipment Leases and Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software);
 - (iii) the performance, availability, reliability, compatibility and interoperability of such Materials, Equipment and Third Party Contracts each in accordance with this Agreement, including the Service Levels and Change Control Procedures;
 - (iv) the compliance with and performance of all operational, administrative and contractual obligations specified in the applicable licenses, leases and contracts;
 - (v) the observance of and compliance with all Laws applicable to such licenses, leases, and contracts (without limiting the obligation of the Parties under [Section 15.11 Compliance with Laws.](#));
 - (vi) the administration and exercise as appropriate of all rights available under such licenses, leases, and contracts; and
 - (vii) the payment of any fees, penalties, charges, interest, or other expenses due and owing under or with respect to such licenses, leases and contracts that are incurred or caused by, or result from Service Provider 's failure to comply with or perform its obligations under this **Section 6.4(b) Operational Responsibility** (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of TxDOT, prior to assumption of financial responsibility by Service Provider).
- (c) **General Rights.** With respect to all Third Party Materials licenses, Equipment Leases and Third Party Contracts for which Service Provider is financially responsible under **Exhibit 4.2 Financial Responsibility Matrix**, Service Provider shall:
- (i) obtain for TxDOT and their designee(s) the license, sublicense, assignment and other rights

specified in [Section 14.6 Ongoing TxDOT Rights](#), and [Section 4.3 Termination Assistance Services](#);

- (ii) ensure that the granting of such license, sublicense, assignment and other rights is not subject to subsequent third party approval or the payment by TxDOT, or their designee(s) of license, assignment or transfer fees;
 - (iii) ensure that the terms, conditions and prices applicable to TxDOT, and their designee(s) are no less favorable than those otherwise applicable to Service Provider, and at least sufficient for the continuation of the activities comprising the services of the nature of the Services;
 - (iv) provide a copy of the entire and complete Third Party Contract(s), regardless of whether Service Provider's other customers utilize or benefit from such Third Party Contract(s), allowing TxDOT to disclose such contracts in future procurements; and
 - (v) ensure that neither any Assistance Event nor the assignment of the license, lease or contract shall trigger less favorable terms, conditions or pricing.
- (d) **Evaluation of Third Party Materials, Equipment.** In addition to its obligations under [Section 6.4 \(a\) Financial Responsibility](#) and [Section 6.4 \(b\) Operational Responsibility](#) and in order to facilitate TxDOT's control of architecture, standards and plans pursuant to [Section 9.5 Change Control](#), Service Provider shall evaluate any Third Party Materials consisting of Software and Equipment selected by or for TxDOT to determine whether such Software and Equipment shall adversely affect TxDOT's environment, ability to interface with and use the Software, Equipment, and Systems and/or Service Provider's ability to provide the Services. Service Provider shall complete and report the results of such evaluation to TxDOT within thirty (30) days of its receipt of TxDOT's request; provided, that Service Provider shall respond more quickly in the case of a pressing need or an emergency situation.
- (e) **TxDOT Provided Equipment.** TxDOT shall provide Service Provider with the use of the TxDOT owned and leased Equipment identified to be so provided in **Exhibit 4.1 Pricing Structure** (the "**TxDOT Provided Equipment**") solely for and in connection with the provision of the Services and solely to the extent permitted by applicable Laws. Throughout the Term, Service Provider shall use the TxDOT Provided Equipment in the manner directed by TxDOT. When such TxDOT Provided Equipment is no longer required by Service Provider for the performance of the Services, Service Provider shall promptly notify TxDOT and promptly return the same to TxDOT and/or its designee(s) in substantially the same condition (as it may have been modified or improved by Service Provider with TxDOT's written approval) as when such TxDOT Provided Equipment was first provided to Service Provider, subject to reasonable wear and tear. Such notification shall include the identification of the Equipment, and the date it shall no longer be needed by Service Provider, along with the reason for decommissioning. Upon receipt of any such notice, TxDOT may, in its sole discretion, terminate the lease for such TxDOT Provided Equipment or sell or otherwise dispose of or redeploy such TxDOT Provided Equipment as of the date specified in such notice. Service Provider shall, at Service Provider's expense, deliver such TxDOT Provided Equipment to the location designated by TxDOT and/or its designee(s). In the event any such TxDOT Provided Equipment is lost, stolen or otherwise not returned to TxDOT in substantially the same condition as when such TxDOT Provided Equipment was first provided to Service Provider, then Service Provider shall, at its sole cost and expense, replace or repair such TxDOT Provided Equipment within fifteen (15) Business Days following receipt of written notice from TxDOT. The foregoing shall not limit Service Provider's obligations with respect to the redeployment and disposal of Equipment pursuant to a Statement of Work. **THE TXDOT PROVIDED EQUIPMENT IS PROVIDED BY TXDOT TO SERVICE PROVIDER ON AN "AS-IS", "WHERE-IS", AND WITH ALL FAULTS BASIS. TXDOT EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE TXDOT PROVIDED EQUIPMENT, ITS TITLE OR ITS CONDITION, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY FOR USE BY SERVICE PROVIDER.**

6.5 Assignment of Licenses, Leases, and Related Agreements

- (a) Assignment and Assumption. Subject to Service Provider obtaining any Required Consents, TxDOT may assign to Service Provider, and Service Provider shall assume and agree to perform, all obligations arising

on or after the Commencement Date that are related to, the Third Party Materials licenses, Equipment Leases, and Third Party Contracts for which Service Provider is financially responsible under **Exhibit 4.2 Financial Responsibility Matrix** or this document. Such assignment shall not include any assignment or transfer of any intellectual property rights in Materials developed under such Third Party Materials licenses, Equipment Leases, and Third Party Contracts prior to the date of such assignment and, as between the Parties, TxDOT hereby expressly reserves and retains such intellectual property rights. TxDOT and Service Provider shall execute and deliver a mutually satisfactory assignment and assumption agreement with respect to such leases, licenses and agreements, evidencing the assignment and assumption provided for herein. Service Provider shall use its best efforts to obtain for the benefit of TxDOT a release of any obligations of TxDOT under the Third Party Materials licenses, Equipment Leases, and Third Party Contracts that are assigned to Service Provider under this Agreement.

- (b) **Items Not Assignable.** If, after Service Provider has used commercially reasonable efforts for a reasonable period of time, any Third Party Materials licenses, Equipment Leases, or Third Party Contracts cannot, as of the Commencement Date or at any time thereafter, be assigned to Service Provider without breaching their terms or otherwise adversely affecting the rights or obligations of TxDOT, or Service Provider thereunder, Service Provider shall, at TxDOT's option and with TxDOT's consent, replace such licenses, leases, or contracts (or the subject thereof) with appropriate alternatives providing equivalent features and functionality and shall remain responsible for providing all of the Services in accordance with the terms of this Agreement
- (c) **Modifications and Substitution.** Service Provider may terminate, shorten, modify, or extend the Third Party Materials licenses, Equipment Leases, and Third Party Contracts for which Service Provider is financially responsible under **Exhibit 4.2 Financial Responsibility Matrix Section Matrix** and, subject to **Section 9.9 (a) Use of Subcontractors** (including TxDOT's right of prior approval), may substitute or change vendors relating to goods or services covered thereby; provided that, except as otherwise disclosed by Service Provider and agreed to by TxDOT, such change(s): (A) shall not constitute a breach of applicable Laws or any obligation of TxDOT under such Materials licenses, Equipment Leases or Third Party Contracts; (B) shall not result in additional financial obligations, financial or operational risk or Losses to TxDOT; (C) shall not result in any increase to TxDOT in the cost of receiving the Services; and (D) if assumable by TxDOT, shall not provide for less favorable terms, conditions or prices for TxDOT and/or their designee(s) following the expiration or termination of this Agreement or any applicable Service(s) than would otherwise be applicable to Service Provider (except for terms, conditions or prices available to Service Provider because of its volume purchases). Service Provider's rights under the preceding sentence are conditioned upon Service Provider paying all applicable termination or cancellation charges, Losses and other amounts due to the applicable vendor associated with such action and indemnifying TxDOT against any such charges, Losses or other amounts associated therewith. Notwithstanding anything to the contrary herein, Service Provider shall not terminate, shorten or modify without TxDOT's prior written consent any license for Third Party Materials either created exclusively for TxDOT or otherwise not commercially available. Service Provider shall reimburse TxDOT for any termination charges, cancellation charges, or other amounts paid by them at Service Provider's direction in connection with obtaining any such modification. TxDOT may request, and Service Provider shall provide, copies of all extensions, renewals, terminations and modifications proposed and/or entered into by Service Provider hereunder.

6.6 Managed Third Parties.

- (a) **Fully Managed Third Parties.** With respect to Managed Third Parties designated on **Exhibit 4.1 Pricing Structure** as "Fully Managed Third Parties" and any substitute or replacement therefor (each a "**Fully Managed Third Party**"), Service Provider shall manage the relevant Third Party Contracts (each a "**Fully Managed Third Party Contract**") so that such Fully Managed Third Parties perform in accordance with this Agreement, including the Service Levels, and comply with all applicable duties and obligations imposed on Service Provider under this Agreement. Unless otherwise specified in **Exhibit 4.1**, the performance of such Fully Managed Third Parties shall be included in determining Service Provider's compliance with applicable Service Levels in **Exhibit 3.1 Service Level and Deliverable Matrix**, and Service Provider shall be responsible for any Service Level Credits incurred as a result of any failure by such Fully Managed Third Parties to perform in accordance with such Service Levels. Upon the expiration or termination of a Fully Managed Third Party Contract, Service Provider shall be responsible for the continued performance of the Services in accordance with this Agreement and shall either provide such Services itself or enter into a contract for such services with a replacement Fully

Managed Third Party. As it shall remain the contracting party, TxDOT shall exercise such rights under the Fully Managed Third Party Contracts in support of Service Provider’s obligations as TxDOT is reasonably requested to do so by Service Provider.

- (b) **Generally Managed Third Parties.** Unless otherwise set forth in **Exhibit 4.1**, with respect to all Managed Third Parties, including the Fully Managed Third Parties, Service Provider shall perform the following activities with respect to the management and administration of Third Party Contracts between TxDOT and such Managed Third Parties:
- (i) manage the Managed Third Parties, including monitoring operational day-to-day service delivery, monitoring performance, escalating problems for resolution, and maintaining technical support relationships;
 - (ii) work with TxDOT, as requested, to manage new and existing contractual relationships TxDOT may have with such Managed Third Parties as needed to provide the Services;
 - (iii) oversee Managed Third Party delivery of services and compliance with the Service Levels and the performance standards contained in the agreements with such Managed Third Parties;
 - (iv) manage the performance of the Managed Third Party to the service levels or other performance standards contained in the agreements with such Managed Third Parties and notify TxDOT and the Managed Third Party of each Managed Third Party’s failure to perform such services in accordance with the performance standards or other terms and conditions contained in such TxDOT agreement with the Managed Third Party or the Service Levels contained in **Exhibit 3.1**;
 - (v) escalate Managed Third Party performance failures to Managed Third Party management as necessary to achieve timely resolution;
 - (vi) monitor and manage the Managed Third Party’s efforts to remedy a failure of performance;
 - (vii) communicate to TxDOT the status of the Managed Third Party’s efforts to remedy a failure of performance; and
 - (viii) recommend retention, replacement, modification or termination of a Managed Third Party based on the performance or cost benefits to TxDOT as tracked by Service Provider.
- (c) **Other Responsibility.** Any use by Service Provider of any services provided by Managed Third Parties in connection with the Services shall be limited to fulfilling the requirements of this Agreement to the extent allowed and for purposes authorized under applicable Laws. Unless otherwise specified in **Exhibit 4.1** or agreed in writing by the Parties, Service Provider is responsible for all costs and charges associated with such Managed Third Parties. Unless otherwise specified in **Exhibit 4.1**, Service Provider shall be TxDOT’s sole point of contact regarding the services provided by such Managed Third Parties in connection with the Services.

7 PERFORMANCE MANAGEMENT

7.1 General.

(a) **General Performance Standards.**

Beginning on the Commencement Date, Service Provider shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, and resource efficiency that are at least equal to those received by TxDOT prior to such date. In addition, Service Provider shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency, and productivity that are at least equal to accepted industry standards of first tier providers of services that are the same as or similar to the Services. The foregoing provisions of this Subsection shall not be deemed to supersede the Service Levels.

(b) **Service Level Performance Standards.**

Beginning on the Commencement Date, Service Provider shall perform the Services so as to meet or exceed the Service Levels set forth in or otherwise in accordance with **Exhibit 3.0 Performance Model**.

7.2 Service Level Credits.

Service Provider recognizes that TxDOT is paying Service Provider to deliver the Services at specified Service Levels. If Service Provider fails to meet such Service Levels, then, in addition to other remedies available to TxDOT, Service Provider shall pay or credit to TxDOT the Service Level Credits specified in **Exhibit 3.0 Performance Model** in recognition of the diminished value of the Services resulting from Service Provider's failure to meet the agreed upon level of performance, and not as a penalty. Under no circumstances shall the imposition of Service Level Credits be construed as TxDOT's sole or exclusive remedy for any failure to meet the Service Levels Service Level Credits are not counted toward and are not subject to the overall cap on Service Provider's liability.

7.3 Deliverable Credits.

Service Provider recognizes that TxDOT is paying Service Provider to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Service Provider fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to TxDOT, Service Provider shall pay or credit to TxDOT the amounts specified in **Exhibit 3.1 Service Level and Deliverable Matrix** as applicable, or established by TxDOT as part of the Project approval process on a case by case basis in recognition of the diminished value of the Services resulting from Service Provider's failure to meet the agreed upon level of performance, and not as a penalty (**the "Deliverable Credits"**). If TxDOT recovers monetary damages from Service Provider as a result of Service Provider's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Service Provider shall be entitled to set-off against such damages any Deliverable Credits paid for the failures giving rise to such recovery. Deliverable Credits are distinct from Service Level Credits and shall not be counted toward or subject to the overall cap on Service Provider's liability.

8 SERVICE PROVIDER PERSONNEL

8.1 Key Personnel.

- (a) **Approval of Key Personnel.** The positions designated by TxDOT to be filled by Key Personnel and the Key Personnel that have been selected and approved by TxDOT as of the Effective Date are identified in **Exhibit 2.4 Key Personnel**. At least thirty (30) days prior to assigning an individual to act as one (1) of the Key Personnel, whether as an initial assignment or a subsequent assignment, Service Provider shall notify TxDOT of the proposed assignment, shall introduce the individual to appropriate TxDOT representatives, shall provide reasonable opportunity for TxDOT representatives to interview the individual and shall provide TxDOT with a resume and such other information about the individual as may be reasonably requested by TxDOT. If TxDOT in good faith objects to the proposed assignment, the Parties shall attempt to resolve TxDOT's concerns on a mutually agreeable basis. If the Parties have not been able to resolve TxDOT's concerns within five (5) Business Days of TxDOT communicating its concerns, Service Provider shall not assign the individual to that position and shall propose to TxDOT the assignment of another individual of suitable ability and qualifications. TxDOT may add, delete, or otherwise change the positions to be filled by Key Personnel under this Agreement.
- (b) **Continuity of Key Personnel.** Service Provider shall cause each of the Key Personnel initially assigned at execution to devote full time effort to the provision of Services under this Agreement for, at a minimum, twenty-four (24) months post Commencement unless otherwise stated in **Exhibit 2.4 Key Personnel**. Service Provider shall not transfer, reassign or remove any of the Key Personnel except to the extent such transfer, reassignment or removal is due to "cause" or "performance" as defined below, voluntary resignation or involuntary termination for death or disability, or other leave of absence protected by applicable Law (e.g., the Family and Medical Leave Act) or announce its intention to do so during the minimum period without TxDOT's prior approval, which TxDOT may withhold in its reasonable discretion based on its own self-interest. In the event of the voluntary resignation, involuntary termination for cause, illness, disability or death or other leave of absence protected by applicable Law

(e.g., the Family and Medical Leave Act) of one of its Key Service Provider Personnel during or after the specified period, Service Provider shall (i) give TxDOT as much notice as reasonably possible of such development and (ii) as soon as possible, and in no event more than fifteen (15) Business Days following the voluntary resignation, involuntary termination for cause, illness, disability or death or other leave of absence protected by applicable Law (e.g., the Family and Medical Leave Act) of such Key Service Provider Personnel, identify and obtain TxDOT's approval of a suitable replacement, with the same or substantially similar competence, skills, experience, ability, tenure and qualifications as the Key Service Provider Personnel being replaced. Service Provider shall ensure that, at no point during the Term, any Key Service Provider Personnel position remains vacant for more than fifteen (15) Business Days. In addition, even after the period specified in the applicable Statement of Work, Service Provider shall not replace, transfer, reassign or remove one of its Key Service Provider Personnel unless and until Service Provider (A) gives TxDOT at least fifteen (15) Business days prior notice of such action (except to the extent such removal involves termination due to "cause" or "performance" as defined below, voluntary resignation or involuntary termination for death or disability), (B) identifies and obtains TxDOT's approval of a suitable replacement at least fifteen (15) Business days prior to such replacement, transfer, reassignment or removal, (C) provides TxDOT with a plan describing the steps and training (including knowledge transfer) that Service Provider shall perform to transition responsibility to the replacement at no cost to TxDOT, and (D) demonstrates to TxDOT's reasonable satisfaction that such action shall not have an adverse impact on Service Provider's performance of its obligations under this Agreement. For purposes of this Section "cause" means disregard of Service Provider's rules, insubordination or misconduct (as defined in Service Provider's human resource written practices or policies), or criminal conduct, and "performance" means that the individual's job performance is at a level that would justify dismissal under Service Provider's human resources written practices and policies.

- (c) **Retention and Succession.** Service Provider shall implement and maintain a retention strategy designed to retain Key Personnel on TxDOT's ' accounts for the prescribed period, to include items such as retention bonuses. Service Provider shall also maintain active succession plans for each of the Key Personnel positions.

8.2 Service Provider Account Director.

Service Provider shall designate a "Service Provider Account Director" who, unless otherwise agreed by TxDOT, shall maintain his or her office in Austin, Texas. The Service Provider Account Director shall (a) be one (1) of the Key Personnel, (b) be a full time employee of the Service Provider, (c) devote his or her full time and effort to managing the Services, (d) remain in this position for a minimum period of two (2) years from the initial assignment (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or other leave of absence protected by applicable Law (e.g., the Family and Medical Leave Act)), (e) serve as the single point of accountability for the Services, (f) be the single point of contact to whom all TxDOT communications concerning this Agreement may be addressed, (g) have authority to act on behalf of Service Provider in all day-to-day matters pertaining to this Agreement, (h) have day-to-day responsibility for service delivery, billing and relationship management, and (i) have day-to-day responsibility for ensuring customer satisfaction and attainment of all Service Levels.

8.3 Service Provider Personnel Are Not State or TxDOT Employees.

It is expressly understood and agreed to by both parties that TxDOT is contracting with Service Provider as an independent contractor. Service Provider understands and agrees that individuals performing services in connection with the Agreement are not State employees and nothing in this Agreement shall operate or be construed as making the State and TxDOT, on the one hand, and Service Provider, on the other hand, partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, affiliate, contractor or subcontractor retained by Service Provider to perform work hereunder shall be deemed to be an officer, Director, employee, agent, affiliate, contractor or subcontractor of the State or TxDOT for any purpose. Service Provider, not the State or TxDOT, has the right, power, authority and duty to supervise and direct the activities of the Service Provider Personnel and to compensate such Service Provider Personnel for any work performed by them hereunder. Except as expressly provided in this Agreement, neither Service Provider nor any of Service Provider's employees, agents or Subcontractors may act in any sense as agents or representatives of TxDOT or the State. Service Provider,

and not the State nor TxDOT shall be responsible and therefore solely liable for all acts and omissions of Service Provider Personnel associated or related in any manner with this Agreement, the Services, TxDOT Facilities, Service Provider Facilities, TxDOT Confidential Information, or Equipment, including acts and omissions constituting negligence, gross negligence, willful misconduct and/or fraud.

8.4 Responsibility for Service Provider Personnel.

- (a) Service Provider Personnel and Subcontractors shall be paid exclusively by Service Provider for all Services performed. Service Provider is responsible for and must comply with all requirements and obligations related to such employees, agents or Subcontractors under local, State or Federal law, including minimum wage, social security, unemployment insurance, State and Federal income tax and workers' compensation obligations.
- (b) Service Provider assumes sole and full responsibility for its acts and the acts of the Service Provider Personnel and Subcontractors relating to the performance of this Agreement.
- (c) Service Provider agrees that any claim on behalf of any person arising out of employment, alleged employment, agency or subcontracts (including, but not limited to, claims of discrimination against Service Provider, its officers, or its agents or its Subcontractors) are the sole responsibility of Service Provider and are not the responsibility of TxDOT, and that Service Provider will indemnify and hold harmless TxDOT from any and all such claims asserted against the State or TxDOT. Service Provider understands that any person who alleges a claim arising out of employment, alleged employment, agency, or Subcontract by Service Provider (including, but not limited to, claims of discrimination against Service Provider, its officers, or its agents or its Subcontractors) will not be entitled to any compensation, rights, or benefits from TxDOT (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

8.5 Replacement, Qualifications, and Retention of Service Provider Personnel.

- (a) **Sufficiency and Suitability of Personnel.** As a material obligation hereunder, Service Provider shall assign (or cause to be assigned) sufficient numbers of Service Provider Personnel to perform the Services in accordance with this Agreement (including applicable Service Levels), and such Service Provider Personnel shall possess suitable competence, ability and qualifications and shall be properly educated and trained for the Services they are to perform. Service Provider will maintain the organizational and administrative capacity and capabilities to carry out all Service Provider duties and responsibilities, including providing and supporting the Services, under this Agreement. Notwithstanding transfer or turnover of its personnel, or of its agents' or Subcontractors' personnel, Service Provider remains obligated to perform all duties and responsibilities, including providing and supporting the Services, without degradation and in accordance with the terms of this Agreement.
- (b) **Responsibility for Service Provider Personnel.** Service Provider agrees that anyone used by Service Provider to fulfill the terms of this Agreement is an employee, agent or Subcontractor of Service Provider and remains under Service Provider's sole direction and control. In addition, Service Provider hereby agrees to be responsible for the following with respect to its employees, agents or Subcontractors: (i) damages incurred by Service Provider Personnel or Subcontractors within the scope of their duties under this Agreement; and (ii) determination of the hours to be worked and the duties to be performed by Service Provider Personnel or Subcontractors. Service Provider agrees and will inform its employees, agents, and Subcontractors that there is no right of action against TxDOT for any duty owed by Service Provider pursuant to this Agreement. Service Provider expressly agrees that TxDOT assumes no liability for the actions of, or judgments rendered against, the Service Provider, its employees, agents, or Subcontractors. TxDOT's liability to the Service Provider's employees, agents, and Subcontractors, if any, will be governed by Chapter 101, Texas Civil Practice & Remedies Code.
- (c) **Requested Replacement.** In the event that TxDOT determines lawfully and in good faith that the continued assignment of any individual Service Provider Personnel (including Key Personnel) to the performance of the Services is not in the best interests of TxDOT, then TxDOT may give Service Provider notice to that effect requesting that such Service Provider Personnel be replaced. Service Provider shall have ten (10) Business Days following TxDOT's request for removal of such Service Provider Personnel in which to investigate the matters forming the basis of such request, correct any

deficient performance, and provide TxDOT with assurances that such deficient performance shall not recur (provided that, if requested to do so by TxDOT, Service Provider shall immediately remove (or cause to be removed) the individual in question from all TxDOT Facilities pending completion of Service Provider's investigation and discussions with TxDOT). If, following such ten (10) Business Day period, TxDOT is not reasonably satisfied with the results of Service Provider's efforts to correct the deficient performance and/or to prevent its recurrence, Service Provider shall, as soon as possible, remove and replace such Service Provider Personnel with an individual of suitable ability and qualifications, at no additional cost to TxDOT. Nothing in this provision shall operate or be construed to limit Service Provider's responsibility for the acts or omissions of Service Provider Personnel, or be construed as joint employment of the Service Provider Personnel.

(d) Service Provider Personnel.

- (i) Service Provider shall ensure that all Service Provider Personnel (A) are at all times legally permitted to work in any location in which they are assigned to perform Services and (B) meet the criteria for Service Provider Personnel under this Agreement, and (C) have completed pre-hire background investigations verifying that Service Provider Personnel had not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest act. Service Provider shall maintain, in a reasonably accessible location and format, the documentation reasonably necessary to verify the foregoing, as well as a resume and such other information about the individual as may be reasonably requested by TxDOT, and shall make such documentation available to TxDOT or TxDOT Auditors upon request
 - (ii) Service Provider shall maintain policies prohibiting the use of illegal drugs. Service Provider represents that the Service Provider Personnel are not disqualified from performing their assigned work under applicable Laws. Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 13, 2014, and as subsequently clarified, the Service Provider shall, as a condition to this Agreement, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of (A) all persons to whom the E-Verify system applies, and who are hired by Service Provider during the Term to perform Services within the State, and (B) all Subcontractors' employees to whom the E-Verify system applies and who are hired by a Subcontractor during the Term and assigned by Subcontractor to perform Services pursuant to this Agreement. Service Provider shall require its Subcontractors to comply with the requirements of this Section. Nothing herein is intended to exclude compliance by Service Provider and its Subcontractors with all other applicable federal immigration statutes and regulations promulgated pursuant thereto.
- (e) Background and/or Criminal History Investigations.** Prior to the date any Service Provider Personnel are assigned to TxDOT's account, Service Provider shall conduct, at its expense and in compliance with applicable Law, a background check, criminal history investigation, and substance abuse screening of each such member of the Service Provider Personnel. Service Provider Personnel background checks, criminal history investigations, and substance abuse screenings will include investigation of such matters as reasonably required by TxDOT, subject to the limitations of applicable Law, and aligned with federal government or other third party background check requirements, such as those identified in CJIS security policy, that are necessary for those Service Provider Personnel that access, use, and manage the type of information described in [Section 13.4 TxDOT Regulated Data](#). Service Provider shall provide to TxDOT on an annual basis a report that identifies all Service Provider Personnel and their current background, criminal history, and substance abuse screenings investigation status information. In addition, when Service Provider onboards new Service Provider Personnel to support the delivery of the Services under this Agreement and requests access and use of TxDOT Systems, Service Provider shall include within the staff onboarding package that the current background check status information. Service Provider shall maintain, in a reasonably accessible format and location, documentation evidencing that background checks, criminal history investigations and substance abuse screenings have been completed on all Service Provider Personnel, and will grant TxDOT access to such documentation upon request. Service Provider will exercise reasonable care and diligence to ensure that Service Provider does not assign individuals to the Service Provider Personnel who, based on the results of any background checks, criminal history investigations, or substance abuse screening, may represent a threat to the safety or security of any person or any TxDOT Data, facilities, operations, or assets.

8.6 Conduct of Service Provider Personnel. Service Provider shall ensure that:

- (a) **Conduct and Compliance.** Service Provider Personnel (i) comply with applicable TxDOT Rules and other rules and regulations as further described in [Section 6.3 TxDOT Rules/Employee Safety](#), (ii) comply with reasonable requests of TxDOT personnel pertaining to personal and professional conduct, (iii) attend workplace training offered by TxDOT at TxDOT's request, and (iv) otherwise conduct themselves in a professional and businesslike manner.
- (b) **Identification of Service Provider Personnel.** Except as specifically authorized by TxDOT, all Service Provider Personnel clearly identify themselves as Service Provider Personnel and not as employees or representatives of the State or TxDOT. This shall include any and all communications, whether oral, written or electronic, unless and to the extent authorized by TxDOT in connection with the performance of specific Services. Each Service Provider Personnel shall wear a badge issued by TxDOT indicating that he or she is a "contractor" when at a TxDOT Facility.
- (c) **Restriction on Marketing Activity.** Except for marketing representatives designated in writing by Service Provider to TxDOT, none of the Service Provider's Personnel may conduct any marketing activities with respect to any services specifically outside the scope of this Agreement to TxDOT at TxDOT Facilities (including marketing of any New Services), other than, subject to [Section 13.1 Confidentiality](#), reporting potential marketing opportunities to Service Provider's designated marketing representatives.

8.7 Substance Abuse or Criminal Activity.

- (a) **Employee Removal.** To the extent permitted by applicable Laws, Service Provider shall immediately remove (or cause to be removed) any Service Provider Personnel known to be or reasonably suspected of (i) engaging in substance abuse or criminal activity while at any TxDOT Facility, in a TxDOT vehicle or while performing Services, or (ii) engaging in activities that may present a threat to the safety or security of any person or any TxDOT Data, facilities, operations, or assets. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia or alcohol, or the misuse of prescription or non-prescription drugs.
- (b) **Substance Abuse Policy.** Service Provider shall maintain substance abuse policies in conformance with TxDOT Rules and applicable Laws, and all Service Provider Personnel shall be subject to such policies.

8.8 Union Agreements.

Service Provider shall provide TxDOT not less than ninety (90) days notice of the expiration of any collective bargaining agreement with unionized Service Provider Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt the activities or operations of TxDOT or impact Service Provider's ability to timely perform its duties and obligations under this Agreement.

8.9 Knowledge Transfer.

- (a) During the period following the Effective Date and prior to the Commencement Date, Service Provider will use its best efforts to acquire the practical skill, knowledge and expertise from the personnel who are providing the Services prior to the Effective Date in relation to the delivery of the Services, including the knowledge necessary for the Service Provider to perform the Services. Service Provider will accomplish such knowledge transfer, as appropriate, by interviewing personnel currently performing the Services as well as reviewing information, records and documents related to the provision of the Services. The information to be reviewed to affect the obligations of such knowledge transfer include, (A) copies of procedures and operations manuals, (B) relevant system, software and/or hardware information, (C) a list of third party suppliers of goods and services which are to be transferred to TxDOT or Service Provider, (D) key support contact details for third party supplier employees, and (E) information regarding work in progress and associated unresolved faults in progress. Service Provider shall within one (1) Business Day notify TxDOT of any lack of cooperation or assistance on the part of any TxDOT Contractor or any third party that impedes or hinders Service Provider's efforts to comply with this obligation.
- (b) Upon at least fifteen (15) Business Days' notice from TxDOT (but no less than twice in a Contract Year),

Service Provider will meet with representatives of TxDOT to (i) explain how the Services are provided, (ii) explain how the Software, Systems, Equipment, and Materials work and should be operated and (iii) provide such training and documentation as TxDOT may require for TxDOT to (A) provide services that interact with or interface with the Services, (B) understand and operate the Software, Systems, Equipment, and Materials, and (C) understand and perform the Services after the expiration or termination of this Agreement. Upon TxDOT's request from time to time, Service Provider will deliver to TxDOT a full description of the processes, tools and environmental configuration related to the Services.

9 SERVICE PROVIDER RESPONSIBILITIES

9.1 Reports, Data Correction, Re-Performance.

- (a) **Reports.** Service Provider shall provide TxDOT with (A) reports pertaining to the performance of the Services and Service Provider's other obligations under this Agreement sufficient to permit TxDOT to monitor and manage Service Provider's performance, (B) those reports described in **Exhibit 3.3 Reports** and the SMM in the form and format and at the frequencies provided therein, (C) those reports required elsewhere under the terms of this Agreement, (D) those generated by TxDOT prior to the Commencement Date, and (E) such additional reports as TxDOT may reasonably identify from time to time to be generated and delivered by Service Provider on an ad hoc or periodic basis (all such reports, the "**Reports**").
- (b) **Back-Up Documentation.** As part of the Services, Service Provider shall provide TxDOT with such documentation and other information available to Service Provider (including original source documentation and data in its native format or in an alternative industry-standard format as requested by TxDOT) as may be requested by TxDOT from time to time in order to verify the accuracy of the Reports provided by Service Provider. In addition, Service Provider shall provide TxDOT with all documentation and other information reasonably requested by TxDOT from time to time to verify that Service Provider's performance of the Services is in compliance with the Service Levels and this Agreement.
- (c) **Correction of Errors.** Service Provider shall promptly correct any errors or inaccuracies in or with respect to the Reports as part of the Services and at no additional cost.

9.2 Governance: Meetings.

- (a) **Governance.** The parties shall comply with the governance and account management provisions set forth in **Exhibit 1.2 Governance Model**. The Parties will make management decisions, respond to communications and perform the other governance responsibilities set forth in **Exhibit 1.2 Governance Model** in a timely manner.
- (b) **Meetings.** During the term of this Agreement, representatives of the Parties shall meet periodically or as requested by TxDOT to discuss matters arising under this Agreement, including any such meetings provided for in the Transition Plan and the SMM. During the Transition Period, this may include meetings with TxDOT, the incumbent service provider, and other Service Component Providers. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings.

9.3 Quality Assurance and Internal Controls.

- (a) **General.** Service Provider shall develop and implement Quality Assurance and internal control (e.g., financial and accounting controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) processes and procedures, including implementing tools and methodologies, to perform the Services in an accurate and timely manner (and confirm that they are so performed and accounted for) in accordance with (A) the Service Levels and other requirements of this Agreement, (B) Generally Accepted Accounting Principles (US GAAP) to the extent necessary for Service Provider to make its public filings with the Securities and Exchange Commission, (C) accepted industry standards of first tier providers of services that are the same as or similar to the Services, (D) the Laws applicable to TxDOT (without limiting the obligations of the Parties under [Section 15.11 Compliance with Laws.](#)), and (E) industry standards (e.g., QS 9000, ISO 9001/2000, ISO 14000, ISO 17799/2005, ISO 27001/2005, ISO 27002/2005) applicable to TxDOT

and the performance of the Services to the extent described in [Section 9.3\(c\)](#) below. Such processes, procedures and controls shall include verification, checkpoint reviews, testing, acceptance and other procedures for TxDOT to assure the quality and timeliness of Service Provider's performance. Without limiting the generality of the foregoing, Service Provider shall:

- (i) Maintain a strong control environment in day-to-day operations to assure that the following fundamental control objectives are met: (A) financial, billing and operational information is valid, timely, complete and accurate; (B) operations are performed efficiently and achieve effective results, consistent with the requirements of this Agreement; (C) assets and data are safeguarded in accordance with Service Provider's own internal (and in all events reasonable) practices (but without expanding Service Provider's obligations under [Section 13.2 \(b\) Safeguarding of TxDOT Data.](#)); and (4) actions and decisions of the organization are in compliance with Laws (without limiting the obligation of the Parties under [Section 15.11 Compliance with Laws.](#)) and the terms of this Agreement;
 - (ii) Build the following basic control activities into work processes: (A) accountability clearly defined and understood; (B) access properly controlled; (C) adequate supervision; (D) transactions properly authorized; (E) transactions properly recorded; (F) transactions recorded in proper accounting period; (F) policies, procedures and responsibilities documented; (H) adequate training and education; and (I) adequate separation of duties;
 - (iii) Develop and execute a process to perform (and confirm performance of) periodic control self-assessments with respect to all Services (such self-assessments to be performed at least annually unless and until TxDOT approves less frequent self-assessments);
 - (iv) Maintain an internal audit function to sufficiently monitor the processes, internal controls and Systems used to provide the Services (i.e., perform audits, track control measures, communicate status to management, drive corrective action, etc.) and provide copies of any such internal audit reports to TxDOT; and
 - (v) Conduct investigations of suspected fraudulent activities within Service Provider's organization that impact or reasonably could be expected to impact TxDOT. Service Provider shall promptly notify TxDOT of any such suspected fraudulent activity and a reasonable summary of the results of any such investigation as they relate to TxDOT and such supplemental materials as TxDOT may reasonably request. At Service Provider's request, TxDOT shall provide reasonable assistance to Service Provider in connection with any such investigation.
- (b) **Approval by TxDOT.** Service Provider shall submit such processes, procedures and controls to TxDOT for its review, comment and approval at least forty-five (45) days prior to the Commencement Date and shall use commercially reasonable efforts to finalize such processes, procedures and controls and obtain TxDOT's final approval on or before the Commencement Date. Upon TxDOT's approval, such processes and procedures shall be included in the Service Management Manual. Prior to the approval of such processes and procedures by TxDOT, Service Provider shall adhere strictly to TxDOT's ' then-current policies, procedures and controls. No failure or inability of the quality assurance procedures to disclose any errors or problems with the Services shall excuse Service Provider's failure to comply with the Service Levels and other terms of this Agreement.
- (c) **Industry Standards, Certifications and Compliance.** Service Provider shall comply with all applicable Laws and regulations related, including but not limited to:
- (i) TxDOT Rules and TxDOT Standards
 - (ii) Texas Codes, Laws, and Regulations
 - (iii) Payment Card Industry (PCI) Data Security Standards (DSS)
 - (iv) Criminal Justice Information System (CJIS) Security Policy
 - (v) 18. U.S.C. Chapter 123, Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records
 - (vi) American Institute of Certified Public Accountants (AICPA) Statements on Standards for

Attestation Engagements (SSAE No. 18)

- (vii) International Organization for Standardization (ISO) 9000, 9001:2000, 14001, 27001/2005, and 27002/2005
- (viii) The Open Group Architecture Framework (TOGAF)
- (ix) Information Technology Infrastructure Library (ITIL)
- (x) Six Sigma
- (xi) Project Management Institute (PMI)

9.4 Processes, Procedures, Architecture, Standards and Planning.

- (a) **Service Provider Support.** As requested by TxDOT, Service Provider and without limiting the obligation of the Parties under [Section 15.11 Compliance with Laws](#), shall assist TxDOT and the appropriate governance committee (as specified in **Exhibit 1.2 Governance Model**), on an on-going basis in defining (A) the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Service Provider in the performance of the Services, including those identified on **Exhibit 2.0** and (B) the associated IT technologies architectures, standards, products and systems to be provided, operated, managed, supported and/or used by Service Provider in connection therewith (collectively, the "**TxDOT Standards**"). The Parties acknowledge and agree that, as of the Commencement Date, Service Provider is fully informed as to the TxDOT Standards that have been communicated to it in a manner consistent with [Section 6.3 TxDOT Rules/Employee Safety](#). Service Provider also shall assist TxDOT on an annual basis in preparing Strategic Plans and short-term implementation plans. The assistance to be provided by Service Provider shall include: (A) active participation with TxDOT and the appropriate governance committee (as specified in **Exhibit 1.2 Governance Model**), addressing such issues; (B) assessments of the then-current TxDOT Standards at a level of detail sufficient to permit TxDOT to make informed business decisions; (C) analyses of the appropriate direction for such TxDOT Standards; (D) the provision of information to TxDOT regarding Service Provider's technology strategies for its own business; (E) recommendations regarding standards, processes, procedures and controls and associated technology architectures, standards, products and systems; and (F) the provision of current, historical, and forecasted system capacity, performance and utilization metrics at reasonable requested levels of detail. With respect to each recommendation provided pursuant to [Section 9.5 Change Control](#), Service Provider shall provide the following at a level of detail sufficient to permit TxDOT to make an informed business decision: (A) the projected cost to TxDOT and cost/benefit analyses; (B) the changes, if any, in the personnel and other resources Service Provider and/or TxDOT shall require to operate and support the changed environment; (C) the resulting impact on the total costs of TxDOT ; (D) the expected performance, quality, responsiveness, efficiency, reliability, security risks and other service levels; and (E) general plans and projected time schedules for development and implementation. Any assistance provided by Service Provider under [Section 9.5 Change Control](#), shall be at no additional fee or charge beyond the Charges specified in **Exhibit 4.0 Business Model** for the Services, unless an additional Charge has been approved by TxDOT.
- (b) **TxDOT Authority and Service Provider Compliance.** TxDOT shall have final authority to promulgate TxDOT Standards and Strategic Plans and to modify or grant waivers from such TxDOT Standards and Strategic Plans. Service Provider shall (A) comply with and implement the TxDOT Standards and Strategic Plans in providing the Services, (B) work with TxDOT to enforce the TxDOT Standards and Strategic Plans, (C) modify the Services as and to the extent necessary and on a schedule to conform to such TxDOT Standards and Strategic Plans, and (D) obtain TxDOT's prior written approval for any deviations from such TxDOT Standards and Strategic Plans.

9.5 Change Control.

- (a) **Compliance with Change Control Procedures.** In making any change in the standards, processes, procedures and controls or associated technologies, architectures, standards, products, Materials, Equipment, Systems or services provided, operated, managed, supported or used in connection with the Services, the Parties shall comply with the change control procedures specified in the Service

Management Manual ("**Change Control Procedures**"). The Service Management Manual shall contain a procedure that allows TxDOT to exercise the approval rights in this Section and complies with the following requirements:

- (i) **Impact Assessment.** If Service Provider desires to make any change, upgrade, replacement or addition that may have an adverse impact or require changes as described in [Section 9.5 \(c\) TxDOT Approval – Cost, Adverse Impact](#) or increase the risk of Service Provider not being able to provide the Services in accordance with this Agreement or violate or be inconsistent with TxDOT Standards or Strategic Plans, then Service Provider shall prepare a written risk assessment and mitigation plan (A) describing in detail the nature and extent of such adverse impact or risk, (B) describing any benefits, savings or risks to TxDOT associated with such change, and (C) proposing strategies to mitigate any adverse risks or impacts associated with such change and, after consultation and agreement with TxDOT, implement the plan.
 - (ii) **Comparison Analysis.** Each time that Service Provider makes a material change to the Materials, Equipment, Systems, or Services, Service Provider shall perform a comparison analysis at a reasonable and mutually agreed level of detail to confirm the change shall not have an adverse impact on the costs, operations or environment of TxDOT or on the functionality, interoperability, performance, accuracy, speed, legality, responsiveness, quality or resource efficiency of the Services. In addition, at TxDOT's request, Service Provider shall perform a comparison at a reasonable and mutually agreed level of detail, between the amount of chargeable resources required to perform a representative sample of the Services being performed for TxDOT immediately prior to the change and immediately after the change. TxDOT shall not be required to pay for increased chargeable resources usage due to a change except to the extent that such change is requested or approved by TxDOT after notice from Service Provider of such increased chargeable resources usage.
 - (iii) **Testing.** Prior to making any change or using any new (i.e., not tested in or for the TxDOT environment) Software, Equipment, or System to provide the Services, Service Provider shall verify by appropriate testing that the change or item is properly installed, operating in accordance with its specifications, performing its intended functions in a reliable manner and compatible with and capable of operating as part of the TxDOT environment. This obligation shall be in addition to Service Provider's other obligations in this Agreement, including Service Provider's obligation to perform any testing as part of the routine deployment or installation of Software or Equipment.
- (b) **Financial Responsibility for Changes.** Without limiting TxDOT's right of approval under [Section 9.5 \(c\) TxDOT Approval – Cost, Adverse Impact](#), unless otherwise set forth in this Agreement or otherwise expressly approved by TxDOT, Service Provider shall bear all charges, fees, and costs associated with any change desired by Service Provider, including all charges, fees and costs associated with (A) the design, installation, implementation, testing and rollout of such change, (B) any modification or enhancement to, or substitution for, any impacted process or associated Materials, Equipment, System, or Services, (C) any increase in the cost to TxDOT of operating, maintaining or supporting any impacted process or associated Materials, Equipment, System, or Services and (D) subject to **Exhibit 4.0 Business Model**, any increase in Resource Unit usage resulting from such change.
- (c) **TxDOT Approval – Cost, Adverse Impact.** Other than as expressly set forth in the Transition Plan as approved by TxDOT, Service Provider shall make no change which may (A) increase TxDOT's total cost of receiving the Services; (B) require material changes to, or have an adverse impact on TxDOT's operations, facilities, processes, systems, software, utilities, tools, or equipment (including those provided, managed, operated, supported and/or used on their behalf by TxDOT Contractors); (C) require TxDOT to install, at their cost or expense, a new version, release, Upgrade of or replacement for any Software or Equipment or to modify any Software or Equipment; (D) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services; (E) have an adverse impact on the cost, either actual or planned, to TxDOT of terminating this Agreement, in whole or in part, or on TxDOT's rights to insource or use third parties; (F) have an adverse impact on TxDOT's environment (including its flexibility to deal with future changes, interoperability and its stability), (G) introduce new technology to (1) TxDOT's environment or operations or (2) Service Provider's environment, to the extent that such introduction has or may have

- an adverse impact on TxDOT's environment; (H) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of TxDOT's Retained Systems and Processes, or (I) violate or be inconsistent with TxDOT Standards, TxDOT Rules, and any Strategic Plan in all cases (A) through (I) without first obtaining TxDOT's approval, which approval TxDOT may withhold in its sole discretion. If Service Provider desires to make such a change, it shall provide to TxDOT a written proposal describing in detail the extent to which the desired change may affect the functionality, performance, price, or resource efficiency of the Services and any benefits, savings or risks to associated with such change.
- (d) **Information for Exercise of Strategic Authority.** In order to facilitate TxDOT's strategic control pursuant to this [Section 9.5 Change Control](#), Service Provider shall provide TxDOT with such information as TxDOT shall reasonably require prior to making any proposed change. Such information shall include, at a minimum, a description of the proposed rights of TxDOT with respect to ownership and licensing (including any related restrictions) relating to such Materials, Equipment, or other technology. Such description shall include the license fees, maintenance fees and/or purchase or lease terms (if any) for use of such Materials, Equipment, or other technology by TxDOT and their designee(s) upon termination or expiration of this Agreement or the completion of Termination Assistance Services and any limitations or conditions on such use.
 - (e) **Temporary Emergency Changes.** Notwithstanding the foregoing, Service Provider may make temporary changes required by an emergency if it has been unable to contact the Designated TxDOT Representative to obtain approval after making reasonable efforts. Service Provider shall document and report such emergency changes to TxDOT not later than the next Business Day after the change is made. Such changes shall not be implemented on a permanent basis unless and until approved by TxDOT.
 - (f) **Implementation of Changes.** Service Provider shall schedule and implement all changes so as not to (A) disrupt or adversely impact the operations of TxDOT, (B) degrade the Services then being received by them, or (C) interfere with their ability to obtain the full benefit of the Services.

9.6 Software Currency.

- (a) **Currency of Software.** Subject to and in accordance with [Sections 9.3 Quality Assurance and Internal Controls](#), [9.4 Processes, Procedures, Architecture, Standards and Planning](#), [Exhibit 4.0 Business Model](#), and [Exhibit 4.2 Financial Responsibility Matrix](#), Service Provider shall maintain reasonable currency for Software for which it is financially responsible under this Agreement and provide maintenance and support for Software (including new Upgrades, major releases, and minor releases) for which it is operationally responsible under this Agreement. Service Provider shall (A) maintain Software within one (1) major release of the then-current major release, unless otherwise specified pursuant to the Software Currency guidelines set out in [Exhibit 4.2 Financial Responsibility Matrix](#) and (B) Service Provider shall install minor releases promptly or, if earlier, as requested by TxDOT.
- (b) **Evaluation and Testing.** Prior to installing a new Upgrade, major release, or minor release, Service Provider shall evaluate and test such Software to verify that it shall perform in accordance with this Agreement and the TxDOT Standards and Strategic Plans and that it shall not (A) increase TxDOT's total cost of receiving the Services, (B) have an adverse impact on performance or require changes as described in [Section 9.5 \(c\) TxDOT Approval – Cost, Adverse Impact](#), or (C) violate or be inconsistent with TxDOT Standards, Strategic Plans, or applicable Laws. The evaluation and testing performed by Service Provider shall be at least consistent with the reasonable and accepted industry norms applicable to the performance of such Services and shall be at least as rigorous and comprehensive as the evaluation and testing usually performed by highly qualified service providers under such circumstances.
- (c) **Approval by TxDOT.** Notwithstanding [Section 9.6 \(a\) Currency of Software](#), Service Provider shall seek approval from TxDOT prior to installing any new Upgrade, major release or minor release, shall provide TxDOT with the results of its testing and evaluation of such Software and a detailed implementation plan and shall not install such Software if directed not to do so by TxDOT. Where specified by TxDOT, Service Provider shall not install new Upgrades, major releases or minor releases or make other Software changes until TxDOT has completed and provided formal signoff on successful

User Acceptance Testing. Service Provider shall not install new Upgrades, major releases or minor releases or make other Software changes if doing so would require TxDOT to install new releases of, replace or make any other changes to any Software for which TxDOT is financially responsible under this Agreement unless TxDOT consents to such change in advance.

- (i) If TxDOT rejects Service Provider's proposed Upgrade or replacement of a Software version that is back-leveled such that it is no longer supported by the applicable Software manufacturer, Service Provider may be relieved from applicable Service Levels in accordance with [Section 10.2 Savings Clause](#).
- (ii) Notwithstanding the other provisions of this [Section 9.6 \(a\) Currency of Software Currency](#), if TxDOT rejects Service Provider's proposed Upgrade or replacement of a Software version that is back-leveled such that it is no longer supported by the applicable Software manufacturer and Service Provider is thereafter required to incur additional fees and expenses to obtain necessary maintenance for such Software version from such Software manufacturer in order to meet its obligations under this Agreement, TxDOT shall reimburse Service Provider for the reasonable fees and expenses thus incurred, but only if: (A) Service Provider is unable, using commercially reasonable efforts, to perform such maintenance using Service Provider personnel, including maintenance of knowledge among Service Provider personnel about Software versions retained or desired to be retained by end users, (B) TxDOT has rejected Service Provider's proposed Upgrade or replacement of such Software version after being notified by Service Provider that it will not be able to provide certain required maintenance for such Software version using Service Provider personnel, (C) Service Provider notifies TxDOT of its intent to use such Software manufacturer to perform maintenance and the anticipated fees and expenses associated therewith and obtains TxDOT's approval prior to incurring such fees and expenses, and (D) Service Provider uses commercially reasonable efforts to minimize the fees and expenses to be reimbursed by TxDOT.
- (d) **Updates by TxDOT.** TxDOT shall have the right, but not the obligation, to install new Upgrades, major releases or minor releases, and replace or otherwise make any other changes to Software for which TxDOT is financially responsible under this Agreement.

9.7 Access to Specialized Service Provider Skills and Resources.

Upon TxDOT's request, Service Provider shall provide TxDOT with prompt access to Service Provider's specialized services, personnel, and resources pertaining to standards, processes and procedures and associated software, equipment and systems on an expedited basis, taking into account the relevant circumstances (the "**Specialized Services**"). The Parties acknowledge that the provision of such Specialized Services may, in some cases, constitute New Services for which Service Provider is entitled to additional compensation, but in no event shall Service Provider be entitled to any additional compensation for New Services under this Section unless the Designated TxDOT Representative and Service Provider Account Director, or their authorized designees, expressly agree upon such additional compensation or Service Provider's entitlement to additional compensation is established through the dispute resolution process. If TxDOT authorizes Service Provider to proceed but the Parties disagree as to whether the authorized work constitutes New Services and TxDOT reasonably believes that such work is material and is required on an urgent basis, Service Provider shall proceed with such work if directed to do so by TxDOT. The Parties will diligently seek to resolve any such dispute, including through prompt submission of the disagreement to the dispute resolution pursuant to [Article 19 DISPUTE RESOLUTION](#), as appropriate.

9.8 Audit Rights.

- (a) **Contract Records.** Service Provider shall maintain complete and accurate records of, and supporting documentation for, all Charges, all TxDOT Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed, or stored by Service Provider in the performance of its obligations under this Agreement ("**Contract Records**"). Service Provider shall maintain such Contract Records in accordance with applicable Laws and the terms of this Agreement. Service Provider shall retain Contract Records in accordance with the applicable TxDOT record retention policy (as such policies may be modified from time to time and provided to Service Provider

- in writing) during the Term and thereafter through the end of the seventh (7th) full year after the year in which Service Provider stopped performing any Services (the "**Audit Period**").
- (b) **Operational Audits.** During the Audit Period, Service Provider shall provide to TxDOT (and internal and external auditors, inspectors, regulators, and other representatives that TxDOT may designate from time to time, including customers, vendors, licensees, and other third parties to the extent TxDOT is legally or contractually obligated to submit to audits by such Entities), and the State Auditor's Office and any successor governmental authorities (collectively, "**TxDOT Auditors**"), provided any such external customers, vendors, licensees and other third parties agree to protect Service Provider's Confidential Information subject to applicable public information laws, access at reasonable hours and upon reasonable notice to Service Provider Personnel, to the facilities at or from which Services are then being provided and to Service Provider records and other pertinent information, all to the extent relevant to the Services and Service Provider's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (A) verify the integrity of TxDOT Data, (B) examine the systems that process, store, support, and transmit that data (including system capacity, performance, and utilization), (C) examine the internal controls (e.g., financial controls, human resources controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery, and back-up practices and procedures, (D) examine Service Provider's performance of the Services, (E) verify Service Provider's reported performance against the applicable Service Levels, (F) examine Service Provider's measurement, monitoring, and management tools, and (G) enable TxDOT to meet applicable legal, regulatory and contractual requirements. Service Provider shall (1) provide any assistance reasonably requested by TxDOT Auditors in conducting any such audit, including installing and operating audit software, (2) make requested Service Provider Personnel, records and information available to TxDOT Auditors, and (3) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If an audit reveals a non-trivial breach of this Agreement, Service Provider shall, upon TxDOT's request, promptly reimburse TxDOT for reasonable auditors' fees including any follow-up audit to verify that such breach has been corrected.
- (c) **Financial Audits.** During the Audit Period, Service Provider shall provide to TxDOT Auditors access at reasonable hours to Service Provider Personnel and to Contract Records and other pertinent information to conduct financial audits, including the audit work papers of Service Provider's auditor to the extent applicable to the Services and obtainable by Service Provider, all to the extent relevant to the performance of Service Provider's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (A) verify the accuracy and completeness of Contract Records, (B) verify the accuracy and completeness of Charges and any Pass-Through Expenses and Out-of-Pocket Expenses, (C) examine the financial controls, processes, and procedures utilized by Service Provider in connection with the Services, (D) examine Service Provider's performance of its other financial and accounting obligations to TxDOT under this Agreement, and (E) enable TxDOT to meet applicable legal, regulatory, and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services. Service Provider shall (1) provide any assistance reasonably requested by TxDOT Auditors in conducting any such audit, (2) make requested Service Provider Personnel, records, and information available to TxDOT Auditors, and (3) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Service Provider, and Service Provider does not successfully dispute the amount questioned by such audit in accordance with [Article 19 DISPUTE RESOLUTION](#), Service Provider shall promptly pay to TxDOT the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Service Provider of the overcharged amount until the date of payment to TxDOT. In addition, if any such audit reveals an overcharge of more than five percent (5%) of the audited Charges in any Charges category, Service Provider shall, upon TxDOT's request, promptly reimburse TxDOT for reasonable auditors' fees.
- (d) **Audits by Governmental Authorities.** Acceptance of funds under this Agreement by Service Provider acts as acceptance of the authority of the State Auditor's Office, the State Comptroller Claims Division and any successor governmental authorities to conduct audits and investigations in connection with those funds. The State Auditor's Office and the State Comptroller Claims Division shall at any time have access

to and rights to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of Service Provider relating to this Agreement, notwithstanding any other provision of this Agreement. Service Provider shall fully cooperate with and provide all assistance requested by the State Auditor's Office or the State Comptroller Claims Division in the conduct of such audits or investigations, including providing all records requested. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex. Government Code, the State Auditor may conduct an audit or investigation of Service Provider or any other entity or person receiving funds from the State directly through this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Service Provider or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. This Agreement may be unilaterally amended by TxDOT upon notice to Service Provider to bring this Agreement into compliance 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.

(e) **General Procedures.**

- (i) Service Provider shall obtain audit rights equivalent to those specified in this [Section 9.8\(e\)9.9](#) from all Subcontractors (and in all events shall obtain such audit rights from all Subcontractors as required under the Texas Government Code, including Texas Government Code 2262.003, or other applicable Law), and shall cause such rights to extend to TxDOT Auditors.
 - (ii) In performing audits, TxDOT Auditors shall endeavor to avoid unnecessary disruption of Service Provider's operations and unnecessary interference with Service Provider's ability to perform the Services in accordance with the Service Levels.
 - (iii) TxDOT Auditors shall be given adequate private workspace in which to perform an audit, including access to photocopiers, telephones, internet connectivity, computer hook-ups, and any other facilities or equipment needed for the performance of the audit.
 - (iv) As requested by TxDOT, Service Provider shall provide TxDOT Auditors access to on-line view and notification components of any measurement and monitoring tools used by Service Provider in connection with its delivery of the Services.
 - (v) Service Provider recognizes that TxDOT must comply with applicable Laws respecting procurement of services in connection with any engagement of an audit firm or other consultant for conducting the audits contemplated in this [Section 9.8 Audit Rights](#). To the extent permissible under such Laws and the reasonable practice of TxDOT, TxDOT shall consult with Service Provider respecting the audit firm or other consultant and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, TxDOT reserves the right to determine, in its sole discretion, the appropriate audit firm or consultant to be engaged and the arrangement for such engagement.
 - (vi) TxDOT shall provide Service Provider with notice at least three (3) Business Days prior to any operational or financial audit by a TxDOT Auditor; provided that no such notice shall be required with respect to audits conducted pursuant to [Section 9.8\(d\) Audits by Governmental Authorities](#) or to the extent limited due to extenuating circumstances. To the extent TxDOT has advance notice of an audit to be conducted pursuant to [Section 9.8\(d\) Audits by Governmental Authorities](#) it shall provide reasonable notice to Service Provider.
- (f) **Service Provider Internal Audit.** If Service Provider determines as a result of its own internal audit that it has overcharged TxDOT, then Service Provider shall promptly pay to TxDOT the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Service Provider of the overcharged amount until the date of payment to TxDOT. In the event such an audit results in a determination that Service Provider has undercharged TxDOT, then, subject to [Section 12.1\(d\) Invoicing Time Limitation](#) and [Section 12.4 Disputed Charges](#), and TxDOT's right to dispute the amount of such undercharge, Service Provider shall promptly report such undercharge to TxDOT and may invoice TxDOT for such undercharged amounts.

- (g) **Service Provider Response.** Service Provider and TxDOT shall meet promptly upon the completion of an audit conducted pursuant to this [Section 9.8 Audit Rights](#) (i.e., an exit interview) and/or issuance of an interim or final report to Service Provider and TxDOT following such an audit. Service Provider shall respond to each exit interview and/or audit report in writing within thirty (30) days, unless a shorter response time is specified in such report. Service Provider and TxDOT shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview and/or audit report and Service Provider, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Service Provider's obligations under this Agreement.
- (h) **Service Provider Response to External Audits.** If an audit by a governmental body, standards organization, or regulatory authority having jurisdiction over TxDOT or Service Provider results in a finding that Service Provider is not in compliance with any applicable Law or standard, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this Agreement, Service Provider shall, if and to the extent such audit deficiency or finding of non-compliance results from Service Provider's failure to comply with its obligations under this Agreement, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such audit governmental body, standards organization or regulatory authority, in the manner approved by TxDOT, to the extent necessary to comply with Service Provider's obligations under this Agreement.
- (i) **Security Attestation.** Service Provider shall provide an annual written attestation that the Service Provider has a cybersecurity risk management program consistent with TxDOT Standards and the State of Texas information security standards and requirements.
- (j) **Security Assessment.** The Service Provider shall conduct an annual security assessment for each TxDOT system that they are the Information Custodian for that accesses, transmits, uses, or stores TxDOT data that demonstrates the system meets the TxDOT security controls TxDOT determines are proportionate with the risk based on the sensitivity of the TxDOT data. Service Provider shall propose, and TxDOT will review and approve the minimum content and format of the security assessment report that will be created by the Service Provider to include those required under Texas Administrative Code (TAC) 202 – Information Security Standards and Texas Government Code 2054 - Information Resources. In addition, Service Provider shall support any security assessment conducted by TxDOT on TxDOT systems for which the Service Provider serves as the Information Custodian.

9.9 Subcontractors.

- (a) **Use of Subcontractors.** Service Provider shall not subcontract any of its responsibilities under this Agreement without TxDOT's prior written approval, which may be withheld in TxDOT's sole discretion. Prior to entering into a subcontract with a third party for the Services, Service Provider shall:
- (i) deliver to TxDOT a copy of the entire and complete proposed subcontract (other than charges thereunder, except to the extent such charges are the basis on which Charges are based), or (in TxDOT's discretion) a detailed description of the scope and material terms (other than pricing terms) of the proposed subcontract;
 - (ii) obtain for TxDOT the licenses described in [Article 14 MATERIALS](#);
 - (iii) give TxDOT reasonable prior notice of the subcontract (no less than thirty (30) days), specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the reasons for subcontracting the work in question, the location of the Subcontractor facilities from which the Services shall be provided, the extent to which the subcontract shall be dedicated and the Subcontractor's willingness to grant the rights described in [Section 4.3 Termination Assistance Services](#), and [Article 14 MATERIALS](#); and
 - (iv) obtain TxDOT's prior written approval of such Subcontractor.
- (b) An entire and complete copy of the subcontract includes any contract that Service Provider considers an enterprise agreement such that Service Provider utilizes the subcontract for Service Provider's other customer(s) in addition to TxDOT. A list of Subcontractors that TxDOT has approved as of the Effective

Date as found in the relevant SMM, and the Parties acknowledge that such Subcontractors are approved to perform the Services to the extent described in the relevant SMM pursuant to the subcontracts previously provided to TxDOT.

- (c) **Right to Revoke Approval.** TxDOT may revoke its prior approval of a Subcontractor and direct Service Provider to replace any Subcontractor as soon as possible at no additional cost to TxDOT, if the Subcontractor's performance is materially deficient or if there are other reasonable grounds for removal. Service Provider shall have a reasonable opportunity to investigate TxDOT's concerns, correct the Subcontractor's deficient performance and provide TxDOT with a written action plan to assure that such deficient performance shall not recur. If TxDOT is not reasonably satisfied with Service Provider's efforts to correct the Subcontractor's deficient performance and/or to prevent its recurrence, Service Provider shall, as soon as possible, remove and replace such Subcontractor. Service Provider shall continue to perform its obligations under this Agreement, notwithstanding the removal of the Subcontractor. TxDOT shall have no responsibility for any termination charges or cancellation fees that Service Provider may be obligated to pay to a Subcontractor as a result of the removal of such Subcontractor at TxDOT's request or the withdrawal or cancellation of the Services then performed by such Subcontractor as permitted under this Agreement.
- (d) **Performance by Service Provider Affiliates.** Service Provider may subcontract certain Service Provider obligations under this Agreement to Service Provider's Affiliates and, without limiting the provisions of [Sections 20.3 Termination Upon Service Provider Change of Control](#), and [21.1 Delegation of Authority](#), TxDOT hereby approves such subcontracts, provided that Service Provider shall (A) provide TxDOT with prior notice of any such performance, (B) obtain for TxDOT and their designee(s) the rights described in [Section 4.4 Use of Third Parties](#), (C) obtain for TxDOT and their designee(s) the licenses described in [Article 14 MATERIALS](#), and (D) deliver to TxDOT a copy of the entire and complete subcontract, allowing TxDOT to disclose the subcontract during future procurements .
- (e) **Service Provider Responsibility.** Unless otherwise approved by TxDOT, the terms of any subcontract must be sufficient to enable Service Provider to perform all of its responsibilities and comply with all of its obligations under this Agreement, including: (A) confidentiality and intellectual property obligations; (B) obtaining for TxDOT and their designee(s) the rights described in [Section 4.3 Termination Assistance Services](#), (C) obtaining for TxDOT and their designee(s) the licenses described in [Article 14 MATERIALS](#), (D) TxDOT's approval rights (which must apply directly to the Subcontractor); (E) compliance with TxDOT Rules, TxDOT Standards, Strategic Plans and applicable Laws; (F) audit rights as described in [Section 9.8 Audit Rights](#); (G) Key Personnel; (H) insurance coverage as described in [Attachment B Insurance and Risk of Loss](#), with coverage limits consistent with the scope of the work to be performed by such Subcontractors; and (I) obtaining for TxDOT the rights specified in [Section 9.9 \(a\) Use of Subcontractors](#). For purposes of this Agreement, services, functions, and responsibilities performed by Subcontractors (including their personnel) shall be deemed Services performed by Service Provider, the obligations of Service Provider hereunder related to such performance shall be deemed applicable to Subcontractors as if expressly so provided herein and references to Service Provider in this Agreement (including references to a "**Party**" constituting references to Service Provider) shall include Subcontractors. Service Provider shall be TxDOT's sole point of contact regarding the Services, including with respect to payment. Notwithstanding the terms of the applicable subcontract, the approval of any Subcontractor by TxDOT or the availability or unavailability of Subcontractor insurance, Service Provider shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Service Provider under this Agreement to the same extent as if such failure to perform or comply was committed by Service Provider or Service Provider personnel. Without limiting the foregoing, Service Provider warrants and covenants that in no event shall any provision of this Agreement, or any right or benefit of TxDOT provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, Charge or expense, including taxes) as a consequence of the performance of any Services by or through Subcontractors.
- (f) **TxDOT's ability to contract with Subcontractors.** Service Provider is permitted to secure from its Subcontractors covenants not to compete with Service Provider with respect to the award of the particular Services for which Subcontractor was engaged to perform under the Subcontract, provided

that any such covenant not to compete must be coterminous with the Agreement.

- (g) **Historically Underutilized Businesses.** Service Provider shall use commercially reasonable efforts to select subcontractors for the performance of the Services in accordance with TxDOT's then-current "Policy on Utilization of Historically Underutilized Businesses."

9.10 Technology Evolution.

- (a) **Obligation to Evolve.** Service Provider shall identify and propose the implementation of services, products and offerings that are likely to: (A) improve the efficiency and effectiveness of the Services (including cost savings); (B) improve the efficiency and effectiveness of the processes, services and related functions performed by or for TxDOT; (C) result in cost savings or revenue increases to TxDOT in areas of their operations outside the Services; and (D) enhance the ability of TxDOT to conduct their operations and serve their constituencies and customers faster and/or more efficiently than the then-current strategies. Service Provider will cause the Services, Software and other assets used to deliver the Services, as approved by TxDOT, to evolve and to be modified, enhanced, supplemented and replaced as necessary for the Services, Software, and other assets used to deliver the Services to keep current with industry best practices and a level of technology that is: (1) compliant with all Laws applicable to the provision and receipt of the Services; (2) used by Service Provider and other top-tier IT providers in providing services similar to the Services to other customers; and (3) in general use within the IT industry. Any changes to the Services, Software, and other assets used to deliver the Services implemented in accordance with this Section will be deemed to be included within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement, at no additional charge to TxDOT.
- (b) **Flexibility.** The technologies and process strategies Service Provider employs to provide the Services shall meet industry standards and shall be flexible enough to allow integration with new technologies or processes, or significant changes in TxDOT's objectives and strategies. For example, Equipment must have sufficient scalability and be sufficiently modular to allow integration of new technologies without the need to replace whole, or significant parts of, systems or processes (e.g., made to be a one-to-many model) to enable TxDOT's operations to become more scalable and flexible.
- (c) **Obligation to Identify Best Practices.** Throughout the Term, Service Provider shall (A) identify and apply best practice techniques, methods and technologies in the performance of the Services; (B) train Service Provider-Personnel in the use of new techniques, methods, and technologies that are in general use within Service Provider's organization and the IT and business consulting industries; and (C) make necessary investments to keep and maintain the Software and other assets used to deliver the Services at the level of currency defined in this Section.
- (d) **Service Provider Briefings.** Service Provider will meet with TxDOT at least once during every 180-day period throughout the Term to inform TxDOT of: (A) any investments, modifications, enhancements, and improvements that Service Provider is required or proposes to make to the Services, Software, and other assets used to deliver the Services pursuant to this Section; (B) new information processing technology or business processes Service Provider is developing; (C) any pending or actual changes in Law that could reasonably be expected to affect the provision or receipt of the Services; and (D) technology or process trends and directions of which Service Provider is otherwise aware that could reasonably be expected to have an impact on TxDOT's information technology operations or business.

9.11 Retained Systems and Processes.

- (a) **No Adverse Effect.** Except as otherwise expressly agreed upon by the Parties in the Transition Plan, any Project Work Order or in connection with any New Services or Contract Change, Service Provider shall not, by any act or omission, (A) adversely affect or alter the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost, or resource efficiency of TxDOT's Retained Systems and Processes without the prior consent of TxDOT or (B) require changes to TxDOT's Retained Systems and Processes, including associated processes, applications, systems, software, utilities, tools, or equipment, without the prior consent of TxDOT.
- (b) **Interface.** Service Provider shall ensure that the processes, Systems, Software, and Equipment used by Service Provider to provide the Services interface and integrate with TxDOT's Retained Systems and

Processes.

- (c) **Assistance.** As part of the Services, Service Provider shall provide TxDOT (upon TxDOT's written request) with Services in relation to TxDOT's Retained Systems and Processes, including: liaising with TxDOT or third parties regarding the impact of any alterations to TxDOT's Retained Systems and Processes and vice versa.

9.12 Multi-sourcing Services Integration and Cooperation

Service Provider acknowledges and agrees that it will deliver the Services to TxDOT in an environment in which there are various other Service Component Providers providing related services to TxDOT ("Multi-sourcing Services Environment"). Service Provider acknowledges that its provision of the Services in a multi-supplier environment requires significant integration, cooperation, and coordination of processes and procedures with other Service Component Providers. **Exhibit 3.1 Service Level and Deliverables Matrix** specifies certain Service Levels and obligations to TxDOT related to the provision of the Services in a multi-supplier environment and **Exhibit 3.4 Operating Agreements** requires development and execution of agreements with respect to the integration, cooperation and coordination of the Services and services provided by the Service Provider and other Service Component Providers.

The Parties shall cooperate with the utmost good faith to reach reasonable and timely agreements on such further definition and clarification, and agree that such further definitions and clarifications shall in all respects be consistent with the terms of the security assessment requirements in **Exhibit 2.1.1 Cross Functional) Statement of Work**. In addition, to the extent that a security assessment company reasonably establishes that certain definitions, procedures and methodologies are widely used in security assessments, the Parties agree to generally rely on the security assessment company's definitions, procedures, and methodologies for guidance in reaching agreement. The Parties acknowledge that in reaching the final results of a security assessment, the security assessment company will be required to exercise its professional judgment and discretion in certain matters and, assuming such judgments are within established industry practices for security assessments, the Parties will defer to the conclusions of the security assessment company.

Service Provider acknowledges that TxDOT views the right to conduct Assessments as a critical inducement to TxDOT's agreement to many of the terms of this Agreement, including the Term and termination rights provided for in the Agreement, and therefore Service Provider agrees that it will cooperate in good faith to accomplish the objectives contemplated by the security assessment for the benefit of TxDOT.

9.13 Monitoring Tools

As requested by TxDOT, Service Provider will provide TxDOT and its designee access for audit or operational reporting, on-line view, and notification components of any measurement and monitoring tools used by Service Provider in connection with its delivery of the Services. Each such tool must be approved by TxDOT prior to implementation.

10 TXDOT RESPONSIBILITIES

10.1 Responsibilities.

In addition to TxDOT's responsibilities as expressly set forth elsewhere in this Agreement, TxDOT shall be responsible for the following:

- (a) **Designated TxDOT Representative.** TxDOT shall designate one (1) individual to whom all Service Provider communications concerning this Agreement may be addressed (the "**Designated TxDOT Representative**"), who shall have the authority to act on behalf of TxDOT in all day-to-day matters pertaining to this Agreement. TxDOT may change the Designated TxDOT Representative upon notice to Service Provider. Additionally, the Designated TxDOT Representative may, upon notice to Service Provider, delegate such of his or her responsibilities to other TxDOT employees as the Designated TxDOT Representative deems appropriate.
- (b) **Cooperation.** TxDOT shall cooperate with Service Provider by, among other things, making available, as reasonably requested by Service Provider, management decisions, information, approvals and

acceptances so that Service Provider may accomplish its obligations and responsibilities hereunder.

- (c) **Requirement of Writing.** To the extent Service Provider is required under this Agreement to obtain TxDOT's approval, consent, or agreement, such approval, consent, or agreement must be in writing and must be signed by, or directly transmitted by electronic mail from, the Designated TxDOT Representative or an authorized TxDOT representative. Notwithstanding the preceding sentence, the Designated TxDOT Representative may agree in advance in writing that as to certain specific matters oral approval, consent, or agreement shall be sufficient.

10.2 Savings Clause.

- (a) Service Provider's failure to timely or otherwise perform its responsibilities under this Agreement (including failure to meet the Service Levels or Critical Deliverables) shall be excused if and to the extent such Service Provider non-performance is caused by:
- (i) the wrongful or tortious actions or omissions of TxDOT or
 - (ii) the failure of TxDOT to perform TxDOT's obligations under this Agreement, but only if and to the extent (A) Service Provider, upon becoming aware of such an occurrence, immediately and expeditiously notifies TxDOT of such wrongful or tortious action or failure to perform and its inability to perform under such circumstances, (B) Service Provider provides TxDOT with reasonable opportunity to correct such wrongful or tortious action or failure to perform and thereby avoid such Service Provider non-performance, (C) Service Provider identifies and pursues commercially reasonable means to avoid or mitigate the impact of such wrongful or tortious action or failure to perform, (D) Service Provider uses commercially reasonable efforts to perform notwithstanding such wrongful or tortious action or failure to perform (with TxDOT reimbursing Service Provider for its additional reasonable Out-of-Pocket Expenses incurred in connection with such effort provided, however, that TxDOT has provided prior written approval of any such additional Out-of-Pocket Expenses), and (E) Service Provider conducts a Root Cause Analysis and thereby demonstrates that such wrongful or tortious action or failure to perform is the cause of Service Provider's non-performance.
- (b) Service Provider acknowledges and agrees that the circumstances described in this [Section 10.2 Savings Clause](#), together with [Section 18.2 Force Majeure](#), are the only circumstances in which its failure to perform its responsibilities under this Agreement or to meet the Service Levels will be excused and that Service Provider will not assert that any other act or omission of TxDOT excuses any such failure on Service Provider's part, provided, however, that upon the occurrence of a Service Level Escalation Event or a Governance Escalation Event, Service Provider may escalate such issue for resolution through governance in accordance with [Exhibit 1.2 Governance Model](#), which resolution may include excusing Service Provider's performance. Solely for the purposes of excusing Service Provider's performance under this [Section 10.2 Savings Clause](#), TxDOT will consider the wrongful or tortious actions or omissions of a TxDOT Contractor provided that such TxDOT Contractor is not a TxDOT Service Component Provider.

10.3 Governance Escalation Event.

A Governance Escalation Event occurs, if (a) the Service Provider asserts that it has been unable to perform all or a portion of the Services solely as a result of the failure by a TxDOT Service Component Provider to perform certain obligations reasonably specified in the Service Management Manual or in the applicable Operating Agreement (OA), (b) the Service Provider has performed its own obligations as set forth in the Agreement, including the Statements of Work, Service Management Manual, and the applicable OA, and (c) the Service Provider, upon becoming aware of such an occurrence or failure, (A) immediately notifies the TxDOT Service Component Provider of such failure and that such failure will result in a failure by the Service Provider to perform its obligations to TxDOT under such circumstances, (B) provides the TxDOT Service Component Provider with reasonable opportunity to correct such failure to perform and thereby avoid the Service Provider's non-performance, (C) uses commercially reasonable efforts to perform its obligations under the Agreement notwithstanding such failure to perform, (D) has notified TxDOT that corrective action has commenced, and (E) has otherwise exhausted all other rights and remedies to cause the TxDOT Service Component Provider to perform. Upon the occurrence of a Governance Escalation Event, the Service Provider may escalate the Service Component Provider's failure through the appropriate governance structure

for resolution in accordance with **Exhibit 1.2 Governance Model**. If the applicable governance committee has determined that Service Provider has satisfied each of the requirements and obligations set forth above, such resolution shall include excusing Service Provider's performance related to such failure and may include other actions as reasonably determined by TxDOT including appropriate changes to the Service Management Manual and/or the applicable OLA.

10.4 TxDOT Benchmarking Reviews

(a) Benchmarking Review

During the course of the Contract, beginning not less than eighteen (18) months after the Commencement Date, TxDOT may, at its expense and subject to this Section, engage the services of an independent third party (a "**Benchmarker**") to compare the quality and price of all or any Service Component of the Services against the quality and price of representative suppliers performing similar services to determine whether TxDOT is receiving from Service Provider pricing and levels of service that are competitive with market rates and prices, given the nature, volume and type of Services and Service Levels provided by Service Provider hereunder ("**Benchmarking**"). In making this comparison, the Benchmarker shall consider a minimum of four (4) comparable transactions (at least three (3) of which shall involve public sector clients), and shall further consider the following factors and normalize the pricing data as and to the extent appropriate:

- (i) whether supplier transition, transformation, and other charges are paid by the customer as incurred or over a period of time;
- (ii) the extent to which supplier pricing includes the purchase of the customer's existing assets or assumption of any agreements.
- (iii) the extent to which supplier pricing includes the cost of acquiring future assets;
- (iv) the extent to which the comparable supplier is working within a Multi-Sourcing Services Integrator (MSI) model;
- (v) the extent to which this Agreement calls for Service Provider to provide and comply with unique TxDOT requirements;
- (vi) whether taxes are included in such pricing or stated separately in supplier invoices;
- (vii) the restrictions related to location of the delivery of the Services;
- (viii) differences in the volumes of the services being compared;
- (ix) applicability of service levels, and
- (x) material differences in terms and conditions.

(b) General

- (i) Any Benchmarker engaged by TxDOT shall: (A) be independent; (B) have, in TxDOT's reasonable judgment, experience in Benchmarking the required services; and (C) execute a non-disclosure agreement substantially in the form attached hereto as **Attachment A Form of Non-disclosure**; provided, however, Service Provider agrees and acknowledges that such non-disclosure agreement shall be amended to permit the Benchmarker to anonymously reuse all Benchmarking data or other benchmarking studies it performs.
- (ii) Service Provider recognizes that TxDOT must comply with applicable Laws respecting procurement of services in connection with any engagement of a Benchmarker. To the extent permissible under such Laws and the reasonable practice of TxDOT, TxDOT shall consult with Service Provider respecting the Benchmarker and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, TxDOT reserves the right to determine, in its sole discretion, the appropriate Benchmarker to be engaged and the arrangement for such engagement. Service Provider shall cooperate fully with TxDOT and the Benchmarker and shall provide reasonable access to any premises, equipment, personnel or documents and provide any assistance required by the Benchmarker to conduct the

Benchmarking, all at Service Provider's cost and expense provided, however, that Service Provider will not be obligated to provide the Benchmarking with Service Provider's internal costs or information concerning other Service Provider customers.

(c) Result of Benchmarking

If the Benchmarking finds that the aggregate Charges that are the subject of the Benchmarking are more than ten percent (10%) higher than the average of the comparable transactions set forth above, then Service Provider shall reimburse TxDOT for its costs associated with such Benchmarking and the Parties will work together in good faith to eliminate any such unfavorable variance either through reduced Charges equivalent to the variance or through other means that demonstrate value to the State. The Service Provider will eliminate the unfavorable variance within 180 days, provided, however, if the Service Provider does not decrease the Charges or otherwise demonstrate an equivalent value to the State as described above within such 180 days, TxDOT may, at its option, terminate this Agreement in whole or in relevant part (determined in TxDOT's judgement provided further, however, that any termination exercised by TxDOT hereunder will not be subject to or otherwise require payment of any Termination Charges). Termination by CLIENT under this Section shall not be deemed a termination for cause under [Section 20.1 Termination for Cause](#). Under no circumstances shall Benchmarking result in any increases to the Charges. The Benchmarking shall reasonably explain its methodology, including its use of relevant comparative data in the Benchmarking's report. TxDOT will instruct the Benchmarking to conduct the Benchmarking so as not to unreasonably disrupt Service Provider's operations under this Agreement.

(d) Service Provider's Review and Dispute

TxDOT shall provide Service Provider with a copy of the Benchmarking's report. Service Provider shall have ten (10) Business Days to dispute the validity the report, in writing, to the TxDOT Contract Manager. No later than twenty (20) Business Days after receipt of the report, Service Provider must provide quantitative evidence for each point disputed in the Benchmarking's report. Failure to provide materials within the timeframes contained in this Section shall result in a forfeiture of the Service Provider's right to dispute.

11 FEES

11.1 General.

- (a) **Payment of Charges.** In consideration of Service Provider's performance of the Services and in accordance with Chapter 2251, Texas Government Code, TxDOT shall pay to Service Provider the Charges.
- (b) **No Additional Charges.** Unless expressly set forth in this Agreement or in **Exhibit 4.0 Business Model** as a responsibility of TxDOT, there shall be no charges, fees, expenses, or other amounts payable to Service Provider for the provision of Services. Any costs incurred by Service Provider prior to the Commencement Date are included in the Charges and are not to be separately paid or reimbursed by TxDOT.
- (c) **Incidental Expenses.** Service Provider acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Service Provider incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, equipment, and software required by Service Provider Personnel, and long-distance telephone) are included in the Charges set forth in **Exhibit 4.0 Business Model**. Accordingly, such Service Provider expenses shall not be separately paid or reimbursed by TxDOT unless TxDOT has agreed in advance and in writing to reimburse Service Provider for the expenses, and in all events any such expenses shall not exceed the amounts authorized by the current State Travel Regulations or other applicable Laws.
- (d) **No Charge for Reperformance.** At no additional cost or expense to TxDOT, Service Provider shall reperform (including, subject to [Section 13.5 TxDOT Data – Correction and Restoration](#), any required backup or restoration of data from scheduled backups or, if not available on such backups, restoration by other means with TxDOT's reasonable cooperation) any Services that, during the Term

or applicable warranty period, due to an error or breach of this Agreement by Service Provider either (i) result in incorrect outputs or (ii) are not correctly performed due to an error or breach of this Agreement by Service Provider. The resources required for such performance shall not be counted in calculating the Charges payable or resources utilized by TxDOT hereunder and Service Provider shall be solely responsible for any additional Pass-Through Expenses and other costs and expenses incurred by TxDOT in connection with such performance.

- (e) **Charges for Contract Changes.** Unless otherwise agreed, changes in the Services (including changes in TxDOT Rules, TxDOT Standards, Strategic Plans, Technology Plans, processes, Materials, Equipment and Systems) and changes in the rights or obligations of the Parties under this Agreement shall result in changes in the applicable Charges only if and to the extent (A) this Agreement expressly provides for a change in the Charges in such circumstances; (B) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances; or (C) such change meets the definition of New Services and additional Charges are applicable in accordance therewith.
- (f) **Efforts to Minimize.** Service Provider shall continually seek to identify methods of reducing and minimizing TxDOT's ' total cost of receiving the Services (including the amount of Pass-Through Expenses and Retained Expenses) and shall notify TxDOT of such methods and the estimated potential savings associated with each such method.

11.2 Pass-Through Expenses.

- (a) **Paid by TxDOT Directly.** If the Parties agree that any Pass-Through Expenses are to be paid by TxDOT directly, Service Provider shall arrange that the Pass-Through Expenses are invoiced by the third party directly to TxDOT, and timely provided to TxDOT together with any documentation required by TxDOT to support such invoiced charges. Before any such third party invoices are submitted to TxDOT for payment, Service Provider shall review the invoiced charges and communicate with the applicable third party to correct any errors in such invoices in a timely manner and otherwise in accordance with the applicable provisions of the Service Management Manual. TxDOT shall pay such invoices in accordance with Chapter 2251, Texas Government Code.
- (b) **Paid by Service Provider.** If the Parties agree that any Pass-Through Expenses are to be paid by Service Provider directly, Service Provider shall pay the third party invoices containing such Pass-Through Expenses on behalf of TxDOT. Prior to making any such payment, however, Service Provider shall review the invoiced charges and communicate with the applicable third party to correct any errors in such invoices in a timely manner and shall provide TxDOT with a reasonable opportunity to review such invoices to confirm that the third party charges are proper and valid. Following such review by Service Provider and TxDOT, Service Provider shall pay the amounts due and shall invoice TxDOT for such charges.
- (c) **Generally.** No new Pass-Through Expenses may be added without TxDOT's prior consent, which TxDOT may withhold in its sole discretion. For all products or services paid for on a Pass-Through Expenses basis, TxDOT reserves the right to (A) obtain such products or services directly from a third party, (B) designate the third party source for such products or services, (C) designate the particular products or services that Service Provider shall obtain (provided that if Service Provider demonstrates to TxDOT that such designation shall have an adverse impact on Service Provider's ability to meet the Service Levels, such designation shall be subject to Service Provider's approval), (D) require Service Provider to identify and consider multiple sources for such products or services or to conduct a competitive procurement, and (E) review and approve the Pass-Through Expense for such products or services before entering into a contract for such products or services. In addition, for all products and services paid for on a Pass-Through Expense basis, Service Provider shall use commercially available efforts to pass through, or otherwise provide, to TxDOT all benefits offered by the manufacturers and/or vendors of such products and services (including all warranties, refunds, credits, rebates, discounts, training, technical support, and other consideration offered by such manufacturers and vendors) except to the extent otherwise agreed by TxDOT. If Service Provider is unable to pass through any such benefit to TxDOT, it shall notify TxDOT in advance and shall not purchase such product or service without TxDOT's prior approval.

11.3 Procurement.

- (a) **Requested Purchases for TxDOT.** Upon TxDOT's request, Service Provider shall procure products and services on TxDOT's behalf by (1) purchasing the products and services on behalf of TxDOT, (2) leasing, or arranging for a third party to lease, such products to TxDOT, or (3) licensing, or arrange for a third party to license, such products to TxDOT. In connection with the foregoing, the following shall apply:
- (i) **Pass-Through Expenses; Rights in Products.** TxDOT shall pay directly to Service Provider, the supplier, third party lessor, or third party licensor, as agreed by the Parties, the purchase, lease, or license fees, as applicable, in respect of products and services procured on behalf of TxDOT on a Pass-Through Expense basis in accordance with **Exhibit 4.0 Business Model**. Unless otherwise expressly set forth in **Exhibit 4.0 Business Model**, Service Provider will not add any mark-up or margin to the costs of such items procured on TxDOT's behalf. Except as otherwise agreed by the Parties or as otherwise provided in this Agreement, (A) all rights in and title to any products purchased by Service Provider on behalf of TxDOT shall belong to TxDOT, as applicable, and (B) all products shall be new.
 - (ii) **General.** Service Provider shall adhere to the applicable product and services standards specified by TxDOT or set forth in the Service Management Manual and shall not deviate from such standards without TxDOT's prior approval. To the extent an authorized TxDOT representative specifies the third party vendor, pricing and/or other terms and conditions for procuring products or services on behalf of TxDOT, Service Provider shall not deviate from such instructions without TxDOT's prior approval.
 - (iii) **TxDOT Master Agreements.** Service Provider may use master agreements between TxDOT and third party vendors to procure products and services under this **Section 12.3(a)**; provided, however, that, in the event Service Provider is able to procure such products or services at lower cost than such products or services can be procured through such master agreements, then, subject to **Section 11.3(a)(iv) Service Provider Agreements** (including TxDOT's approval rights therein), Service Provider shall procure such products or services at such lower prices. Service Provider shall provide reasonable documentation respecting the foregoing as may be reasonably requested by TxDOT.
 - (iv) **Service Provider Agreements.** Service Provider may use, with TxDOT's prior approval, agreements between Service Provider and third party vendors if permitted by such agreements to procure products and services on TxDOT's behalf. Service Provider's use of such agreements shall be conditioned on and subject to the following: (A) TxDOT approving in advance the terms, conditions and pricing of such agreements and any financial or other commitments made therein by or on behalf of TxDOT; (B) Service Provider complying with the terms and conditions of such agreements and accepting responsibility for meeting any minimum volumes; (C) where permitted by such agreements and consistent with TxDOT's approval, Service Provider passing through to TxDOT any refunds, credits, discounts or other rebates to the extent such amounts are directly allocable to TxDOT; (D) Service Provider retaining responsibility for curing any breaches of such agreements and indemnifying, under and in accordance with **Section 17.3 Indemnification Procedures**, TxDOT for any Losses in connection with such breaches; (E) such agreements offering more favorable pricing and equivalent or better terms and conditions for the requested product or service than any master agreement between TxDOT and third party vendors; (F) giving TxDOT price quotations and other benefits consistent with Service Provider's favorable third party vendor arrangements where permitted by such vendors, without any uplift; and (G) to the extent reasonably practicable, using the aggregate volume of Service Provider's procurements on behalf of itself and TxDOT to obtain more favorable pricing and equivalent or better terms and conditions for the requested product or service.

11.4 Taxes.

Pursuant to Section 151.309, Texas Tax Code, TxDOT is exempt from the assessment of State taxes and, pursuant to Texas Comptroller Rule 3.22(c)(4), is not required to present an exemption certificate with respect to State sales tax. In addition, TxDOT is exempt from federal taxes pursuant to 26 U.S.C. §§ 4253(i) and (j).

Service Provider shall not include any taxes in the Charges except as expressly provided in this Section and **Exhibit 4.0 Business Model**. Without limiting the generality of the foregoing, Service Provider's responsibilities in connection with taxes arising under or in connection with this Agreement include the following obligations:

- (a) **Income Taxes.** Service Provider shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Service Provider shall be responsible for any sales, lease, use, personal property, stamp, duty, or other such taxes on Equipment, Materials or property it owns or leases or licenses from a third party, including any lease or license assigned pursuant to this Agreement.
- (c) **Taxes on Goods or Services Used by Service Provider.** Service Provider shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Service Provider on any goods or services used or consumed by Service Provider in providing the Services where the tax is imposed on Service Provider's acquisition or use of such goods or services and the amount of tax is measured by Service Provider's costs in acquiring or procuring such goods or services and not by TxDOT's cost of acquiring such goods or services from Service Provider.
- (d) **Service Taxes.** Service Provider shall be financially responsible for all Service Taxes. As a result of TxDOT's exempt status, Service Provider shall not charge TxDOT sales tax on the Services.
- (e) **Withholding.** Any withholding tax or other tax of any kind that TxDOT is required by applicable Law to withhold and pay on behalf of Service Provider with respect to amounts payable to Service Provider under this Agreement shall be deducted from said amount prior to remittance to Service Provider. TxDOT shall provide to Service Provider reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Service Provider to claim exemption from or obtain a repayment of such withheld taxes and shall, upon request, provide Service Provider with a copy of the withholding tax certificate.
- (f) **Tax Filings.** Service Provider represents, warrants, and covenants that it shall file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions. At TxDOT's request, Service Provider shall provide TxDOT with (A) written confirmation that Service Provider has filed all required tax forms and returns and has collected and remitted all applicable amounts, and (B) such other information pertaining to applicable Taxes as TxDOT may reasonably request.

11.5 New Services

- (a) **Procedures.** If TxDOT requests that Service Provider perform any New Services reasonably related to the Services or other services generally provided by Service Provider, Service Provider shall promptly prepare a New Services proposal for TxDOT's consideration. Unless otherwise agreed by the Parties, Service Provider shall prepare such New Services proposal at no additional charge to TxDOT and shall deliver such proposal to TxDOT within ten (10) days of its receipt of TxDOT's request; provided, that Service Provider shall respond more quickly in the case of a pressing need or an emergency situation. TxDOT shall provide such information as Service Provider reasonably requests in order to prepare such New Service proposal. Such New Services proposal shall include, among other things, the following at a level of detail sufficient to permit TxDOT to make an informed business decision:
 - (i) a project plan and fixed price or price estimate for the New Service;
 - (ii) a breakdown of such price or estimate;
 - (iii) a description of the service levels to be associated with such New Service;
 - (iv) a schedule for commencing and completing the New Service;
 - (v) a description of the new hardware or software to be provided by Service Provider in connection with the New Service;
 - (vi) a description of the software, hardware and other resources, including Resource Unit utilization, necessary to provide the New Service;

- (vii) any additional facilities or labor resources to be provided by TxDOT in connection with the proposed New Service;
- (viii) any risks associated with the New Service and/or the integration of the New Service into the existing environment; and
- (ix) in the case of any Developed Materials to be created through the provision of the proposed New Services, any ownership rights therein that differ from the provisions of [Section 14.2 Developed Materials](#). The Designated TxDOT Representative may accept or reject proposals for New Services in his or her sole discretion. Unless the Parties otherwise agree, if the Designated TxDOT Representative accepts Service Provider's proposal, Service Provider shall perform the New Services and be paid in accordance with the proposal submitted by Service Provider and the provisions of this Agreement. Upon the Designated TxDOT Representative's acceptance of a Service Provider's proposal for New Services, the scope of the Services shall be expanded and this Agreement shall be modified to include such New Services without the need for further action by the Parties.

If Service Provider is unable to provide such New Services using its own resources (including resources it procures through a supplier or Subcontractor), TxDOT may require Service Provider to engage (as Service Provider's subcontractor) a third party approved or selected by TxDOT to provide such services. Notwithstanding any provision to the contrary, (A) Service Provider shall act reasonably and in good faith in formulating such pricing proposal, (B) Service Provider shall use commercially reasonable efforts to identify potential means of reducing the cost to TxDOT, including utilizing subcontractors as and to the extent appropriate, (C) such pricing proposal shall be no less favorable to TxDOT than the pricing and labor rates set forth herein for comparable Services, and (D) such pricing proposal shall take into account the existing and future volume of business between TxDOT and Service Provider.

- (b) **Use of Third Parties.** TxDOT may elect to solicit and receive bids from third parties to perform any New Services. If TxDOT elects to use third parties to perform New Services, (i) such New Services shall not be deemed "Services" under the provisions of this Agreement and (ii) Service Provider shall cooperate with such third parties as provided in [Section 4.4 Use of Third Parties](#).
- (c) **Services Evolution and Modification.** The Parties anticipate that, as referenced in [Section 9.10 Technology Evolution](#), the Services shall evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering Services and changes in the operations of TxDOT. The Parties acknowledge and agree that these changes shall modify the Services and shall not be deemed to result in New Services unless the changed services meet the definition of New Services.
- (d) **Authorized User and TxDOT Requests.** Service Provider shall promptly inform the TxDOT Designated Representative of requests for New Services from Authorized Users, and shall submit any proposals for New Services to the Designated TxDOT Representative. Service Provider shall not agree to provide New Services to TxDOT or any Authorized Users without the prior approval of the Designated TxDOT Representative. Without limiting TxDOT's other rights under this Agreement or applicable Law, if Service Provider fails to comply strictly with this [Section 11.5 New Services](#), it shall receive no compensation for any services rendered to any person or Entity in violation of this [Section 11.5 New Services](#).

11.6 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, an "Extraordinary Event" means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the operations of TxDOT that results or shall result in a change in the scope, nature or volume of the Services that TxDOT shall require from Service Provider. Examples of the kinds of events that might cause such substantial increases or decreases include the following:
 - (i) changes in locations where the TxDOT operates;
 - (ii) changes in constituencies served by, or activities or operations of, TxDOT;
 - (iii) privatizations, dispositions, or reorganizations of TxDOT;

- (iv) changes in the method of service delivery;
 - (v) changes in the applicable regulatory environment or applicable Laws; and
 - (vi) changes in TxDOT's policy, technology or processes.
- (b) **Consequence.** If an Extraordinary Event occurs, TxDOT may, at its option, request more favorable pricing with respect to applicable Charges for any Functional Service Area specified in **Exhibit 4.0 Business Model** in accordance with the following:
- (i) Service Provider and TxDOT shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions, if any, resulting from such Extraordinary Event and, upon TxDOT's approval, Service Provider shall then proceed to implement such efficiencies, economies, savings, and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges specified in **Exhibit 4.0 Business Model** shall be promptly and equitably adjusted to pass through to TxDOT the net benefit of such efficiencies, economies, savings, and resource utilization reductions; provided, that TxDOT shall reimburse Service Provider for any net costs or expenses incurred to realize such efficiencies, economies, savings, or resource utilization reductions if and to the extent Service Provider (A) notifies TxDOT of such additional costs and obtains TxDOT's approval prior to incurring such costs, (B) uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other more practical or cost effective way to obtain such savings without incurring such expenses, and (C) uses commercially reasonable efforts to minimize the additional costs to be reimbursed by TxDOT.
 - (ii) An Extraordinary Event shall not result in Charges to TxDOT being higher than such Charges would have been if the rates and charges then specified in **Exhibit 4.0 Business Model** had been applied. TxDOT may, at its sole option, elect, for each Extraordinary Event, at any time to forego its rights under this [Section 11.6 Extraordinary Events](#), and instead, apply rates and charges specified in **Exhibit 4.0 Business Model** to adjust the Charges. For the avoidance of doubt, upon the occurrence of an Extraordinary Event, TxDOT is entitled to request more favorable pricing with respect to the applicable Charges even if the change in consumption related to the Extraordinary Event is within the bands associated with the applicable fixed and variable Charges set forth in **Exhibit 4.1 Pricing Structure**.
- (c) If the Parties cannot agree on an equitable adjustment to the Charges in accordance with this Section within thirty (30) days after Service Provider's receipt of notice of the Extraordinary Event, TxDOT shall have the right to terminate the Agreement, in whole or in part, by written notice to Service Provider, effective as of the date set forth in such notice.

11.7 Unanticipated Change.

If an Unanticipated Change occurs, and if TxDOT requests any modifications to the Services to incorporate such Unanticipated Change, the Parties shall use the procedures in [Section 11.6 \(b\) Consequence](#) to equitably adjust the Charges and other relevant provisions of this Agreement to take such Unanticipated Change into account. An "**Unanticipated Change**" shall consist of a material change in the technologies and/or processes available to provide all or any portion of the Services which is outside the normal evolution of technology experienced by the Services, that was not generally available as of the Effective Date and that would materially reduce Service Provider's cost of providing the Services.

11.8 Proration.

Service Provider shall compute periodic Charges under this Agreement on a monthly basis, and shall prorate such Charges for any partial month on a daily basis.

11.9 Refundable Items.

- (a) **Paid Amounts.** Where TxDOT has paid for a service, function, or item for which Service Provider is assuming financial responsibility under this Agreement, Service Provider shall promptly refund to TxDOT, upon either Party identifying the payment, that portion of such paid expense which is

attributable to periods after Service Provider's assumption of financial responsibility.

- (b) **Refunds and Credits.** If Service Provider should receive a refund, credit, discount, or other rebate for goods or services paid for by TxDOT on a Pass-Through Expense, retained expense, cost-plus or cost-reimbursement basis, then Service Provider shall (A) notify TxDOT of such refund, credit, discount or rebate and (B) pay the full amount of such refund, credit, discount, or rebate to TxDOT.

11.10 Pricing Commitment

- (a) Service Provider's Charges to TxDOT for Services to be provided under this Agreement shall be at least as low as Service Provider's lowest fees, under agreements entered into directly between Service Provider and other State governmental entities or agencies, for the same or substantially similar services provided at similar volumes.
- (b) At TxDOT's request, not more frequently than once in any rolling twelve (12) month period (with the first assessment to be conducted no sooner than twelve (12) months from the Commencement Date), Service Provider shall conduct a competitive price assessment. The assessment shall first identify whether there are any agreements between Service Provider and other entities meeting the criteria in **Section 11.10 (a)** above and then, assuming there are such agreements, shall proceed to assess the price competitiveness of this Agreement with up to three (3) such agreements selected by TxDOT from a list of candidates presented by Service Provider, taking into account the type of normalization factors referenced in **Section 11.10 (a)** to ensure a like-for-like comparison. At the conclusion of the assessment, either (A) Service Provider shall verify that the assessment has been completed and no adjustment is required for the Charges to be brought in line with lower fees or (B) Service Provider shall identify any relevant variance, offer a plan to enable Service Provider to reduce the Charges so that they are brought in line with the lower fees, and reduce such Charges prospectively from the date of verification of the relevant variance. TxDOT shall be allowed to review and approve such plan, and in all events Service Provider shall implement the relevant Charges reductions no later than thirty (30) days from the date of TxDOT's approval of such plan. The provisions of **Section 9.8 Audit Rights** shall not apply to the assessment conducted in accordance with this **Section 11.9 Pricing Commitment**.
- (c) If TxDOT becomes aware of any agreement that it believes would appropriately be subject to the assessment described in this **Section 11.10**, TxDOT may call such agreement to Service Provider's attention, and the Parties shall discuss in good faith whether a competitive price assessment in accordance with **Section 11.10 (b)** above is appropriate in the circumstances.

12 INVOICING AND PAYMENT

12.1 Invoicing.

- (a) **Invoice.** After the Commencement Date, and within five (5) Business Days after the end of each month in which Services are provided thereafter, Service Provider shall meet with TxDOT to review any preliminary Charges and Resource Unit volumes that Service Provider expects to include on the Monthly Invoice. Service Provider shall provide variance explanations for Resource Unit dollar and volume fluctuations based on the thresholds established by and at the level of detail required by TxDOT. Within ten (10) Business Days after the end of each month, Service Provider shall present TxDOT with an invoice (the "**Monthly Invoice**") for any Charges, Resource Unit volumes and Pass-Through Expenses due and owing for the preceding month. Service Provider shall not invoice TxDOT for taxes, any advance or concurrent charges or other amounts. Service Provider and TxDOT shall mutually agree on a process that shall enable Service Provider to provide expedited invoices to TxDOT so that TxDOT shall have sufficient time to process and remit payment on such invoices before the end of the calendar year. To the extent that any Charges included in the Monthly Invoice are disputed by TxDOT, such dispute shall be resolved in accordance with **Section 12.4 Disputed Charges..**
- (b) **Form and Data.** Each invoice provided by Service Provider to TxDOT under this Agreement shall be presented in hard copy and electronically in the form specified in **Exhibit 4.3 Form of Invoice** and shall (A) comply with all applicable legal, regulatory, and accounting requirements, including Chapter 2251, Texas Government Code, (B) allow TxDOT to validate volumes and Charges, and (C) comply with TxDOT's accounting and billing requirements, including providing sufficient detail for TxDOT to

allocate costs to all federal and State programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of TxDOT (if any). Each invoice shall include: (1) the pricing calculations and related data utilized to establish the Charges, (2) sufficient information to validate the service volumes and associated Charges, and (3) indicate which expenses, if any, are attributable to Historically Underutilized Businesses (collectively, the "Invoice Data"). Each invoice and the data underlying each invoice shall be delivered to TxDOT electronically in a form and format compatible with TxDOT's accounting systems.

- (c) **Credits.** To the extent a Service Level Credit, Deliverable Credit, or other credit may be due to TxDOT pursuant to this Agreement, Service Provider shall provide TxDOT with an appropriate credit against amounts then due and owing. If no further payments are due to Service Provider, Service Provider shall pay such amounts to TxDOT within thirty (30) days of the date such amounts become due and owing.
- (d) **Time Limitation.** Unless otherwise requested by Service Provider in advance and agreed by TxDOT in its sole discretion, if Service Provider fails to provide an invoice to TxDOT for any amount within four (4) invoice cycles (i.e., issuance of invoices) of the month in which the Services in question are rendered or the expense incurred, or such other period designated by TxDOT, Service Provider shall waive any right it may otherwise have to invoice for and collect such amount.

12.2 Payment Due.

Subject to the other provisions of this [Article 12 INVOICING AND PAYMENT](#), each Monthly Invoice provided for under [Section 12.1 Invoicing](#), above and other amounts due under this Agreement shall be due and payable by TxDOT under and in accordance with Chapter 2251, Texas Government Code.

12.3 Set Off.

Subject to [Section 12.4 Disputed Charges](#), TxDOT may set off against any and all amounts to be paid or reimbursed by TxDOT any amount that Service Provider is obligated to pay TxDOT hereunder, provided that TxDOT notifies Service Provider in writing of the amounts of, and the basis for, such set off.

12.4 Disputed Charges.

- (a) **Disputed Amounts.** TxDOT may withhold any amount of any invoice in dispute as provided in and in accordance with Chapter 2251, Texas Government Code. TxDOT shall comply with Chapter 2251, Texas Government Code, with respect to timely notice of such disputed amounts.
- (b) **Interest.** For invoice amounts that have been paid by TxDOT that become the subject of a dispute which is resolved in favor of TxDOT, in addition to any amounts that Service Provider may subsequently credit to TxDOT arising from resolution of such dispute, Service Provider shall include interest on the reimbursed amounts accrued monthly at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, calculated from the ninetieth (90th) day following the date of TxDOT's dispute.
- (c) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right TxDOT may otherwise have to dispute any Charge or amount or recover any amount previously paid.
- (d) **Prompt Resolution.** In the event TxDOT initiates a dispute in accordance with the Service Management Manual related to a Monthly Invoice (a "**TxDOT-Initiated Financial Dispute**"), Service Provider will promptly respond to the issue raised in such dispute, which response will include a written explanation of the charges that are the subject of the TxDOT-Initiated Financial Dispute, as well as any supporting documentation necessary to support Service Provider's position. If within thirty (30) days of the date on which TxDOT notifies Service Provider of the TxDOT-Initiated Financial Dispute, Service Provider has either (A) failed to respond to TxDOT or (B) failed to provide documentation or other evidence as to the validity of the disputed charges, then such dispute will be deemed resolved in favor of TxDOT and the appropriate credits will be processed and the matter will be closed.

13 TXDOT DATA AND OTHER CONFIDENTIAL INFORMATION

13.1 Confidentiality.

Nothing in this [Section 13.1 Confidentiality](#), is intended to limit the obligations of Service Provider under [Sections 13.2 TxDOT Data](#), [Section 13.3 TxDOT Personal Data](#), [Section 13.4 TxDOT Regulated Data](#) of this Agreement with respect to the TxDOT Data addressed in such Sections and, to the extent the provisions of [Sections 13.2 TxDOT Data](#), or [Section 13.3 TxDOT Personal Data](#) or [Section 13.4 TxDOT Regulated Data](#) conflict with the provisions of this [Section 13.1 Confidentiality](#), as they pertain to TxDOT Data, the provisions of [Sections 13.2 TxDOT Data](#), or [Section 13.3 TxDOT Personal Data](#) or [Section 13.4 TxDOT Regulated Data](#) shall control over the provisions of this [Section 13.1 Confidentiality](#), as applicable.

- (a) **Confidential Information.** Service Provider and TxDOT each acknowledge that the other possesses and shall continue to possess information that has been developed or received by it, has commercial, proprietary or other value in its or its constituents' or customers' activities or operations and is not generally available to the public, subject, however to the applicability of the Public Information Act and other applicable Law. Except as otherwise specifically agreed in writing by the Parties, "**Confidential Information**" means (A) all information marked confidential, restricted, or proprietary by either Party and (B) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked. Confidential Information also shall include Developed Materials, TxDOT Data, TxDOT Personal Data, TxDOT Regulated Data, Work Product, Authorized User information, attorney-client privileged materials, attorney work product, research information, information that contains trade secrets, human resources and personnel information, or other information or data obtained, received, transmitted, processed, stored, archived, or maintained by Service Provider under this Agreement. Service Provider's Confidential Information shall not include Confidential Information of TxDOT, and provided further, however characterization of information as Confidential Information of Service Provider shall not limit or restrict the rights of TxDOT to exercise their rights (including rights related to auditing and Benchmarking) provided for under this Agreement.
- (b) **Disclosure of Confidential Information.**
- (i) The disclosing Party represents and warrants that it has the right to disclose its Confidential Information to the receiving party, subject to the confidentiality obligations contained in this [Section 13.1 Confidentiality](#).
- (ii) During the term of this Agreement and at all times thereafter as specified in [Section 13.7 Survival](#), each Receiving Party (A) shall hold Confidential Information received from a disclosing Party in confidence and shall use such Confidential Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes; (B) shall follow all applicable security requirements, protocols, and procedures for accessing and handling such Confidential Information; and (C) shall not disclose, provide, disseminate, or otherwise make available any Confidential Information of the disclosing Party to any third party without the express written permission of the disclosing Party, unless expressly permitted by [Sections 13.1\(b\)\(iii\)](#) and [13.1\(b\)\(iv\)](#) below or elsewhere in this Agreement. Subject to the requirements of [Sections 13.2 \(b\) Safeguarding of TxDOT Data](#), and [Section 13.3 TxDOT Personal Data](#), as applicable, each Receiving Party shall use at least the same degree of care to prevent disclosure, dissemination, and misuse of the disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.
- (iii) The Receiving Party may disclose Confidential Information of the disclosing Party to its employees, directors, attorneys, financial advisors, contractors, and agents (including TxDOT Auditors in the case of TxDOT) provided that (A) such person or Entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or Entity

that is no less stringent than that set forth in this [Section 13.1 Confidentiality](#), and (C) such disclosure is not in violation of Law, the Service Management Manual, or applicable TxDOT Standards. The Receiving Party assumes full responsibility for the acts or omissions of any person or Entity to whom it discloses Confidential Information of the disclosing Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.

- (iv) The Receiving Party may disclose Confidential Information of the disclosing Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request, the Receiving Party, to the extent it may legally do so, gives notice to the disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. The Receiving Party shall use reasonable efforts to cooperate with the disclosing Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment shall be accorded such Confidential Information.
 - (v) Unless expressly permitted by this Agreement, neither Party shall (A) make any use or copies of the Confidential Information of the other Party except as expressly contemplated by this Agreement, (B) possess or acquire any right in or assert any lien against the Confidential Information of the other Party, (C) sell, assign, transfer, lease, encumber or otherwise dispose of or disclose the Confidential Information of the other Party to third parties or commercially exploit, or permit a third party to commercially exploit, such information, including through Derivative Works, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including any copies thereof) to the other Party if requested to do so.
 - (vi) Notwithstanding the provisions of this [Section 13.1 \(b\) Disclosure of Confidential Information](#), TxDOT may disclose Confidential Information relating to the financial or operational terms of this Agreement and/or Service Provider's performance hereunder (e.g., applicable Service Levels and measurements of Service Provider's performance with respect to such Service Levels) in connection with Benchmarking or the solicitation of proposals for or the procurement of the same or similar services from prospective TxDOT Contractors provided, TxDOT may not disclose Confidential Information related to Service Provider's processes and procedures without first securing an obligation from prospective TxDOT Contractors to keep such information confidential.
 - (vii) Notwithstanding the provisions of this [Section 13.1 \(b\) Disclosure of Confidential Information](#), the Parties acknowledge and agree that each Party may be required to disclose Confidential Information pursuant to Chapter 552, Texas Government Code (the "**Public Information Act**"), that TxDOT shall be required to and may disclose this Agreement and the terms hereof pursuant to the Public Information Act and that the Parties shall comply with the Public Information Act and with all applicable opinions of the Office of the Texas Attorney General concerning the Public Information Act.
 - (viii) Each Party shall take all necessary steps to cause its employees, contractors and subcontractors to comply with the provisions of this [Article 13 TxDOT DATA AND OTHER CONFIDENTIAL INFORMATION](#).
- (c) **Exclusions.** Notwithstanding the above, [Section 13.1 \(b\) Disclosure of Confidential Information](#), shall not apply to any particular information which the receiving Party can demonstrate: (A) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (B) after disclosure to it, is published by the disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (C) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it; (D) is received from a third party having a lawful right to disclose such information; or (E) is independently developed by the Receiving

Party without reference to the disclosing Party's Confidential Information. The exclusions in this [Section 13.1 \(c\) Exclusions](#) shall not apply to TxDOT Personal Data.

- (d) **Loss of Confidential Information.** Each Party shall (A) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this Agreement, (B) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (C) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights and (D) promptly use appropriate efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this [Section 13.1 \(d\) Loss of Confidential Information](#).
- (e) **No Implied Rights.** Nothing contained in this [Section 13.1](#) shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information of the other Party.
- (f) **Return or Destruction of Confidential Information.** Each Party shall securely store the other Party's Confidential Information until such Confidential Information is returned or destroyed as described in this [Section 13.1](#). Except as provided in this Agreement with respect to Contract Records, each Party shall destroy all documentation in any medium that contains, refers to or relates to the other Party's Confidential Information (or the portion of such Confidential Information specified by the other Party) or shall return such documentation to the other Party or its designee, in the format and on the media reasonably prescribed by the other Party, as follows: (A) within thirty (30) days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including, with respect to Service Provider, all periods of Termination Assistance Services requested by TxDOT; and (B) with respect to TxDOT Confidential Information, at any time TxDOT requests such Confidential Information or, with respect to particular Confidential Information, within thirty (30) days of the date that such Confidential Information is no longer required by Service Provider to perform its obligations under this Agreement as identified by TxDOT or pursuant to the Service Management Manual. Such documentation shall include all copies of a Party's Confidential Information in the other Party's possession or under the other Party's control. The Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party. Notwithstanding the foregoing, either Party may retain one (1) copy of the other Party's Confidential Information in its legal department as and to the extent required to comply with applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute. Contract Records shall be retained by Service Provider for the duration of the Audit Period unless and to the extent Service Provider is directed by TxDOT to deliver such Contract Records to TxDOT prior to the expiration of the Audit Period. In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.
- (g) **Transfer of TxDOT Confidential Information.** Service Provider shall not transfer TxDOT Confidential Information to any other locations, nor change the locations for storage and processing of such TxDOT Confidential Information, except with the express written consent of TxDOT, which TxDOT may withhold in its sole discretion.

13.2 TxDOT Data.

Nothing in this [Sections 13.2 TxDOT Data](#), is intended to limit the obligations of Service Provider under [Section 13.1 Confidentiality](#), [Section 13.3 TxDOT Personal Data](#) and [Section 13.4 TxDOT Regulated Data](#) of this Agreement with respect to the Confidential Information addressed in such Sections.

- (a) **Ownership of TxDOT Data.** TxDOT Data shall be and shall remain, as between the Parties, the property of TxDOT. Service Provider shall not sell, assign, lease, transfer, distribute, or encumber TxDOT Data. Service Provider shall not disclose to or allow access by third parties to TxDOT Data, unless expressly provided for in this Agreement. Service Provider shall not commercially exploit, or

permit a third party to commercially exploit, TxDOT Data on behalf of Service Provider or any other person or Entity. TxDOT Data shall be made available to TxDOT, upon its request, in the form and format as reasonably requested by TxDOT. Service Provider agrees that Service Provider and Service Provider Personnel shall not use any TxDOT Data for any purpose other than the fulfillment of the terms and conditions of this Agreement.

(b) Safeguarding of TxDOT Data.

- (i) Service Provider shall implement and maintain a written, comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of TxDOT Data in the possession of Service Provider, and which shall be (A) no less rigorous than those maintained (or required to be maintained) by TxDOT as of the Commencement Date (or required or implemented by TxDOT in the future to the extent deemed necessary by TxDOT and communicated to Service Provider in accordance with [Section 6.3 TxDOT Rules/Employee Safety.](#)), (B) no less rigorous than those maintained by Service Provider for its own information of a similar nature, (C) no less rigorous than accepted security standards in the industry and TxDOT Rules and TxDOT Standards, and (D) (without limiting the Parties' obligations under [Section 15.11 Compliance with Laws.](#)) compliant with all applicable TxDOT Rules and TxDOT Standards, including the requirements of TxDOT's then-current privacy, security and records retention policies and the rules pertaining to information technology security standards found at 1 Texas Administrative Code (TAC), Chapter 202, and (F) be reviewed at least annually.
- (ii) The content and implementation of such data security program and associated technical, organizational and security measures shall be fully documented by Service Provider in the Service Management Manual. Service Provider shall permit TxDOT Auditors to review such documentation and/or to inspect Service Provider's compliance with these provisions in accordance with [Section 9.8 Audit Rights.](#) TxDOT acknowledges that elements of Service Provider's data security program involve customized services offerings regarding the specific means and levels of security protection selected by a customer (regarding, for example, desired levels of host and network intrusion detection services, methods for monitoring and limiting access to data, extent of desired encryption, etc.). All TxDOT Data shall reside on TxDOT-owned or provided Systems within the United States of America. Not less frequently than two (2) times per Contract Year, Service Provider shall proactively provide technical information regarding security best practices in the industry.
- (iii) Under no circumstances shall Service Provider make any changes that materially weaken any technical, organizational or security measures in place to safeguard TxDOT Data, or result in Service Provider's failure to meet any of the minimum standards set forth above without the written approval of TxDOT's Designated Representative. In the event TxDOT directs Service Provider to make a change that Service Provider concludes will materially weaken any technical, organizational or security measures in place to safeguard TxDOT Data, or result in Service Provider's failure to meet any of the minimum standards set forth above, Service Provider shall advise TxDOT in writing prior to making any such change. Under no circumstances shall Service Provider or Service Provider Personnel attempt to access or allow access to TxDOT Data that is not required for the performance of Service Provider's obligations or otherwise permitted under this Agreement.
- (iv) Subject to any restriction in contracts with Service Provider's other customers, Service Provider shall regularly advise TxDOT of data security practices, procedures, and safeguards in effect for other Service Provider customers that, in Service Provider's reasonable judgment, are (A) relevant to the Services being provided under this Agreement and (B) define or exceed relevant industry standards relevant to the Services. If requested by TxDOT, Service Provider shall, to the extent reasonably practicable and subject to the Change Control Procedures, implement such enhanced practices, procedures and safeguards with respect to its provision of Services to TxDOT hereunder.
- (v) TxDOT shall have the right to establish backup security for any TxDOT Data and to keep backup and files for such Data in its possession if it chooses. Service Provider shall provide TxDOT with

downloads of TxDOT Data, as requested and directed by TxDOT, to enable TxDOT to maintain such backup copies.

- (vi) In the event Service Provider discovers or is notified of a Security Breach or potential Security Breach relating to TxDOT Data, Service Provider shall, in addition to its obligations pursuant to [Section 6.3 TxDOT Rules/Employee Safety](#), immediately once Service Provider knows or should have known such a Security Breach or potential Security Breach has occurred (A) notify TxDOT of such breach or potential breach, (B) investigate (with TxDOT's participation if so desired by TxDOT) such breach or potential breach and perform a risk assessment, Root Cause Analysis and corrective action plan thereon, (C) provide a written report to TxDOT of such risk assessment, Root Cause Analysis and action plan, (D) remediate the effects of such breach, potential breach, exposure, or inappropriate disclosure of security as soon as practicable or coordinate such remediation if Service Provider does not have responsibility for the matters which are the source of the breach or potential breach, and (E) provide TxDOT with reasonable assurances that such breach or potential breach shall not recur.
- (vii) To the extent Service Provider removes TxDOT Data from any media that is taken out of service that is under Service Provider's control, Service Provider shall destroy or securely erase such media in accordance with the Service Management Manual. Under no circumstances shall Service Provider use or re-use media on which TxDOT Data has been stored to store data of any other customer of Service Provider or to deliver data to a third party, including another Service Provider customer, unless such TxDOT Data has been securely erased in accordance with the Service Management Manual.
- (viii) Service Provider agrees that Service Provider and Service Provider Personnel shall not access any TxDOT Data for any purpose other than the fulfillment of requested Services as provided for in this Agreement. Service Provider shall not disclose or allow access to TxDOT Data, without an approved Request for Solution that requires access to TxDOT Data for the fulfillment of Services.

13.3 TxDOT Personal Data.

In addition to the provisions of [Section 13.1 Confidentiality](#), and [Sections 13.2 TxDOT Data](#), the following privacy and data protection provisions shall apply to TxDOT Personal Data as defined by the State of Texas Business and Commerce Code 521.002, Sensitive Personal Information.

- (a) Service Provider shall hold any TxDOT Personal Data that it receives in confidence and in compliance with (A) Service Provider's obligations under this Agreement, the Exhibits and Attachments hereto and the Service Management Manual and (B) subject to [Section 15.11 Compliance with Laws](#), all Laws regarding its use of and access to such TxDOT Personal Data.
- (b) Service Provider agrees that Service Provider and Service Provider Personnel shall not use any TxDOT Personal Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Service Provider shall not process or disseminate TxDOT Personal Data to any third party or transfer TxDOT Personal Data without the approval of TxDOT unless expressly provided for in this Agreement. Service Provider shall take appropriate action to cause:
 - (i) Any Service Provider Personnel who have access to TxDOT Personal Data pursuant to this Agreement to be advised of, and comply with, the terms and conditions of this [Section](#); and
 - (ii) Any Service Provider Personnel who have access to TxDOT Personal Data to be trained regarding their handling of such TxDOT Personal Data.

Service Provider shall be responsible for any failure of Service Provider Personnel to comply with the terms and conditions regarding TxDOT Personal Data set forth in this [Section](#).

- (c) When interfacing with TxDOT regarding TxDOT Personal Data, Service Provider shall only disclose or transmit TxDOT Personal Data to those TxDOT employees and TxDOT Contractors authorized by the Designated TxDOT Representative or identified in the Service Management Manual.

- (d) TxDOT shall notify Service Provider of any:
- (iii) Limitation in any privacy notice used by TxDOT to the extent that such limitation may affect Service Provider's use or disclosure of TxDOT Personal Data; and
 - (iv) Restriction on the use or disclosure of TxDOT Personal Data to which TxDOT agreed to the extent that such restriction may affect Service Provider's use or disclosure of such TxDOT Personal Data.
- Service Provider agrees to promptly implement any such limitation or restriction as directed by TxDOT.
- (e) If Service Provider has knowledge of any unauthorized disclosure of or access to TxDOT Personal Data, Service Provider shall:
- (v) Expeditiously report such unauthorized disclosure or access to TxDOT,
 - (vi) Mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Service Provider or its agents, and
 - (vii) Cooperate with TxDOT in providing any notices regarding impermissible disclosures caused by such disclosure or access which TxDOT deems appropriate.
- (f) To the extent such unauthorized disclosure or access is attributable to a Security Incident by Service Provider or Service Provider Personnel's obligations under this Agreement with respect to TxDOT Personal Data, Service Provider shall bear the following costs and expenses to the extent Service Provider is found responsible for such breach as determined by the root cause analysis and related processes as provided in the relevant SMM(s):
- (i) the costs incurred by Service Provider in complying with its legal obligations relating to such Security Incident and
 - (ii) in addition to any other damages for which Service Provider may be liable for under this Agreement (except to the extent such disclosure is due to TxDOT's failure to provide or identify (including through authorization to provide as part of the Services) the level of encryption required under this Agreement or applicable Law(s) to protect such Data), the following costs incurred by TxDOT in complying with their legal obligations relating to such breach, to the extent applicable, (1) the cost of providing notice to affected individuals, (2) the cost of providing such affected individuals with credit monitoring services for thirty-six (36) months, (3) the cost of providing such affected individuals with \$50,000 of identity theft insurance, (4) creating a call center support, and bearing the costs thereof, for such affected individuals for thirty (30) days, (5) any related governmental fees or fines assessed against TxDOT, and (6) any other Losses for which Service Provider would be liable under [Section 17.1 \(d\) TxDOT Data or Confidential Information](#).

The above shall not be considered damages subject to, and shall not be counted toward, any liability exclusion or cap specified in [Article 18 LIABILITY](#).

13.4 TxDOT Regulated Data

TxDOT Regulated Data is information that is controlled by a federal statute, federal regulation, or other third-party agreements. The TxDOT Regulated Data may include the following TxDOT Confidential Data that has its use and protection dictated by a federal agency or by third-party agreements. The protection of TxDOT data must meet the appropriate statutory definitions or industry agreement conditions. The TxDOT Regulated Data may include the following:

- (a) **Payment Card Information.** To the extent applicable to the Services, Service Provider shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") with respect to Payment Card Information as defined therein, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Service Provider's sole cost and expense. Service Provider shall access Payment Card Information only for the limited purpose of performing the Services or as specifically agreed to by Visa, MasterCard, American Express, and/or Discover (collectively, the

"Issuers"), TxDOT, or as required by applicable law. In the event of a breach or intrusion of, or otherwise unauthorized access to, Payment Card Information stored by or for Service Provider, Service Provider shall immediately notify TxDOT, in the manner required, and provide TxDOT or its designee, the Issuers, and the acquiring financial institution and their respective designees access to Service Provider's facilities and all pertinent records to conduct a review of Service Provider's compliance with these requirements. Service Provider shall maintain appropriate business continuity procedures and systems to ensure security of Payment Card Information in the event of a disruption, disaster, or failure of Service Provider's primary data systems which involve a risk to Payment Card Information. Service Provider shall provide access to its security systems and procedures, as reasonably requested by TxDOT or its designee. Service Provider shall cooperate fully with any reviews of their facilities and records provided for in this **Section 13.4 TxDOT Regulated Data**. Service Provider will comply with any assessment, validation, or verification of PCI DSS rules and regulations.

- (b) **Criminal Justice Information.** To the extent applicable to the Services, Service Provider shall comply with the U.S. Department of Justice Criminal Justice Information Services (CJIS) Security Policy. Service provider shall access CJIS information only for the limited purposes of performing the Services or as specifically authorized by the Texas Department of Public Safety (DPS) or TxDOT, or as required by applicable law.
- (c) **Personal Information in Motor Vehicle Records.** To the extent applicable to the Services, Service Provider shall comply with Title 18, U.S.C., regarding protection of personal information in Motor Vehicle Records.

In addition to the provisions of [Section 13.1 Confidentiality, and Section 13.2 TxDOT Data](#), the following privacy and data protection provisions shall apply to TxDOT Regulated Data:

- (a) Service Provider shall hold any TxDOT Regulated Data that it receives in confidence and in compliance with (A) Service Provider's obligations under this Agreement, the Exhibits and Attachments hereto and the Service Management Manual and (B) subject to [Section 15.11 Compliance with Laws](#), all Laws regarding its use of and access to such TxDOT Regulated Data.
- (b) Service Provider agrees that Service Provider and Service Provider Personnel shall not use any TxDOT Regulated Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Service Provider shall not process or disseminate TxDOT Regulated Data to any third party or transfer TxDOT Personal Data without the approval of TxDOT unless expressly provided for in this Agreement. Service Provider shall take appropriate action to cause:
 - (i) Any Service Provider Personnel who have access to TxDOT Regulated Data pursuant to this Agreement to be advised of, and comply with, the terms and conditions of this [Section](#); and
 - (ii) Any Service Provider Personnel who have access to TxDOT Regulated Data to be trained regarding their handling of such TxDOT Personal Data.

Service Provider shall be responsible for any failure of Service Provider Personnel to comply with the terms and conditions regarding TxDOT Regulated Data set forth in this [Section](#).

- (c) When interfacing with TxDOT regarding TxDOT Regulated Data, Service Provider shall only disclose or transmit TxDOT Regulated Data to those TxDOT employees and TxDOT Contractors authorized by the Designated TxDOT Representative or identified in the Service Management Manual.
- (d) TxDOT shall notify Service Provider of any:
 - (i) Limitation in any privacy notice used by TxDOT to the extent that such limitation may affect Service Provider's use or disclosure of TxDOT Regulated Data; and
 - (ii) Restriction on the use or disclosure of TxDOT Regulated Data to which TxDOT agreed to the extent that such restriction may affect Service Provider's use or disclosure of such TxDOT Regulated Data.

Service Provider agrees to promptly implement any such limitation or restriction as directed by TxDOT.

- (e) If Service Provider has knowledge of any unauthorized disclosure of or access to TxDOT Regulated Data, Service Provider shall:
 - (i) Expeditiously report such unauthorized disclosure or access to TxDOT,
 - (ii) Mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Service Provider or its agents, and
 - (iii) Cooperate with TxDOT in providing any notices regarding impermissible disclosures caused by such disclosure or access which TxDOT deems appropriate.
- (f) To the extent such unauthorized disclosure or access is attributable to a Security Incident by Service Provider or Service Provider Personnel of Service Provider's obligations under this Agreement with respect to TxDOT Regulated Data, Service Provider shall bear the following costs and expenses to the extent Service Provider is found responsible for such breach as determined by the root cause analysis and related processes as provided in the relevant SMM(s):
 - (i) the costs incurred by Service Provider in complying with its legal obligations relating to such Security Incident and
 - (ii) in addition to any other damages for which Service Provider may be liable for under this Agreement (except to the extent such disclosure is due to TxDOT's failure to provide or identify (including through authorization to provide as part of the Services) the level of encryption required under this Agreement or applicable Law(s) to protect such Data), the following costs incurred by TxDOT in complying with their legal obligations relating to such breach, to the extent applicable, (1) the cost of providing notice to affected individuals, (2) the cost of providing such affected individuals with credit monitoring services for thirty-six (36) months, (3) the cost of providing such affected individuals with \$50,000 of identity theft insurance, (4) creating a call center support, and bearing the cost thereof, for such affected individuals for thirty (30) days, (5) any related governmental fees or fines assessed against TxDOT, and (6) any other Losses for which Service Provider would be liable under [Section 17.1\(d\) TxDOT Data or Confidential Information](#).

The above shall not be considered damages subject to, and shall not be counted toward, any liability exclusion or cap specified in [Article 18 LIABILITY](#).

13.5 File Access.

TxDOT shall have secure access to, and the right to review and retain the entirety of, all TxDOT Confidential Information in the possession or control of Service Provider. Such access shall be provided to TxDOT in near-real time and by the means and in the format reasonably requested by TxDOT. At no time shall any of such files or other materials or information be stored or held in a form or manner not readily accessible to TxDOT in this manner. Service Provider shall provide to the Designated TxDOT Representative, or his or her designee, all passwords, codes, comments, keys, documentation and the locations of any such files and other materials promptly upon his or her request, including Equipment and Software keys and such information as to format, encryption (if any) and any other specification or information necessary for TxDOT to retrieve, read, revise and/or maintain such files and information. Upon the request of the Designated TxDOT Representative, or his or her designee, Service Provider shall confirm that, to the best of its knowledge, all files and other information provided to TxDOT are complete and that no material element, amount, or other fraction of such files or other information to which TxDOT may request access or review has been deleted, withheld, disguised or encoded in a manner inconsistent with the purposes and intent of providing full and complete access to TxDOT as contemplated by this Agreement.

13.6 TxDOT Data – Correction and Restoration.

- (a) **Corrections.** The correction of any errors or inaccuracies in or with respect to TxDOT Data shall be

- performed by the Party that has operational responsibility for inputting such TxDOT Data into the applicable System. To the extent (i) Service Provider is operationally responsible for inputting such data or (ii) such errors or inaccuracies are attributable to the failure of Service Provider or Service Provider Personnel to comply with Service Provider's obligations under this Agreement, Service Provider shall bear the cost of correcting such errors or inaccuracies.
- (b) **Re-running of Corrected Data.** If the correction of errors or inaccuracies as described above necessitates the re-running of corrected TxDOT Data and thereby results in the usage of additional Resource Units, TxDOT shall pay the applicable Charge as set forth in **Exhibit 4.0 Business Model**, unless the underlying errors or inaccuracies are attributable to the failure of Service Provider or Service Provider Personnel to comply with Service Provider's obligations under this Agreement (including the failure of Service Provider or Service Provider Personnel to adhere to applicable processes and controls that, if adhered to, would have enabled Service Provider or Service Provider Personnel to identify and timely correct such errors or inaccuracies, even if caused by TxDOT), in which case Service Provider shall be financially responsible for any additional Resource Units usage resulting from the re-running of corrected data.
- (c) **Restoration of Data.** The restoration of any destroyed, lost or altered TxDOT Data shall be performed through generally accepted data restoration techniques by the Party that has operational responsibility under **Exhibit 4.2 Financial Responsibility Matrix** for maintaining the System on which such TxDOT Data resides and for creating and maintaining backup copies of such TxDOT Data. To the extent (A) Service Provider is operationally responsible for performing such restoration or (B) such destruction, loss or alteration is attributable to the failure of Service Provider or Service Provider Personnel to comply with Service Provider's obligations under this Agreement, Service Provider shall bear the cost of restoring such data to the most recent required back-up.

13.7 Survival.

Notwithstanding the expiration or any termination of this Agreement, (A) the limitations on use and disclosure by Service Provider under this **Article 13** with respect to TxDOT Personal Data and TxDOT Regulated data shall survive the expiration or any termination of this Agreement and shall be perpetual and (B) each Party's confidentiality obligations under this Agreement shall continue for any period required by applicable Law, or in the absence of a required period for seven (7) years after the expiration or termination of this Agreement, or, if sooner, until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the receiving Party.

13.8 Requirements for Information in Legal Proceedings.

- (a) **Preservation of Legal Privilege.** If TxDOT notifies Service Provider, or Service Provider is otherwise aware, that particular TxDOT Confidential Information may be within TxDOT attorney-client or work-product privileges of TxDOT, then regardless of any applicable exclusions, Service Provider (A) shall not disclose such TxDOT Confidential Information or take any other action that would result in waiver of such privileges and (B) shall instruct all Service Provider Personnel who may have access to such communications to maintain privileged material as strictly confidential and otherwise protect TxDOT privileges.
- (b) **Service Provider Responsibility for TxDOT Information.** To the extent requested by TxDOT, Service Provider shall comply with TxDOT litigation response plan, including policies and procedures to prepare for and respond to discovery requests, subpoenas, investigatory demands, and other requirements for information related to legal and regulatory proceedings, as such plan may be revised from time to time, including preparing for and complying with requirements for preservation and production of data in connection with legal and regulatory proceedings and government investigations. Upon receipt of any request, demand, notice, subpoena, order or other legal information request relating to legal proceedings or investigations by third parties relating to any Materials, TxDOT Confidential Information or related Systems in Service Provider's possession, Service Provider shall immediately notify TxDOT and provide TxDOT with a copy of all documentation of such legal information request, to the extent Service Provider legally may do so and shall cooperate with TxDOT in responding to such request, demand, notice, subpoena, order or other legal information request.

- (c) **Cost of Compliance.** Service Provider's cost of complying with this [Section 13.8 Requirements for Information in Legal Proceedings](#), shall be at no additional charge to TxDOT.

14 MATERIALS

14.1 TxDOT Owned and Licensed Materials.

- (a) **Ownership of TxDOT Owned Materials.** As between the Parties, TxDOT shall be the sole and exclusive owner of:
- (i) all Materials and other intellectual property owned by TxDOT as of the Effective Date,
 - (ii) all Materials and other intellectual property acquired by TxDOT on or after the Effective Date, and
 - (iii) certain Developed Materials as provided in [Section 14.2 Developed Materials](#), (collectively, "TxDOT Owned Materials"), including all United States and foreign patent, copyright, trade secret and other intellectual property rights ("**IP Rights**") that exist now or in the future in the TxDOT Owned Materials.
- (b) **License to TxDOT Owned Materials.** As of the Commencement Date, TxDOT hereby grants to Service Provider and, if and to the extent necessary for Service Provider to provide the Services, to Subcontractors designated by Service Provider, a non-exclusive, non-transferable, royalty-free limited right and license during the Term to Use the TxDOT Owned Materials provided by TxDOT to Service Provider for the express and sole purpose of providing the Services, subject to any conditions or limitations arising from the financial participation of United States federal government authorities in the development or acquisition of such TxDOT Owned Materials or otherwise imposed under applicable Laws. Service Provider shall have no right to the source code to such TxDOT Owned Materials unless and to the extent approved in advance in writing by TxDOT. TxDOT Owned Materials shall remain the property of TxDOT. Service Provider shall not:
- (i) use any TxDOT Owned Materials for the benefit of any person or Entity other than TxDOT,
 - (ii) separate or uncouple any portions of the TxDOT Owned Materials, in whole or in part, from any other portions thereof, or
 - (iii) reverse assemble, reverse engineer, translate, disassemble, decompile, or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of the TxDOT Owned Materials by any means whatsoever, without the prior approval of TxDOT, which may be withheld at TxDOT's sole discretion.
- (c) Except as otherwise requested or approved by TxDOT, Service Provider shall cease all use of TxDOT Owned Materials upon the end of the Term and shall certify such cessation to TxDOT in a notice signed by an officer of Service Provider. THE TXDOT OWNED MATERIALS ARE PROVIDED BY TXDOT TO SERVICE PROVIDER ON AN AS-IS, WHERE-IS BASIS. TXDOT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE TXDOT OWNED MATERIALS OR THE CONDITION OR SUITABILITY OF THE TXDOT OWNED MATERIALS FOR USE BY SERVICE PROVIDER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (d) **License to TxDOT Third Party Materials.** Subject to Service Provider having obtained any Required Consents, TxDOT hereby grants to Service Provider, for the sole purpose of performing the Services and subject to TxDOT's underlying rights and any conditions or limitations imposed under applicable Laws, the same rights of access and use as TxDOT possesses under the applicable licenses with respect to the TxDOT licensed Third Party Materials provided by TxDOT to Service Provider. Subject to Service Provider having obtained any Required Consents, TxDOT shall also grant such rights to Subcontractors designated by Service Provider if and to the extent necessary for Service Provider to provide the Services. Except as otherwise expressly agreed by the applicable third party licensors, Service Provider shall comply with the duties, including use restrictions and nondisclosure obligations, imposed on TxDOT by such licenses. If proof of entitlement for a license is not available, TxDOT will, at a minimum, notify Service Provider in writing of:

- (i) the name of the software product and vendor;
 - (ii) the number of license available to TxDOT; and
 - (iii) any other duties, restrictions, and obligations know to TxDOT.
- (e) Except as otherwise requested or approved by TxDOT (or the relevant licensor), Service Provider shall cease all use of such Third Party Materials upon the end of the Term. THE TXDOT LICENSED THIRD PARTY MATERIALS ARE PROVIDED BY TXDOT TO SERVICE PROVIDER ON AN AS-IS, WHERE-IS BASIS. TXDOT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE TXDOT LICENSED THIRD PARTY MATERIALS OR THE CONDITION OR SUITABILITY OF THE TXDOT LICENSED THIRD PARTY MATERIALS FOR USE BY SERVICE PROVIDER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14.2 Developed Materials.

- (a) **TxDOT Ownership.** Except as otherwise expressly provided in [Sections 14.2\(c\)](#) and [14.2\(d\)](#) below, TxDOT shall be the sole and exclusive owner of all:
- (i) Developed Materials that are modifications, enhancements, improvements, or Upgrades to or Derivative Works of TxDOT Owned Materials, including all IP Rights therein, and
 - (ii) the copyright in all other Developed Materials that are provided to TxDOT as a Deliverable (as defined in [Section 14.2\(c\)](#) below).

All Developed Materials owned (or to be owned) by TxDOT pursuant to this [Section 14.2\(a\)](#) shall be considered "works made for hire" (as that term is used in the United States Copyright Act, 17 U.S.C. Section 101, or in analogous provisions of other applicable Laws). Service Provider hereby irrevocably and perpetually assigns, and shall assign, to TxDOT without further consideration to the extent of such ownership by TxDOT all of Service Provider's right, title and interest in and to such Developed Materials, including all IP Rights. Service Provider acknowledges that TxDOT and the successors and assignees of TxDOT shall have the right to obtain and hold in their own name all rights, title and interest in and to all such rights in such Developed Materials. Service Provider agrees to execute any documents and take any other actions reasonably requested by TxDOT to effectuate the purposes of this [Section 14.2\(a\)](#). TxDOT hereby grants Service Provider certain license and other rights with respect to such Developed Materials, as described in [Section 14.1\(b\)](#).

- (b) **Source Code and Documentation.** Service Provider shall, promptly as it is developed by Service Provider, provide TxDOT with the source code and configurations, if any, and object code and documentation for all Developed Materials owned by TxDOT pursuant to [Section 14.2\(a\)](#) above. Such source code and technical documentation shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials. The user documentation for such Materials shall accurately describe in terms understandable by a typical Authorized User the functions and features of such Materials and the procedures for exercising such functions and features.
- (c) **Service Provider Owned Developed Materials.** Service Provider shall be the sole and exclusive owner of all Developed Materials that are modifications, enhancements, improvements, or Upgrades, to or Derivative Works of, Service Provider owned Materials or to the extent not owned by TxDOT pursuant to [Section 14.2\(a\)](#) above, including all IP Rights in such Materials; provided, however, that if the creation of any such Developed Material is specifically requested by TxDOT and is provided through performance of the Services, it shall be treated as commercially available Service Provider owned Developed Material for purposes of all license and other rights of TxDOT therein granted pursuant to this Agreement, including under [Section 14.6 Ongoing TxDOT Rights.](#) TxDOT acknowledges that Service Provider and the successors and assignees of Service Provider shall have the right to obtain and hold in their own name all rights, title and interest in and to Developed Materials owned by Service Provider pursuant to this [Section 14.2\(c\)](#). TxDOT agrees to execute any documents and take any other actions reasonably requested by Service Provider to effectuate the purposes of this [Section 14.2\(c\)](#). Service Provider hereby grants TxDOT certain license and other rights with respect to such Developed Materials, as described in [Sections 14.3\(b\)](#) and [Section 14.6 Ongoing TxDOT Rights.](#)

- (d) **Third Party Materials.** The ownership of Derivative Works of Third Party Materials created by Service Provider in connection with the Services shall, as between Service Provider and TxDOT, be considered Developed Materials owned by TxDOT. TxDOT's ownership of such Derivative Works may be subject to, or limited by, the terms of the underlying agreement with the owner of the underlying Third Party Materials; provided that Service Provider shall notify TxDOT in advance if the terms of any such agreement will preclude or limit TxDOT's ownership of such Derivative Work and shall obtain TxDOT's consent prior to proceeding with such Derivative Work.
- (e) **Disclosure by Service Provider of Developed Materials.** Service Provider shall promptly disclose in writing to TxDOT the Developed Materials that are developed under this Agreement. With respect to each disclosure, Service Provider shall indicate the features or concepts that it believes to be new or different.
- (f) **Waiver of Moral Rights.** To the extent permitted by Law, Service Provider hereby waives and shall cause Service Provider Personnel who will provide any Services to waive any moral rights, reversionary rights, artist rights, or any similar rights in the TxDOT owned Developed Materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise. Service Provider acknowledges the receipt of equitable compensation for its assignment and waiver of such moral rights, reversionary rights, artist rights, or any similar rights and agrees to provide equitable compensation to Service Provider Personnel for any assignment or waiver of moral rights.

14.3 Service Provider Owned and Licensed Materials.

- (a) **Ownership of Service Provider Owned Materials.** As between the Parties, Service Provider shall be the sole and exclusive owner of the:
 - (i) Materials and other intellectual property lawfully owned by it or its Affiliates prior to the Effective Date;
 - (ii) Materials and other intellectual property acquired by Service Provider or its Affiliates on or after the Effective Date (including any such Materials and intellectual property purchased from TxDOT pursuant to this Agreement) other than Materials and other intellectual property obtained by Service Provider or its Affiliates from third parties specifically for or on behalf of TxDOT;
 - (iii) certain Developed Materials as provided in [Sections 14.2\(c\) Service Provider Owned Developed Materials](#) and [14.2\(d\) Third Party Materials](#); and
 - (iv) Materials and other intellectual property that are not developed by or on behalf of Service Provider pursuant to this Agreement or otherwise paid for by TxDOT under this Agreement (collectively, "Service Provider owned Materials"), including all IP Rights in the Service Provider owned Materials.
- (b) **License to Service Provider Owned Materials.** As of the Commencement Date, Service Provider hereby grants to TxDOT during the Term, at no additional charge, a world-wide, non-exclusive, irrevocable, royalty-free right and license to Use, with the right to allow, Service Component Providers, TxDOT Contractors and other third parties to Use for the benefit of or Use by TxDOT, the Service Provider owned Materials (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto), including to
 - (i) receive the full benefit of the Services;
 - (ii) perform or have performed services of the nature of the Services, including in-scope processes and services;
 - (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services; and
 - (iv) perform or have performed ancillary services and functions, including related information technology services and functions, and modifying the Service Provider owned Materials for continued Use after the expiration or termination of this Agreement.

Service Provider owned Materials shall remain the property of Service Provider. The rights and obligations of TxDOT and their designee(s) with respect to such Service Provider owned Materials following the expiration or any termination of this Agreement, in whole or in part, are set forth in [Section 14.6 Ongoing TxDOT Rights](#).

- (c) **License to Service Provider Third Party Materials.** As of the Commencement Date, and subject to Service Provider having obtained any Required Consents, Service Provider hereby grants to TxDOT during the Term, at no additional charge, a world-wide, non-exclusive, irrevocable, royalty-free right and license to Use, with the right to grant sublicenses to TxDOT Contractors and other third parties to Use, the Third Party Materials for which Service Provider holds the license or for which Service Provider is financially responsible under this Agreement (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto) for the benefit of TxDOT, including to:
- (i) receive the full benefit of the Services;
 - (ii) perform or have performed services of the nature of the Services, including in-scope processes and Services;
 - (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services; and
 - (iv) perform or have performed ancillary services and functions, including related information technology services and functions, and modifying the Service Provider owned Materials for continued Use after the expiration or termination of this Agreement.

To the extent a TxDOT Contractor requires a license to Service Provider licensed Third Party Materials for the performance of services or functions previously performed by Service Provider in circumstances in which the services or functions in question have not been terminated or taken completely away from Service Provider and such Third Party Software is generally commercially available at established market rates, if Service Provider is required to buy additional licenses to accommodate such use by a TxDOT Contractor, then TxDOT or the TxDOT Contractor shall pay shall reimburse Service Provider for such license fees, provided that Service Provider notifies TxDOT of such fee, obtains TxDOT's approval prior to incurring it; and uses commercially reasonable efforts (including providing TxDOT the benefit of discounted license fees that are available to Service Provider under the circumstances) to minimize any fee to be paid or reimbursed by TxDOT or the TxDOT Contractor. Except as provided in this provision, neither TxDOT nor the TxDOT Contractors shall be required to pay any other fees or expenses in connection with such licenses to such Third Party Software. The rights and obligations of TxDOT and their designee(s) with respect to such Service Provider licensed Third Party Materials following the expiration or any termination of this Agreement, in whole or in part, are set forth in [Section 14.6 Ongoing TxDOT Rights](#).

- (d) **Embedded and Dependent Materials.** To the extent that Service Provider owned Materials or Third Party Materials are either (i) embedded in or (ii) dependent on or necessary for the Use of any Developed Materials owned by TxDOT pursuant to [Section 14.2 \(a\) TxDOT Ownership](#) or any Third Party Materials that TxDOT licenses, then subject to [Section 14.2 \(d\) Third Party Materials](#), Service Provider shall not be deemed to have assigned its or any third party's intellectual property rights in such Materials to TxDOT, but Service Provider hereby grants to TxDOT a world-wide, non-exclusive, perpetual, irrevocable, royalty-free right and license to Use, with the right to allow Service Component Providers, TxDOT Contractors and other third parties the right to Use for the benefit of or Use by TxDOT, such Materials (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto); provided, however, such license shall not extend to TxDOT's commercial exploitation of such Service Provider owned Materials or Third Party Materials on a stand-alone basis. Following the expiration or any termination of this Agreement and the termination of the Service(s) for which such Service Provider owned Materials were used, Service Provider shall, at TxDOT's request, provide Upgrades, maintenance, support and other services for such Service Provider owned Materials or Third Party Materials in accordance with [Section 14.6 \(b\) Service Provider Owned Materials](#), or [14.6 \(c\) Third Party Materials](#), as applicable.
- (e) **Source Code Escrow.** At TxDOT's request, Service Provider shall deposit in escrow with an escrow agent selected by TxDOT the source code and related documentation for Service Provider owned Materials

consisting of Software in any of the following circumstances: (A) in the case of any such Software that is no longer routinely supported by Service Provider; or (B) in the case of any such Software for which source code is made available to other Service Provider customers (including through such escrow arrangements).

In the event of the occurrence of any event giving rise to termination of this Agreement by TxDOT pursuant to [Section 20.4 Termination for Insolvency](#), Service Provider shall provide reasonable assurance to TxDOT that such occurrence has not and shall not jeopardize Service Provider owned Materials continuing to be routinely supported by Service Provider comparable to that provided prior to such occurrence. If Service Provider shall be unable to comply with the foregoing to TxDOT's reasonable satisfaction, Service Provider shall, upon direction from TxDOT, comply with the obligations of this [Section 14.3 \(e\) Source Code Escrow](#) as if such Service Provider owned Materials were then no longer routinely supported by Service Provider.

At TxDOT's request, Service Provider shall deposit in escrow, with an escrow agent selected by TxDOT, the source code and related documentation, to the extent available to Service Provider, for any Third Party Materials consisting of Software used by Service Provider to perform the Services; provided, however, that this obligation will not be applicable to Commercial Off-the-Shelf (COTS) Third Party Materials. Any such escrow shall be governed by and subject to the terms and conditions appearing in the Escrow Agreement attached hereto as **Attachment C Form of Source Code Escrow Agreement**, as such terms and conditions may be modified by TxDOT and the escrow agent. Unless approved by TxDOT, Service Provider shall not use any Third Party Materials consisting of Software for the performance of the Services without obtaining the right to the source code for such software, other than COTS Third Party Materials as permitted above, whether by escrow or otherwise. While Service Provider shall not be required to escrow third party COTS software, Service Provider shall ensure that Service Provider provides all licenses and other rights required under this Agreement.

14.4 Work Product; Other Materials.

All Work Product shall be owned by TxDOT. TxDOT shall have all right, title, and interest in and to the Work Product and all copies made from them. To the extent any Work Product is not deemed a "**work made for hire**" by operation of law, Service Provider hereby irrevocably assigns, transfers, and conveys, and shall cause its employees, contractors, and agents to assign, transfer and convey, to TxDOT without further consideration all of its and their right, title, and interest in and to such Work Product, including all rights of copyright, trade secret, moral rights, and other similar rights in such materials. Service Provider acknowledges, and shall cause its employees, contractors, and agents to acknowledge that TxDOT and the successors and permitted assignees of TxDOT shall have the right to obtain and hold in their own name any such intellectual property rights in and to such Work Product. Service Provider agrees to execute, and shall cause its employees, contractors, and agents to execute, any documents or take any other actions as may reasonably be necessary, or as TxDOT may reasonably request, to perfect TxDOT's ownership of any such Work Product. This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this [Article 14 MATERIALS](#)) unless otherwise so provided elsewhere in this Agreement.

14.5 General Rights.

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one (1) Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party or any Affiliate of Service Provider.
- (c) **Incorporated Materials.** Without limiting the provisions of [6.5 Assignment of Licenses, Leases, and Related Agreements](#), should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.

- (d) **Residuals.** This Agreement shall not restrict an individual who is an employee or representative of a Party from using ideas, concepts, or know-how relating to the provision of information technology, network management and data processing products and services that are retained solely in the unaided memory of such individual after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon any patent, copyright or trademark right of a Party (or in the case of TxDOT) or its Affiliates; provided, however, that this [Section 14.5 \(d\) Residuals](#) shall not operate or be construed as permitting an employee or representative of Service Provider to disclose, publish, disseminate, or use:
- (i) the source of any proprietary information of TxDOT,
 - (ii) any financial, statistical or personnel information of TxDOT, or
 - (iii) the operational plans of TxDOT. An individual's memory is unaided if the individual has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it as otherwise permitted under this [Section 14.5 \(d\) Residuals](#) and does not identify the information as Confidential Information upon recollection.
- (e) **Termination or Expiration.** In the event of termination or expiration of this Agreement and in addition to the ownership and licensing rights described above, Service Provider hereby provides a perpetual, irrevocable, worldwide, royalty-free, fully paid up right and license to TxDOT to Use the Materials and Management Tools that were utilized in providing the Services or New Services in use upon termination or expiration of the Agreement. Such license to Use will allow TxDOT to continue to use Use the Materials and Management Tools that were utilized in providing the Services or New Services, so that such Services or New Services may continue to be offered uninterrupted to TxDOT's customers or consumers. By way of illustration only, if Service Provider uses or embeds automation scripts or other proprietary or commercially-available products in order to deliver or manage the Services, TxDOT has the unrestricted right and license to continue offering the Services post-expiration or post-termination, including use of such automation scripts or other proprietary or commercially-available products for that purpose. The Parties agree that the purpose of this right and license to the Materials and Management Tools is to ensure uninterrupted offering of Services, including the full benefit of such Services, even if Service Provider is no longer a vendor of services to TxDOT.

14.6 Ongoing TxDOT Rights.

As part of Termination Assistance Services, Service Provider shall provide the following to TxDOT and their designee(s) with respect to Materials:

- (a) **TxDOT Owned and Licensed Materials.** With respect to TxDOT Owned Materials and TxDOT licensed Third Party Materials, Service Provider shall, at no cost to TxDOT:
 - (i) deliver to TxDOT all such Materials and all copies thereof in the format and medium in use to provide the Services; and
 - (ii) following confirmation by TxDOT that the copies of such Materials delivered by Service Provider are acceptable and the completion by Service Provider of any Termination Assistance Services for which such Materials are required, destroy or securely erase all other copies of such Materials then in Service Provider's possession, and cease using such Materials and any information contained therein for any purpose.
- (b) **Service Provider Owned Materials.**
 - (i) **Commercially Available Service Provider Owned Materials.** With respect to those Materials owned by Service Provider or Service Provider Affiliates or Subcontractors that are implicated by the Assistance Event that are used to provide the Services (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) and that are commercially licensed or otherwise commercially available:
 - (A) Service Provider hereby grants to TxDOT (or, at TxDOT's election, to their designee(s)) a worldwide, perpetual, non-exclusive, irrevocable, royalty-free, fully paid-up license on

standard terms and conditions no less favorable than those offered generally by Service Provider to commercial licensees of such Materials (or at TxDOT election under then current terms and conditions applicable between Service Provider and TxDOT for similar items) to Use, with the right to grant sublicenses to Use, such Materials and the IP Rights therein; provided that, in all events, such terms and conditions shall be at least broad enough to permit TxDOT following the expiration or termination of the Agreement, to continue to use such Materials to provide for the Services and uses for which such Materials are in use at the time of such expiration or termination;

- (B) Service Provider shall deliver to TxDOT (or, at TxDOT's election, to their designee(s)) (A) a copy of such Materials and related documentation, (B) the source code and object code for such Materials to the extent such code is reasonably necessary to permit them to Use such Materials, (C) the source code and object code for such Materials that are not COTS products and (D) the source code and object code for such Materials that are COTS products if Service Provider does not offer or provide upgrades, maintenance, support and other services for such Service Provider owned Materials as provided in **Section 14.6(b)**; and
 - (C) Service Provider shall offer to provide to TxDOT (or, at TxDOT's election, to their designee(s)) Upgrades, maintenance, support and other services for such Materials on reasonable commercial terms and conditions and for reasonable fees and charges (on the basis of most favored customer pricing based on Service Provider customers receiving similar volumes of services similar to such Upgrades, maintenance, support and other services).
- (ii) **Non-Commercially Available Service Provider Owned Materials.** With respect to those Materials owned by Service Provider or Service Provider Affiliates or Subcontractors that are implicated by the Assistance Event that are used to provide the services (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) and that are not then commercially licensed or otherwise commercially made available, unless otherwise expressly agreed by TxDOT in writing prior to the first use of such Materials, Service Provider hereby grants to TxDOT (or, at TxDOT's direction, its designee) a worldwide, perpetual, irrevocable, non-exclusive, non-transferable (except to the extent this Agreement is assigned in accordance with this Agreement) a fully paid-up license, to Use such Materials and the IP Rights therein following the expiration or termination of the term or termination of the Service(s) for which such Materials were in use. Such license shall be limited to the use of such Materials by TxDOT (or, at TxDOT's direction, its designee) or such other uses permitted under this Agreement. Unless TxDOT has otherwise consented prior to the first use of such Materials, TxDOT (or, at TxDOT's direction, its designee) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights specified above.
- (A) If Service Provider is unwilling or unable to grant TxDOT or its designee the license and other rights described in the preceding paragraph, Service Provider shall so notify TxDOT and shall not use such non-commercially available Materials to provide the Services without TxDOT's prior written approval. In seeking TxDOT's approval, Service Provider may propose alternative terms, such as a fee for such license, a limitation on the use of such Materials by TxDOT Contractors, or a limitation on the license period and/or the substitution of a functionally equivalent product.
 - (B) At TxDOT's request, Service Provider shall provide Upgrades, maintenance, support, and other services for such non-commercially available Materials on reasonable commercial terms and conditions (on the basis of most favored customer pricing based on other commercial customers receiving similar volumes of services similar to such Upgrades, maintenance, support and other services). If Service Provider fails to offer or provide Upgrades, maintenance, support, or other services, Service Provider shall deliver source code and object code for such Materials to the extent such materials include source code, together with the right to modify, enhance and create derivative works of such materials.
 - (C) Notwithstanding the foregoing, during the Termination Assistance Services period, Service Provider may substitute a license for Third Party Software or Materials sufficient to perform,

without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of such non-commercially available Materials. If it proposes to do so, Service Provider shall notify TxDOT and describe in detail the features, functionality and cost of the substitute product. TxDOT may, in its sole discretion, elect to use a different product for such purpose. In such case, Service Provider shall direct the amount it would have expended in procuring the proposed substitute product toward the procurement of the product selected by TxDOT.

- (D) Unless TxDOT has otherwise agreed in advance, TxDOT (and, to the extent applicable, its designee(s)) shall not be obligated to pay any fees or costs in connection with its receipt of the licenses and other rights contained in this [Section 14.6 \(b\) Service Provider Owned Materials](#). Service Provider's use of any such Materials to provide the Services shall obligate Service Provider to provide, at no additional cost, the license and other rights set forth in this [Section 14.6 \(b\) Service Provider Owned Materials](#), to TxDOT and their designees.
- (c) **Third Party Materials.** With respect to Third Party Materials for which Service Provider holds the license or for which Service Provider is financially responsible under this Agreement, upon the effective date of an Assistance Event, Service Provider hereby grants to TxDOT (or, at TxDOT's election, to their designee(s)) a sublicense (with the right to grant sublicenses) on the same rights and terms (including warranties) that are available to Service Provider (or Service Provider's Affiliates or Subcontractors) to such Third Party Materials that are implicated by that Assistance Event for the benefit of TxDOT; provided that, during the applicable period of time in which Service Provider performs the relevant Termination Assistance Services, Service Provider may, with TxDOT's approval, substitute one of the following for such sublicense: (A) the transfer or assignment to TxDOT (or, at TxDOT's election, to their designee(s)) of the underlying license for such Third Party Materials on terms and conditions acceptable to all applicable parties; (B) the procurement for TxDOT (or, at TxDOT's election, to their designee(s)) of a new license (with terms at least as favorable as those in the license held by Service Provider or its Affiliates or Subcontractors and with the right to either grant sublicenses or allow a third party the right to access and Use such Materials for the benefit of or Use by TxDOT to such Third Party Materials for the benefit of TxDOT; or (C) the procurement for TxDOT (or, at TxDOT's election, to their designee(s)) of a substitute license for new Third Party Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of such Third Party Materials.
- (i) Service Provider shall deliver to TxDOT (or, at TxDOT's election, to their designee(s)) a copy of such Third Party Materials (including source code, to the extent it has been available to Service Provider) and related documentation and shall cause maintenance, support and other services to continue to be available to TxDOT (or, at TxDOT's election, to their designee(s)) to the extent it has been available to Service Provider. Unless TxDOT has otherwise agreed in advance in accordance with [Section 6.4 \(c\) General Rights](#), TxDOT shall not be obligated to pay any fees or costs in connection with their receipt of the licenses, sublicenses and other rights specified in this [14.6 \(c\) Third Party Materials](#). Service Provider shall not use any Third Party Materials in connection with the Services for which it is unable to offer the license or other rights set forth in this [14.6 \(c\) Third Party Materials](#) without TxDOT's prior written approval (and absent such approval, Service Provider's use of any such Third Party Materials shall obligate Service Provider to provide, at no additional cost, such license and other rights to TxDOT and their designees). TxDOT, however, shall be obligated to make monthly or annual payments attributable to periods after Service Provider's completion of all Termination Assistance Services with respect to the Services for which such Third Party Materials were used for the right to use and receive maintenance or support related thereto, but only to the extent Service Provider would have been obligated to make such payments if it had continued to hold the licenses in question or TxDOT has agreed in advance to make such payments.
- (ii) To the extent TxDOT has agreed in advance to pay any fees or costs in connection with its receipt of the licenses, sublicenses or other rights set forth in this [14.6 \(c\) Third Party Materials](#), Service Provider shall, at TxDOT's request, identify the licensing and sublicensing options available to TxDOT and their designee(s), and the fees and costs associated with each. Service Provider shall

use commercially reasonable efforts to obtain the most favorable options and the lowest possible fees and costs for Third Party Materials. Service Provider shall not commit TxDOT to paying any such fees or expenses without TxDOT's prior approval. If the licensor offers more than one form of license, TxDOT (not Service Provider) shall select the form of license to be received by TxDOT and their designee(s).

- (d) **Ownership of Deliverables.** All Deliverables shall be owned by TxDOT, and TxDOT shall have all right, title and interest, IP Rights in and to the Deliverables and all copies made from it, and all Deliverables are considered "works made for hire" by TxDOT as the "author" and owner. Service Provider shall document appropriately all Deliverables created by Service Provider. Service Provider further acknowledges, certifies, and agrees that: (A) TxDOT is and shall be deemed the exclusive owner throughout the world of all rights (including IP Rights) in and to the Deliverables for any and all purposes; (B) TxDOT has the unencumbered right to reproduce, reuse, alter, modify, edit, prepare derivative works based on, or to change the Deliverables as it sees fit and for any purpose; and (C) TxDOT has the right to exploit any or all of the foregoing in any and all media, now known or hereafter devised, throughout the universe, in perpetuity, in all configurations as TxDOT determines in its sole discretion.

Service Provider hereby irrevocably and unconditionally waives any and all "moral rights" and any analogous rights, including rights of attribution, paternity and integrity, arising under any Law, that Service Provider has in the Deliverables, and any contribution thereto, and hereby agrees not to make any claim against TxDOT or any party authorized by TxDOT to exploit the Deliverables based on such "moral rights" and any analogous rights. Unless otherwise permitted by Law, Service Provider shall not, at any time during or after the Term, dispute or contest, directly or indirectly, TxDOT's exclusive right and title to the Deliverables and the IP Rights related thereto or the validity thereof. Notwithstanding anything in this Agreement to the contrary, TxDOT shall have a non-exclusive, royalty-free, fully paid-up, irrevocable, non-transferable license to any Service Provider intellectual property incorporated or embedded in Deliverables.

15 REPRESENTATIONS, WARRANTIES, AND COVENANTS

15.1 Work Standards.

Service Provider represents, warrants, and covenants that (i) the Services shall be rendered with promptness, due care, skill, and diligence; (ii) the Services shall be executed in a professional and workmanlike manner, in accordance with the Service Levels and accepted industry standards of first tier providers of services that are the same as or similar to the Services; (iii) Service Provider shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence, and skill to perform the Services; (iv) Service Provider shall provide such individuals with training as to new products and services prior to the implementation of such products and services in TxDOT's environments; and (v) Service Provider shall have the resources, capacity, expertise and ability in terms of Equipment, Materials, know-how, and personnel to provide the Services.

15.2 Maintenance.

Service Provider Responsibility. Service Provider represents, warrants, and covenants that, unless otherwise agreed and to the extent it has operational responsibility under this Agreement, it shall maintain the Equipment and Software so that they operate substantially in accordance with the Service Levels and their Specifications, including (i) maintaining Equipment in good operating condition, subject to normal wear and tear, (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations and requirements, and (iii) performing Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements.

15.3 Efficiency and Cost Effectiveness.

Service Provider represents, warrants, and covenants that it shall use commercially reasonable efforts to provide the Services in a cost-effective and efficient manner consistent with the required level of quality and performance. Without limiting the generality of the foregoing, such efforts shall include:

- (a) **Timing of Actions.** Making adjustments in the timing of actions (consistent with TxDOT priorities and

schedules for the Services and Service Provider's obligation to meet the Service Levels).

- (b) **Timing of Functions.** Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to TxDOT.
- (c) **Systems Optimization.** Tuning or optimizing the Systems (including memory), Applications Software, databases and/or processes to optimize performance and minimize costs.
- (d) **Usage Scheduling.** Controlling its use of the System and/or the TxDOT data network by scheduling usage, where possible, to low utilization periods.
- (e) **Alternative Technologies.** Subject to [Section 9.4 Processes, Procedures, Architecture, Standards and Planning.](#), using alternative technologies to perform the Services.
- (f) **Efficiency.** Efficiently using resources for which TxDOT is charged hereunder, consistent with industry norms, and compiling data concerning such efficient use in segregated and auditable form whenever possible.

15.4 Intellectual Property.

- (a) **Ownership and Use.** Service Provider represents, warrants, and covenants that: (1) it is either the owner of, or is authorized to use, and possesses sufficient rights to grant the rights and licenses contained in this Agreement to, any and all Materials, Equipment, Systems, or Services and other resources or items utilized or provided or both by Service Provider and (2) that such Materials, Equipment, Systems, or Services and other resources or items utilized and/or provided by Service Provider shall not infringe the IP Right of any third party. As to any such Materials, Equipment, Systems, Services, resources, or items that Service Provider does not own, Service Provider shall advise TxDOT in writing as to the ownership and extent of Service Provider's rights with regard to such Materials, Equipment, Systems, Services, resources, or items to the extent any limitation in such rights would materially impair Service Provider's performance of its obligations under this Agreement or the right and licenses granted by Service Provider under this Agreement.
- (b) **Performance.** Service Provider represents, warrants and covenants that any Service Provider Owned Materials consisting of Software and any Equipment provided by Service Provider shall Comply in all material respects with their applicable documentation and Specifications and shall provide the functions and features and operate in the manner described therein during the Warranty Period.
- (c) **Developed Materials Compliance.** Service Provider warrants and covenants that Developed Materials and Services shall at all times during the Warranty Period (i) be free from material errors in operation and performance, (ii) shall Comply in all material respects with the applicable documentation and Specifications, (iii) shall not infringe the IP Rights of any third party, and (iv) shall provide the functions and features and operate in the manner described in **Exhibit 2 Service Model** or otherwise agreed by the Parties (including in the Transition Plan). During the Warranty Period, Service Provider shall correct any failure to Comply at no additional charge to TxDOT and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Service Provider fails or is unable to repair or replace such nonconforming Developed Material, TxDOT shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Service Provider a copy of the source code and/or object code and/or other applicable documentation to such Developed Material, provided that with respect to any such provided source code for Service Provider owned Developed Materials, TxDOT (or its designee) may utilize such source code only for the repair or maintenance of such Service Provider owned Developed Material, and/or to facilitate the Termination Assistance Services to be provided by Service Provider during the Termination Assistance period (to the extent reasonably necessary for TxDOT to continue to have Services performed for it pursuant to the terms of this Agreement). The foregoing warranties and covenants will not extend to any failure of any Service Provider to Comply attributable to:
 - (i) any change or modification to the Developed Material requested by TxDOT not contemplated by this Agreement, and for which Service Provider or its Affiliate or Subcontractor provides notice as being outside the scope of this Agreement; or
 - (ii) TxDOT operating such Developed Material contrary to

- (A) the applicable documentation and Specifications,
 - (B) for the purpose(s) contemplated by this Agreement, or
 - (C) on types of hardware contemplated by this Agreement or recommended, supplied or approved by Service Provider.
- (d) **Nonconformity of Service Provider Owned Software.** In the event that the Service Provider owned Materials consisting of Software (excluding Service Provider owned Developed Materials that are addressed in [Section 15.4 \(c\) Developed Materials Compliance](#)) or any Equipment provided by Service Provider do not Comply with their applicable documentation and Specifications and/or materially adversely affects the Services provided hereunder, Service Provider shall, at its sole cost and expense and without any charge to TxDOT or any other TxDOT Contractors, expeditiously repair such Software or Equipment, or replace such Software or Equipment with conforming Software or Equipment.

15.5 Non-Infringement.

- (a) **Performance of Responsibilities.** Except as otherwise provided in this Agreement, each Party represents, warrants and covenants that it shall perform its obligations and responsibilities under this Agreement in a manner that does not infringe or misappropriate, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other intellectual property, proprietary or privacy rights of any third party; provided, however, that the performing Party shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (A) modifications made by the other Party or its contractors or subcontractors, without the approval of the performing Party, (B) the other Party's combination of the performing Party's work product or Materials with items not furnished, specified, recommended, or approved by the performing Party or contemplated by this Agreement, (C) a breach of this Agreement by the other Party, (D) the failure of the other Party to use corrections or modifications provided by the performing Party offering equivalent features and functionality, (E) adherence to detailed specifications provided by the other Party that the performing Party is required to comply with (provided the performing Party notifies the other Party of the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), or (F) Third Party Materials, except to the extent that such infringement or misappropriation arises from the failure of the performing Party to obtain the necessary licenses or Required Consents or to abide by the limitations of the applicable Third Party Materials licenses. Each Party further represents, warrants and covenants that it shall not use or create Materials in connection with the Services which are libelous, defamatory or obscene.
- (b) **Third Party Materials Indemnification.** In addition, with respect to Third Party Materials provided by Service Provider pursuant to this Agreement, Service Provider covenants that it shall either indemnify, defend, and hold TxDOT harmless from and against any Losses arising out of or relating to such Third Party Materials, or it shall obtain and provide intellectual property indemnification for TxDOT (or obtain intellectual property indemnification for itself and enforce such indemnification on behalf of TxDOT) from the suppliers of such Materials. Unless otherwise approved in advance by TxDOT, such indemnification shall be:
- (i) comparable to the intellectual property indemnification provided by Service Provider to TxDOT under this Agreement; or
 - (ii) the best indemnification reasonably available in the industry for the same or substantially similar types of products for the intended use of such Materials

15.6 General.

- (a) **Service Provider.** Service Provider represents, warrants, and covenants to TxDOT that:
- (i) It is a corporation duly incorporated, validly existing and in good standing under the Laws of its state of incorporation;
 - (ii) It has the requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;
 - (iii) Except as otherwise provided in [Article 5 REQUIRED CONSENTS](#), it has obtained all licenses,

authorizations, approvals, consents, or permits required to perform its obligations under this Agreement under all applicable federal, state, or local Laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, including under all applicable Laws of the State;

- (iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party;
 - (v) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
 - (vi) As of the Effective Date there is, to Service Provider's knowledge, no pending claim, suit or proceeding against or affecting Service Provider or any of its Affiliates or Subcontractors that would reasonably be expected to adversely affect Service Provider's ability to perform and fulfill its obligations under this Agreement including, without limitation, actions pertaining to the proprietary rights described in [Sections 15.4 Intellectual Property](#), and [15.5 Intellectual Property](#). Service Provider shall notify TxDOT within fifteen (15) days of Service Provider's knowledge of any such claim, suit, or proceeding. Without limiting the terms of [Section 13.1\(b\) Disclosure of Confidential Information](#), Service Provider shall notify TxDOT, within forty-eight (48) hours, if process is served on Service Provider in connection with this Agreement where such matter may reasonably affect the Services or a Party's rights including any subpoena for Service Provider's records, and shall send a written notice of the service together with a copy of the same to TxDOT within seventy-two (72) hours of such service.
- (b) **TxDOT**. TxDOT represents, warrants, and covenants to Service Provider that:
- (i) TxDOT has statutory authority to enter into this Agreement and to perform its obligations hereunder; and
 - (ii) The execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order, or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

15.7 Certifications.

Service Provider, for itself and on behalf of its Subcontractors, certifies that it:

- (a) Has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Agreement,
- (b) Is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate,
- (c) Represents and warrants that, in accordance with Government Code Section 2155.005, neither Service Provider nor the firm, corporation, partnership, or institution represented by Service Provider, or anyone acting for such firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15, of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated the contents of the Response directly or indirectly to any competitor or any other person engaged in the same line of business as Service Provider for the purpose of obtaining an unfair price advantage,
- (d) Has not received payment from TxDOT or any of its employees for participating in the preparation of the Agreement,
- (e) Under Sections 2155.004 and 2155.006, Texas Government Code, is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if

this certification is inaccurate,

- (f) To the best of its knowledge and belief, knows there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under the Agreement,
- (g) Service Provider and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (“SAM”) maintained by the General Services Administration;
- (h) As of the Effective Date, is not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (i) Agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support, that is owed to the State;
- (j) Is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (k) It does not have any knowledge that any Service Provider Personnel or any employee of a Subcontractor performing Services under this Agreement is, or is a relative of, any current or former State employee, within three (3) degrees of consanguinity, and if these facts change during the Term, any failure by Service Provider to disclose to TxDOT the existence of any such employee relationship known to Service Provider shall give rise to a right by TxDOT to terminate this Agreement, in whole or in part, immediately for cause or exercise any other remedy under Applicable Law;
- (l) It Represents and warrants that the provision of Services or other performance under the Agreement will not constitute an actual or potential conflict of interest and certifies that it will not create the appearance of impropriety, and, if these facts change during the course of the Agreement, Service Provider certifies it shall disclose for itself and on behalf of Subcontractors, the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (m) Represents and warrants that TxDOT’s payment to Service Provider and Service Provider’s receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or 556.008, Texas Government Code; and
- (n) Service Provider acknowledges the applicability of Sections 2155.444 and 2155.4441, Texas Government Code, in fulfilling the terms of the Agreement.
- (o) Service Provider shall comply with the requirements related to federal immigration laws and regulations, to include but not limited to Immigration and Reform Act of 1986, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of 1996 Act, who will perform any labor or services under this Agreement. Nothing herein is intended to exclude compliance by Service Provider with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.
- (p) Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Service Provider shall, as a condition of this Contract, also comply with the United States Department of Homeland Security’s E-Verify system to determine the eligibility of:
 - (i) all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Service Provider during the term of this Contract to perform duties within Texas; and
 - (ii) all Subcontractors’ employees 1) to whom the E-Verify system applies, and 2) who are hired by the Subcontractor during the term of this Contract and assigned by the Subcontractor to perform work pursuant to this Contract.
- (q) The Service Provider shall require its Subcontractors to comply with the requirements of this Section and the Service Provider is responsible for the compliance of its Subcontractors. Nothing herein is intended to exclude compliance by Service Provider and its Subcontractors with all other relevant federal

immigration statutes and regulations promulgated pursuant thereto.

- (r) During the term, Service Provider shall, for itself and on behalf of its Subcontractors, promptly disclose to TxDOT all changes that occur to the foregoing certifications, representations and warranties. Service Provider covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

15.8 Inducements; TxDOT Code of Ethics.

In addition to these provisions applying to Service Provider, Service Provider shall impose the provisions of this Section in each of its subcontracts and each such representation, warranty, and covenant shall be fully applicable with respect to Service Provider and each Subcontractor:

- (a) **Reliance.** In executing this Agreement, TxDOT relies on Service Provider's representations, warranties and covenants regarding the following:
 - (i) Service Provider regularly provides the types of Services described in the RFO to other public or private entities;
 - (ii) Service Provider has the skills, qualifications, expertise, financial resources, and experience necessary to perform the Services described in this Agreement in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar Services for other public or private entities;
 - (iii) Service Provider has thoroughly reviewed, analyzed, and understood the RFO, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully understand the current program, operating environment for the Services, this Agreement and the needs and requirements of TxDOT and the State during the Term;
 - (iv) Service Provider has had the opportunity to review and understand the State's stated objectives in entering into this Agreement and, based on such review and understanding, Service Provider has the ability and capacity to perform the Services for the Term in accordance with the terms and conditions of this Agreement;
 - (v) Service Provider also has reviewed and understands all of the risks associated with the Services as described in the Agreement, including the risk of non-appropriation of funds;
 - (vi) Service Provider shall at all times be capable of and legally authorized to provide the Services; and
 - (vii) the Charges assessed to TxDOT shall be true and correct.
- (b) **Inducements.** Service Provider represents, warrants, and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has given or will give commissions, payments, kickbacks, lavish or extensive entertainment or other inducements of more than minimal value to any employee or agent of TxDOT in connection with this Agreement. Service Provider also represents, warrants, and covenants that, to the best of its knowledge, neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has given any such payments, gifts, entertainment or other thing of value to any employee or agent of TxDOT. Service Provider also acknowledges that the giving of any such payment, gift, entertainment or other thing of value is strictly in violation of TxDOT policy on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties.
- (c) **TxDOT Code of Ethics.** Service Provider represents, warrants, and covenants that, in the performance of the Services and its other contractual obligations hereunder, it shall comply with the TxDOT Code of Ethics, as modified from time to time.
- (d) **No Interest.** Service Provider represents, warrants, and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has acquired or will acquire, any contractual, financial, business or other interest or advantage, direct or indirect, that would conflict in any manner or degree with Service Provider's performance of

its duties and responsibilities to TxDOT under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and Service Provider shall promptly inform TxDOT of any such interest that may be incompatible with the interests of TxDOT.

- (e) **No Abuse of Authority for Financial Gain.** Service Provider represents, warrants, and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, has used or shall use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit for Service Provider, any of its Affiliates, any of their employees or any member of the immediate family of any such employee.
- (f) **No Use of Information for Financial Gain.** Service Provider represents, warrants, and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, has used or shall use any TxDOT Confidential Information acquired in connection with this Agreement to obtain financial gain, advantage, or benefit for Service Provider, any of its Affiliates, any of their employees, nor any member of the immediate family of any such employee, or any member of the immediate family of any such employee.
- (g) **Independent Judgment.** Service Provider represents, warrants, and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, has accepted or shall accept another TxDOT contract that would impair the independent judgment of Service Provider in the performance of this Agreement.
- (h) **No Influence.** Service Provider represents, warrants, and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has accepted or shall accept anything of value, or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of Service Provider, any such Affiliates or any such employees on behalf of TxDOT would be influenced thereby; and neither Service Provider nor any of its Affiliates shall attempt to influence any TxDOT employee by the direct or indirect offer of anything of value.
- (i) **No Payment Tied to Award.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has paid or agreed to pay any person or Entity, other than bona fide employees working solely for Service Provider or such Affiliates or any Subcontractors, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement.
- (j) **No Collusion.** Service Provider represents, warrants, and covenants that the prices presented in Service Provider's response to the RFO were arrived at independently, without consultation, communication, or agreement with any other proposer for the purpose of restricting competition, the prices quoted were not knowingly disclosed by Service Provider to any other proposer and no attempt was made by Service Provider to induce any other person or Entity to submit or not to submit a proposal for the purpose of restricting competition.

15.9 Security Vulnerabilities.

At all times during the Term, Service Provider shall maintain written plans and procedures designed to prevent the introduction of security vulnerabilities into TxDOT's environment or any System used to provide the Services, which such measures shall include plans to notify and update TxDOT of such security vulnerabilities and to mitigate the effects thereof. Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions consistent with industry standards and TxDOT Rules and TxDOT Standards to prevent the introduction and proliferation of security vulnerabilities into TxDOT's environment or any System used to provide the Services and to notify the other Party expeditiously of any security vulnerabilities in any such environment or System of which it become aware. Without limiting Service Provider's other obligations under this Agreement, in the event security vulnerabilities are found in Equipment, Software, or Systems managed or supported by Service Provider, Service Provider shall, at no additional charge to TxDOT, eliminate or permanently quarantine such security vulnerabilities and reduce the effects of such security vulnerabilities and, if the security vulnerabilities cause a loss of operational efficiency or loss of data, mitigate such losses and restore such data with generally accepted data restoration techniques.

15.10 Disabling Code.

Service Provider represents, warrants, and covenants that, without the prior written consent of TxDOT, Service Provider shall not insert into the Software any code that could be invoked to disable or otherwise shut down all or any portion of the Software, Equipment, and/or Systems. Service Provider further represents, warrants, and covenants that, with respect to any disabling code that may be part of the Software, Service Provider shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or any termination of this Agreement, without TxDOT's prior written consent. Service Provider also represents, warrants, and covenants that it shall use commercially reasonable efforts to not use Third Party Materials consisting of Software containing disabling code without the prior approval of TxDOT. For purposes of this provision, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Service Provider shall use commercially reasonable efforts to learn from third parties whether such code is included in third party products and shall notify TxDOT accordingly and obtain TxDOT's approval prior to installing such code in any Software, Equipment or System.

15.11 Compliance with Laws.

- (a) **Compliance by Service Provider.** Subject to Sections 15.11(d) and (e) below, Service Provider represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder, Service Provider is and shall be in compliance in all material respects with all applicable Laws and shall remain in compliance with such Laws during the Term, including identifying and procuring applicable permits, certificates, approvals, and inspections required under such Laws. If any charge of non-compliance by Service Provider with any such Laws occurs or Service Provider is aware that it is not in compliance with such Laws that could have an adverse impact on the performance, receipt, or use of the Services, Service Provider shall promptly notify TxDOT of such charge or non-compliance, as applicable.
- (b) **Compliance Data and Reports.** At no additional charge, Service Provider shall provide TxDOT with data and reports in Service Provider's possession as reasonably necessary for TxDOT to comply with all Laws applicable to the Services (including the Equipment, Materials, and other resources it provides or has assumed operational responsibility hereunder).
- (c) **Materials, Equipment, and Systems Compliance.** Service Provider represents, warrants, and covenants that the Materials, Equipment, and Systems owned, developed, implemented, provided or used by Service Provider in providing the Services are in compliance with all applicable Laws and shall remain in compliance with such Laws during the Term.
- (d) **Notice of Laws.** Service Provider shall notify TxDOT of any Laws and changes in Laws applicable to the providers of services similar to the Services or to the performers of activities or functions similar to any of Service Provider's other legal and contractual obligations hereunder ("**Service Provider Laws**"). TxDOT shall notify Service Provider of any other Laws applicable to TxDOT, including those specific to TxDOT's business that are supported by Service Provider under this Agreement ("**TxDOT Laws**"), that would reasonably be expected to materially affect the Services or Service Provider's performance of its obligations under this Agreement. Service Provider shall undertake reasonable efforts, including through Service Provider Personnel, to maintain general familiarity with TxDOT Laws, and shall bring requirements of any such Laws known to Service Provider to TxDOT's attention. Subject to its non-disclosure obligation under other customer contracts, Service Provider shall use commercially reasonable efforts to obtain information regarding such requirements from other outsourcing customer engagements and to communicate such information to TxDOT in a timely manner. Each Party shall further use commercially reasonable efforts to advise the other of Laws and changes in Laws about which such Party becomes aware in any way impacting the performance, provision, receipt, and use of the Services, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations hereunder. At TxDOT's request, Service Provider Personnel shall participate in TxDOT provided compliance training programs.
- (e) **Interpretation of Laws or Changes in Laws.** Service Provider shall be responsible for interpreting and agrees to interpret Service Provider Laws and shall make adjustments to the Services as needed to maintain compliance with such Service Provider Laws. TxDOT shall be responsible for interpreting and

agrees to interpret TxDOT Laws and, with Service Provider's cooperation, advise Service Provider of changes that must be made to the Services or Service Provider's other obligations under this Agreement that are required to maintain TxDOT's compliance with TxDOT Laws. In the event a change to the Services or other Service Provider's obligations under this Agreement is required in order to comply with applicable Laws, the Parties shall timely comply, with such implementation to be undertaken in accordance with Change Control and **Section 15.11(g) Termination** below, as applicable. For purposes of clarity, TxDOT maintains final approval rights, in its sole discretion, to interpret any such change needed under this **Section 15.11 (e)** relating to all applicable Laws provided, however, that such approval rights in the case of Service Provider Laws will be limited to those Service Provider Laws impacting or otherwise related to TxDOT's operating environment. To the extent the impact of any Law (including change in Law) applicable to the provision of the Services and the performance of any of Service Provider's other legal or contractual obligations hereunder cannot be readily identified by Service Provider, the Parties shall cooperate in interpreting such Law and shall seek in good faith to identify and agree upon the impact on the performance, provision, receipt and use of the Services. If the Parties are unable to agree upon such impact, TxDOT shall retain the right, in its sole discretion, to interpret such Law and determine its impact. In addition, if Service Provider reasonably concludes, after due inquiry, that the compliance obligations associated with any Law applicable to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder are unclear or that there is more than one (1) reasonable approach to achieving compliance, Service Provider shall escalate the issue to TxDOT for a final decision. In no event shall either Party be obligated to interpret and/or offer legal advice regarding Laws applicable to the other Party.

Without limiting either Party's obligations under this **Section 15.11 (e)**, the Parties intend to proactively cooperate with each other in understanding TxDOT Laws and Service Provider Laws, and the impact such laws may have on the Services and TxDOT's use or receipt of the Services.

- (f) **Implementation of Changes in Laws.** In the event of any changes in Laws (including laws other than applicable to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder, to the extent Service Provider has knowledge of such Laws, including from TxDOT), Service Provider shall, with prior approval from TxDOT, implement any necessary modifications to the Services, Materials, Equipment, and Systems prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Without modifying the Parties' respective financial obligations set forth in **Exhibit 4.0 Business Model**, Service Provider shall bear the costs associated with compliance with (A) Service Provider Laws, and (B) TxDOT Laws unless the change(s) required for compliance meets the definition of New Service, in which case it shall be treated as a Project.
- (g) **Termination.** In the event that any change(s) in Laws results in an increase of ten percent (10%) or more in the estimated average monthly Charges or otherwise has a material adverse impact on Service Provider's ability to perform the Services and TxDOT would not have incurred such additional cost or impact if it had not outsourced the Services in question to Service Provider, then TxDOT may, within one hundred eighty (180) days of such aggregate increase being attained and upon at least ninety (90) days prior notice to Service Provider, terminate this Agreement in its entirety or the impacted Service as of the termination date specified in the notice.
- (h) **Responsibility.** Subject to **Section 15.11(e)**, Service Provider will be responsible for any Losses imposed on Service Provider or TxDOT resulting from any failure of Service Provider or any third party engaged by Service Provider to comply with applicable Laws or respond in a timely manner to changes in such Laws.

15.12 Equal Opportunity Compliance.

Service Provider represents, warrants, and covenants that it shall abide by all applicable Laws pertaining to equal employment opportunity, including state and federal Laws. In accordance with such Laws, Service Provider agrees that no individual in the United States of America shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, or disability, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed by Service Provider under this Agreement. If Service Provider is found to be in non-

compliance with these requirements, Service Provider agrees to take appropriate steps to correct these deficiencies. Upon request, Service Provider shall furnish to TxDOT information regarding Service Provider's nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

15.13 Information Furnished to TxDOT.

Service Provider represents that, based on the knowledge of the undersigned after reasonable due diligence, all written information made a part of this Agreement is true, accurate, and complete, and contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading. Service Provider hereby agrees to provide TxDOT with notice within two (2) Business Days in the event it discovers that any information that has been provided to TxDOT becomes or turns out not to be true and correct. Such notice shall identify the information as incorrectly provided and shall set forth the correct information.

15.14 Previous and Outside Contracts.

Other than as specifically disclosed by Service Provider in writing, Service Provider represents that neither it, nor any of its Affiliates or Subcontractors, is in default or breach of any other contract or agreement related to information systems facilities, equipment, or services that it or they may have with TxDOT, the State, or any other TxDOT or State related Entity. Service Provider further represents that neither it, nor any of its Affiliates or Subcontractors, has been a party to any contract for information system facilities, equipment, or services with TxDOT, the State or any other TxDOT or State-related Entity that was finally terminated within the previous five (5) years for the reason that Service Provider or such person or Entity failed to perform or otherwise breached an obligation of such contract. Service Provider hereby certifies that it has provided disclosure of all pending, resolved, or completed litigation, mediation, arbitration, or other alternate dispute resolution procedure involving Service Provider, its Affiliates and Subcontractors that would reasonably be expected to materially adversely affect Service Provider's ability to perform and fulfill its obligations under this Agreement.

Service Provider shall promptly disclose any future litigation, mediation, arbitration, or other alternate dispute resolution procedure involving Service Provider, its Affiliates or Subcontractors that would reasonably be expected to materially adversely affect Service Provider's ability to perform and fulfill its obligations under this Agreement or would relate to the type of Services performed under this Agreement.

15.15 Completeness of Due Diligence Activities.

Service Provider acknowledges that it has been provided with sufficient access to TxDOT Facilities, information, and personnel, and has had sufficient time in which to conduct and perform a thorough due diligence of TxDOT's operations and business requirements and assets currently used by TxDOT in providing the Services. Accordingly, Service Provider shall not seek any adjustment in the Charges based on any incorrect assumptions made by Service Provider in arriving at the Charges.

15.16 Interoperability.

Service Provider warrants, and covenants that the Software, Equipment, and Systems provided by Service Provider and/or used to provide the Services shall be interoperable with the software, equipment, and systems used by TxDOT to the extent necessary to provide the same or similar services and/or to deliver records to, receive records from, or otherwise interact with the Software, Equipment, and Systems to receive the Services.

15.17 Prohibition on Contracts with Companies Boycotting Israel.

As required by Texas Government Code section 2270.002, by executing this Agreement, Service Provider represents and warrants that it does not, and will not during the term, boycott Israel. Service Provider further represents and warrants that no subcontractor of the Service Provider boycotts Israel, or will boycott Israel during the term. Service Provider agrees to take all necessary steps to ensure this representation and warranty

remains true during the term.

15.18 Contracting Information Responsibilities

Service Provider represents and warrants that it will comply with Chapter 552 of the Texas Government Code.

15.19 Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, the Service Provider certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.20 Cyber Security Training

In accordance with Section 2054.5192 of the Texas Government Code, each Service Provider Personnel that will access a TxDOT computer system or database must complete a TxDOT approved cyber security training program that is certified under Section 2054.5192 of the Texas Government Code. The training program must be completed by each Service Provider Personnel during the term of the Agreement and during any renewal period. The Service Provider must provide verification of completion of the cyber security training program in a method designated by TxDOT.

15.21 Right to Audit

- (a) The state auditor may conduct an audit or investigation of Service Provider or any other entity or person receiving funds from the state directly under the contract or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Service Provider or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
- (b) Service Provider will ensure that this section concerning the authority of the state auditor and TxDOT to audit funds received indirectly by subcontractors through Service Provider and the requirement to cooperate is included in any subcontract it awards.

15.22 Payment of Subcontractors

As provided by Government Code Section 2251.022, Service Provider must pay a subcontractor the appropriate share of any payment Service Provider receives from TxDOT not later than the 10th day after the date the Service Provider receives the payment. The appropriate share is overdue on the 11th day after the date Service Provider receives the payment.

16 INSURANCE AND RISK OF LOSS

Service Provider shall continuously maintain the insurance coverages set forth in **Attachment B Insurance and Risk of Loss**. This attachment contains provisions or other information applicable to Service Provider's obligations respecting insurance and to the Parties' allocation of certain risks of loss.

17 INDEMNITIES

17.1 Indemnity by Service Provider.

Service Provider agrees to indemnify, defend, and hold harmless TxDOT and their respective officers, directors, employees, agents, representatives, successors and assignees from and against any and all Losses and threatened Losses due to non-Party claims arising from or in connection with any of the following:

- (a) **General.** Any grossly negligent acts or omissions or intentional misconduct of Service Provider, Service Provider Personnel, or Subcontractors in the execution or performance of this Agreement.
- (b) **Representations, Warranties and Covenants.** Service Provider's breach of any of its representations,

warranties, or obligations set forth in [Article 15 REPRESENTATIONS, WARRANTIES, AND COVENANTS](#).

- (c) **Assumed Contracts.** Service Provider’s decision to terminate or failure to comply with or perform any duties or obligations to be complied with or performed by Service Provider under any of the Third Party Materials licenses, Equipment Leases or Third Party Contracts assigned to Service Provider or for which Service Provider has assumed financial or operational responsibility pursuant to this Agreement.
- (d) **Licenses, Leases and Contracts.** Service Provider’s failure to observe or perform any duties or obligations to be observed or performed by Service Provider under Third Party Materials licenses, Equipment Leases, or Third Party Contracts used by Service Provider to provide the Services (other than Third Party Materials Service Provider is required to use by a Service Component Provider pursuant to a license held by such Service Component Provider), including any action undertaken by TxDOT in conformity with the request or direction of Service Provider with respect to any such license, lease or contract.
- (e) **TxDOT Data or Confidential Information.** Service Provider’s breach of its obligations with respect to [Article 13 TxDOT DATA AND OTHER CONFIDENTIAL INFORMATION](#), including any breach or exposure or Security Breach of TxDOT Data, TxDOT Personal Data, TxDOT Confidential Information., or TxDOT Regulated Data.
- (f) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright, or other intellectual property or other proprietary rights in contravention of Service Provider’s representations, warranties and covenants in [Sections 15.4 Intellectual Property, and 15.5 Non-Infringement](#).
- (g) **Compliance with Laws; Government Claims.** Losses, including government fines, penalties, sanctions, interest, or other remedies, resulting from Service Provider’s failure to perform its responsibilities under this Agreement in compliance with applicable Laws as required by this Agreement.
- (h) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Service Provider under [Section 11.4 Taxes](#).
- (i) **Claims Arising in Shared Facility Services.** Any claim for damage, interruption, delay or loss of service (not constituting Services provided pursuant to this Agreement) by a third party receiving services from a shared Service Provider facility or using shared Service Provider resources.
- (j) **Affiliate, Subcontractor, or Assignee Claims.** Any claim, other than an indemnification claim under this Agreement, initiated by (A) a Service Provider Affiliate or Subcontractor asserting rights under this Agreement or (B) any Entity to which Service Provider assigned, transferred, pledged, hypothecated, or otherwise encumbered its rights to receive payments from TxDOT under this Agreement.
- (k) **Personal Injury and Property Loss or Damage.** Personal injury (including death) or any loss or damage to real or tangible personal property resulting from Service Provider’s negligent or wrongful acts or omissions.
- (l) **Employment Claims.** Any claim resulting from any
 - (i) violation by Service Provider or its officers, directors, employees, representatives or agents, of any applicable Laws protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic;
 - (ii) liability resulting from any failure by Service Provider to collect and withhold any social security or other employment taxes, workers' compensation claims, and premium payments and contributions applicable to the wages and salaries of such Service Provider Personnel);
 - (iii) payment or failure to pay any salary, wages, or other cash compensation due and owing to any Service Provider Personnel,
 - (iv) employee pension or other benefits of any Service Provider Personnel,
 - (v) other aspects of the employment relationship of Service Provider Personnel with Service Provider or the termination of such relationship, including claims for wrongful discharge, claims for breach

of express or implied employment contract, and claims of joint employment; and/or

- (vi) liability resulting from representations (oral or written) by Service Provider or its respective officers, directors, employees, representatives, or agents made in connection with the interview, selection, hiring and/or transition process, the offers of employment made to such employees, the failure to make offers to any such employees, or the terms and conditions of such offers (including compensation and employee benefits).
- (m) **Government Claims.** Any claim by any government or any authority, department or agency thereof (excluding the State and TxDOT) resulting from Service Provider's failure to comply with its obligations under this Agreement.
- (n) **Negligence Claims.** Any negligent acts or omissions of Service Provider, Service Provider Personnel, or Subcontractors in the execution or performance of this Agreement.

THE PARTIES AGREE THAT THE INDEMNITIES ABOVE SHALL CONTINUE IN EFFECT EVEN IN THE CASE WHERE A PORTION OF THE DAMAGE IS CAUSED BY THE ACTS OR OMISSIONS (INCLUDING NEGLIGENCE) OF TXDOT. HOWEVER, THE PARTIES FURTHER AGREE THAT SERVICE PROVIDER IN NO WAY WAIVES ANY DEFENSE OTHERWISE AVAILABLE TO IT IN ANY SUCH EVENT, INCLUDING THE RIGHT TO ASSERT COMPARATIVE FAULT OF TXDOT.

17.2 Infringement.

In the event that (1) any Materials, Equipment, Systems, Services, and other resources or items provided by Service Provider or used by Service Provider in the performance or delivery of the Services (other than Third Party Materials Service Provider is required to use by a Service Component Provider) are found, or in TxDOT's reasonable opinion are likely to be found, to infringe upon the patent, copyright, trademark, trade secrets, intellectual property, or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement or (2) the continued use of such Materials, Equipment, Systems, Services, and other resources or items is enjoined, Service Provider shall, in addition to defending, indemnifying, and holding harmless TxDOT as provided in **Section 17.1 (e) Infringement** and to the other rights TxDOT may have under this Agreement, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to TxDOT's operations and activities do one of the following:

- (a) **Obtain Rights.** Obtain for TxDOT the right to continue using and receiving the benefits of such Materials, Equipment, Systems, or Services.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect TxDOT's intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to TxDOT, including all associated services and expenses such as testing, integrating, and configuring.
- (d) **Discontinued Use.** If, despite Service Provider's commercially reasonable efforts to effect the alternatives set forth in **Sections 17.2(a)-(c)** above, the Parties determine that none of such alternatives are feasible, Service Provider may discontinue its use of such infringing or potentially infringing Materials, Equipment, Systems, or Services; provided, however, neither such right or such discontinuation shall neither limit nor expand TxDOT's rights or Service Provider's obligations under the Agreement; nor shall such right or such discontinuation excuse any breach by Service Provider of its obligation to provide the Services and to provide the Services in a non-infringing manner.

17.3 Indemnification Procedures.

With respect to claims which are subject to indemnification under this Agreement, the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any person or Entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee shall seek indemnification hereunder, the indemnitee shall notify the indemnitor of such claim. No delay or failure

to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").

(b) Procedure Following Notice of Election.

- (i) If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor shall assume sole control over the defense and settlement of the claim; provided, however, that (A) the indemnitor shall keep the indemnitee reasonably apprised at all times as to the status of the defense, and (B) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim asserting any liability against the indemnitee or imposing any obligations or restrictions on the indemnitee or ceasing to defend against such claim.
- (ii) The indemnitor shall not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election; provided, however, that (A) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim, and (B) the indemnitor shall pay the fees and expenses associated with such counsel if the indemnitor has an actual or apparent conflict of interest with respect to such claim which is not otherwise resolved or if the indemnitor has requested the assistance of the indemnitee in the defense of the claim or the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure.
- (iii) Service Provider acknowledges that TxDOT's counsel is the Office of the Texas Attorney General, and Service Provider shall coordinate and cooperate with the Office of the Texas Attorney General on all defense and settlement matters relating to claims which are subject to indemnification under this Agreement. The indemnitor shall not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (A) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor, (B) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto, or (C) the time period within which to deliver a Notice of Election has not yet expired.

- (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. The indemnitor shall promptly reimburse the indemnitee for all such reasonable costs and expenses incurred by the indemnitee, including reasonable attorneys' fees.

17.4 Subrogation.

Except as otherwise provided in **Attachment B Insurance and Risk of Loss**, in the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, the indemnitor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

18 LIABILITY

18.1 General Intent.

Subject to the specific provisions and limitations of this **Article 18** and, to the extent allowed by applicable Laws, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

18.2 Force Majeure.

- (a) **General.** Subject to **Section 18.2(d)**, no Party shall be liable for any default or delay in the performance

of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemics, or any other similar cause beyond the reasonable control of such Party except to the extent that the non-performing Party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout, or labor dispute involving Service Provider Personnel shall not excuse Service Provider from its obligations hereunder. In addition, the refusal of Service Provider Personnel to enter a facility that is the subject of a labor dispute shall excuse Service Provider from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of physical harm.

- (b) **Duration and Notification.** In the event of a force majeure event the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered, or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
- (c) **Substitute Services; Termination.** If any event described in **Section 18.2(a)** above has substantially prevented, hindered, or delayed, or is reasonably expected to substantially prevent, hinder, or delay the performance by Service Provider of Services necessary for the performance of critical TxDOT functions for longer than the recovery period specified in the applicable Disaster Recovery Plan or, if there is no such specified recovery period, twenty-four (24) hours, Service Provider shall, unless and until otherwise directed by TxDOT, use commercially reasonable efforts to procure such Services from an alternate source at Service Provider's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Service Provider for the Services with respect to the period of non-performance. If Service Provider is unable to procure such substitute services on an expedited basis or TxDOT elects to contract directly for such services, TxDOT may procure such Services from an alternate source at TxDOT's expense. In addition, if any event described in **Section 18.2(a)** above substantially prevents, hinders or delays the performance by Service Provider of Services necessary for the performance of critical TxDOT functions:
- (i) for more than seven (7) days, then TxDOT may, upon notice to Service Provider, terminate all or any portion of the Services so affected (including portions that are no longer required if the impacted portion is terminated) as of the termination date specified in the notice; or
 - (ii) for more than fifteen (15) days, then TxDOT may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. Service Provider shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Service Provider's ability to perform.
- (d) **Disaster Recovery.** Upon the occurrence of a force majeure event that constitutes a Disaster under the applicable Disaster Recovery Plan and as declared at TxDOT's discretion, Service Provider shall promptly implement, as appropriate, the applicable business continuity and Disaster Recovery Plan and provide Business Continuity and Disaster Recovery Services, including as described in **Exhibit 2.1 Cross Functional Statement of Work** and **Exhibit 2.3 IT Service Management Continuity**.
- (e) **Payment Obligation.** If Service Provider fails to provide Services in accordance with this Agreement due to the occurrence of a force majeure event, all amounts payable to Service Provider hereunder shall be equitably adjusted downward so that TxDOT is not required to pay any amounts for Services that TxDOT is not receiving, whether from Service Provider or from an alternate source at Service Provider's expense pursuant to **Section 18.2(c)**.
- (f) **Allocation of Resources.** Without limiting Service Provider's obligations under this Agreement, whenever a force majeure event or disaster causes Service Provider to allocate limited resources between or among Service Provider's customers and Affiliates, TxDOT shall receive at least the same treatment

as comparable Service Provider customers. In no event shall Service Provider re-deploy or re-assign any Key Personnel to another customer or account in the event of the occurrence of a force majeure event.

18.3 Duty to Mitigate

- (a) **Duty to Mitigate.** Each Party shall use appropriate efforts to mitigate its damages to the extent within its reasonable control and consistent with the Parties' respective performance obligations under this Agreement; provided, however, this provision is not intended to expand or diminish a Party's rights or obligations under this Agreement, alter the plain meaning of the provisions contained herein, or limit a Party's rights to act in its own self-interest.

18.4 Limitation of Liability.

- (a) **Exclusions from Limitations.** **EXCEPT AS PROVIDED IN THIS SECTION 18.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** Notwithstanding the exclusion from limitations provided in this section, Losses pursuant to the indemnification obligations set forth in [Section 17.1](#) may be recovered.
- (b) **Liability Cap.** Additionally, except as provided in this [Section 18.3 Duty to Mitigate](#)
- (c) **Duty to Mitigate.** Each Party shall use appropriate efforts to mitigate its damages to the extent within its reasonable control and consistent with the Parties' respective performance obligations under this Agreement; provided, however, this provision is not intended to expand or diminish a Party's rights or obligations under this Agreement, alter the plain meaning of the provisions contained herein, or limit a Party's rights to act in its own self-interest.
- (d) **Limitation of Liability.** and, in the case of TxDOT, to the extent authorized by applicable Laws (including the constitution of the State), the total aggregate liability of either Party, for all claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall not exceed the charges (excluding Pass-Through Expenses) paid and payable by TxDOT during the _____ months preceding such action or claim, or, in the event the charges have not been paid for _____ months following the Commencement Date, an amount equal to the amounts specified in [Exhibit 4.1 Pricing Structure](#) applicable to the first _____ contract months following the Commencement Date.
- (e) **Exceptions to Limitations of Liability.** [Sections 18.4 \(a\) and \(b\)](#) above shall not apply with respect to:
- (i) Losses occasioned by the fraud, willful misconduct, or gross negligence of a Party.
 - (ii) Losses that are the subject of indemnification under this Agreement.
 - (iii) Any losses occasioned by any breach of Service Provider's representations, or warranties or covenants under this Agreement set forth in [Sections 15.6 \(a\) General, 15.7 Certifications, 15.8 Inducements; TxDOT Code of Ethics, 15.9 Malicious Code, 15.10 Disabling Code, 15.11 Compliance with Laws, 15.12 Equal Opportunity Compliance, and 15.17 Prohibition on Contracts with Companies Boycotting Israel](#), under this Agreement.
 - (iv) Losses caused by Service Provider's refusal to provide Services or Termination Assistance Services.
 - (v) Any of the losses occasioned by Service Provider's breach of its obligations under [Article 13 TxDOT DATA AND OTHER CONFIDENTIAL INFORMATION](#).
- (f) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be counted toward the liability exclusion or cap specified in, [Sections 18.3\(a\) Exclusions from](#)

Limitations or (b) Liability Cap above:

- (i) Service Level Credits or Deliverable Credits assessed against Service Provider pursuant to **Exhibit 3.0 Performance Model**.
- (ii) Amounts withheld by TxDOT in accordance with this Agreement due to incorrect Charges or Services not provided.
- (iii) Amounts paid by TxDOT but subsequently recovered from Service Provider due to incorrect Charges or Services not provided.
- (iv) Invoiced Charges and other amounts that are due and owing to Service Provider for Services under this Agreement.

Further, indirect, incidental, collateral, consequential, or special damages or lost profits do not include those damages provided in **Article 17 INDEMNITIES**.

(g) **Waiver of Liability Cap.** If, at any time, the total aggregate liability for claims asserted by TxDOT under or in connection with this Agreement exceeds sixty percent (60%) of the applicable liability cap specified in **Section 18.3 (b) Liability Cap** above and, upon receipt of the request TxDOT, if Service Provider refuses to waive such cap and/or increase the available cap to an amount at least equal to the original liability cap, then TxDOT may, upon notice, terminate this Agreement in its entirety as of the termination date specified in the notice.

(h) **Acknowledged direct Damages.** The following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result directly from the breaching Party's failure to perform in accordance with this Agreement:

- (i) Costs and expenses of restoring or reloading any lost, stolen or damaged TxDOT Data.
- (ii) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof.
- (iii) Costs and expenses of replacing lost, stolen or damaged Equipment and Materials.
- (iv) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source.
- (v) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source.
- (vi) Straight time, overtime or related expenses incurred by either Party in performing (i) through (v) above, including overhead allocations for employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges and similar charges.
- (vii) Subject to **Section 15.11 Compliance with Laws**, fines, penalties, sanctions, interest or other monetary remedies incurred as a result of a failure to comply with applicable Laws.
- (viii) Service Level Credits or Deliverable Credits assessed against Service Provider.
- (ix) Costs and expenses of protecting and compensating the State and its constituents after a Security Incident, including but not limited to notifications, fines and penalties, establishing a call center, and thirty-six (36) months of credit monitoring for effected individuals.

The absence of direct damages listed in this **Section 18.3(f) Acknowledged direct Damages** above

shall not be construed or interpreted as an agreement to exclude it as a direct damage under this Agreement.

19 DISPUTE RESOLUTION

19.1 Informal Dispute Resolution.

Subject to compliance with Chapter 2260, Texas Government Code, prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 19.1(e) Equitable Remedies** below, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that the Designated TxDOT Representative and the Service Provider Account Manager shall attempt in good faith to resolve all disputes (other than those described in **Section 19.1(e) Equitable Remedies** below or **20.8 Absolute Right.**). In the event the Designated TxDOT Representative and the Service Provider Account Manager are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the senior executives specified in **Section 19.1(b) Escalation** below upon notice to the other Party.
- (b) **Escalation.** Within five (5) Business Days of a notice under **Section 19.1(a) Initial Effort** above referring a dispute for resolution by senior executives, the Designated TxDOT Representative and the Service Provider Account Manager shall each prepare and provide to the designated senior executive of TxDOT and the designated senior executive of Service Provider, respectively, summaries of the non-privileged relevant information and background of the dispute, along with any appropriate non-privileged supporting documentation, for their review. The designated senior executives shall confer as often as they deem reasonably necessary in order to gather and furnish to the other all non-privileged information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The designated senior executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions shall be left to the discretion of the designated senior executives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) **Provision of Information.** During the course of negotiations under **Section 19.1(a) Initial Effort** or **(b) Escalation** above, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the dispute, shall be honored in order that each of the parties may be fully advised of the other's position. All negotiations shall be strictly confidential and used solely for the purposes of settlement or resolution. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, that the underlying facts supporting such materials may be subject to discovery.
- (d) **Prerequisite to Formal Proceedings.** Upon the earlier to occur of (i) the designated senior executives under **Section 19.1(b) Escalation** above concluding in good faith that amicable resolution through continued negotiation of a dispute does not appear likely and (ii) the thirty-first (31st) day following the date of the notice provided under **Section 19.1(a) Initial Effort** above referring the dispute to senior executives, then the Parties shall be entitled to discontinue negotiations and to seek to resolve the dispute through the dispute resolution process provided for in Chapter 2260, Texas Government Code, and TxDOT Rule Number 1, Texas Administrative Code Section 201.1(b).
- (e) **Equitable Remedies.** Notwithstanding the provisions and time periods specified in this **Section 19.1**, at any time the Parties may use formal proceedings pursuant to the process set forth in Chapter 2260, Texas Government Code, and 43 Texas Administrative Code Chapter 1, Subchapter G, in order to (i) avoid the expiration of any applicable limitations period, (ii) preserve a superior position with respect to other creditors, (iii) address a claim arising out of the breach of a Party's obligations under **Article 13**, or (iv) pursue claims for injunctive relief with respect to a Party's obligations to the extent resulting in irreparable injury.

Service Provider acknowledges that, in the event it breaches (or attempts or threatens to breach) its obligation to provide any Services (including Termination Assistance Services) in accordance with this Agreement, its

obligation respecting continued performance in accordance with [Section 19.3 Continued Performance](#), or its obligation to provide access to computers or files containing TxDOT Data in accordance with [Section 13.4 File Access](#), TxDOT may be irreparably harmed and TxDOT may proceed directly to court. If a court of competent jurisdiction should find that Service Provider has breached (or attempted or threatened to breach) any such obligations, Service Provider agrees that TxDOT shall be entitled to seek injunctive relief, including entry of an appropriate order compelling performance by Service Provider and restraining it from any further breaches (or attempted or threatened breaches).

19.2 Jurisdiction.

The laws of the State of Texas shall govern the construction and interpretation of this Agreement. Except as otherwise expressly provided in this Section, each Party irrevocably agrees that any legal action, suit, or proceeding brought by such Party in any way arising out of this Agreement must be brought solely and exclusively in the state courts of Travis County, Texas, or the State Office of Administrative Hearings, as applicable, and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts generally and unconditionally with respect to any action, suit, or proceeding brought by it or against it by the other Party.

19.3 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided, that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate this Agreement as expressly provided herein. TxDOT Data may not be withheld by Service Provider pending the resolution of any dispute.
- (b) **Non-Interruption of Services.** Service Provider acknowledges and agrees that any interruption to the Services may cause irreparable harm to TxDOT and may adversely impact the ability of the State to carry out vital public safety and other governmental functions (including homeland security matters), in which case an adequate remedy at Law would not be available. Except to the extent expressly permitted under Chapter 2251, Texas Government Code, Service Provider expressly acknowledges and agrees that at any time, including, but not limited to, pending resolution of any dispute or controversy, it shall continue to perform under this Agreement and not directly or indirectly engage in any act or omission that may have a detrimental effect on provision of the Services to TxDOT under this Agreement.

19.4 Governing Law

This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without giving effect to the principles thereof relating to the conflicts of Laws. Nothing in this Agreement shall be construed to waive the State's sovereign immunity. The Parties expressly disclaim, to the fullest extent permitted by Law, any application of the Uniform Computer Information Transactions Act which may otherwise be or become applicable (including through enactment subsequent to the Effective Date) during the Term.

20 TERMINATION

20.1 Termination for Cause.

- (a) **By TxDOT.** TxDOT may, upon notice to Service Provider, terminate this Agreement in whole or in part as of the termination date specified in the notice if Service Provider:
 - (i) commits a material breach of its obligations with respect to the Transition Services as provided in [Sections 4.2 \(c\) Remedies for Transition Failures](#) as applicable and such breach is not cured within the applicable timeframe for cure provided in such provision;
 - (ii) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from TxDOT;
 - (iii) commits a material breach of this Agreement which is not capable of being cured within the period

specified pursuant to **Section 20.1(a)(ii)** above;

- (iv) commits numerous breaches of its duties or obligations (excluding Service Level Defaults) which collectively constitute a material breach of this Agreement and Service Provider fails to do both of the following: (A) cure each such breach within thirty (30) days of notice thereof; and (B) develop within fifteen (15) days following written notice of breach from TxDOT a complete plan reasonably acceptable to TxDOT for curing the breach and correcting the deficiencies causing such breaches on a permanent basis; provided, however, this Section **20.1(a)(iv)** shall in no manner limit: (1) TxDOT's right of termination pursuant to any other provision of this **Section 20.1(a)**, or (2) Service Provider's obligation to cure individual nonmaterial breaches of this Agreement;
 - (v) becomes liable for or incurs Service Level Credits under this Agreement that, in the aggregate, exceed seventy-five percent (75%) of the cumulative At Risk Amount during any rolling six (6) month period (exclusive of any earnback during such period);
 - (vi) fails to perform in accordance with the Minimum Service Level for the same Critical Service Level for three (3) consecutive Measurement Windows or during four (4) of any six (6) consecutive Measurement Windows (provided that the applicable Measurement Window is at least one (1) month in duration); or
 - (vii) commits a material breach of **Section 15.8** of this Agreement.
- (b) **By Service Provider.** In the event that TxDOT fails to pay Service Provider amounts due and owing in accordance with Chapter 2251, Texas Government Code exceeding in the aggregate three (3) months of Monthly Charge by the specified due date and fails to cure such default within thirty (30) days of notice from Service Provider of its intention to terminate for failure to make such payment, Service Provider may, upon further notice to TxDOT specifying Service Provider's intention to terminate this Agreement in accordance with this provision following an additional thirty (30) days, terminate this Agreement in its entirety as of the termination date specified in the further notice (provided that TxDOT has not cured the default prior to the effective date of termination). Service Provider acknowledges and agrees that this **Section 20.1(b)** describes Service Provider's sole right to terminate this Agreement and Service Provider hereby waives any other rights it may have to terminate this Agreement.

20.2 Termination for Convenience.

TxDOT may, upon at least ninety (90) days prior notice to Service Provider, terminate this Agreement, in whole or in part, for convenience and without cause as of the termination date specified in the notice without cost or penalty and without payment of any termination charges.

20.3 Termination Upon Service Provider Change of Control.

In the event of a change in Control of Service Provider (or that portion of Service Provider providing all or any material portion of the Services under this Agreement) or the Entity that Controls Service Provider (if any), where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Service Provider (or that portion of Service Provider providing all or any material portion of the Services under this Agreement) are acquired by any Entity, or Service Provider (or that portion of Service Provider providing all or any material portion of the Services under this Agreement) is merged with or into another Entity to form a new Entity, then at any time within twelve (12) months after the last to occur of such events, then TxDOT may, upon at least ninety (90) days prior notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

20.4 Termination for Insolvency.

If Service Provider (a) files for bankruptcy, (b) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, insolvency or the appointment of a receiver or similar officer for it, (c) passes a resolution for its voluntary liquidation, (d) has a receiver or manager appointed over all or substantially all of its assets, (e) makes an assignment for the benefit of all or substantially all of its creditors, or (f) enters into an agreement or arrangement for the

composition, extension, or readjustment of substantially all of its obligations or any class of such obligations, then TxDOT may, upon notice to Service Provider (and during the period such proceeding, condition, event or situation continues or otherwise remains open or unresolved), terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

20.5 TxDOT Rights Upon Service Provider's Bankruptcy.

- (a) **General Rights.** In the event of Service Provider's bankruptcy or other formal procedure referenced in [Section 20.4 Termination for Insolvency](#), or of the filing of any petition under bankruptcy Laws affecting the rights of Service Provider which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, TxDOT shall have the immediate right to retain and take possession for safekeeping all TxDOT Data, TxDOT Confidential Information, TxDOT licensed Third Party Materials, TxDOT owned Equipment, TxDOT owned Materials, TxDOT-owned Developed Materials and all other Materials, Equipment or Systems to which TxDOT is or would be entitled during the Term or upon the expiration or any termination of this Agreement. Service Provider shall cooperate fully with TxDOT and assist TxDOT in identifying and taking possession of the items listed in the preceding sentence. TxDOT shall have the right to hold such TxDOT Data, Confidential Information, Materials, Equipment and Systems until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to TxDOT that they shall be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Service Provider and TxDOT agree that without this material provision, TxDOT would not have entered into this Agreement or provided any right to the possession or use of TxDOT Data, TxDOT Confidential Information or TxDOT Materials covered by this Agreement.
- (b) **TxDOT Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary and to the maximum extent permitted by applicable Laws, in the event that Service Provider becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the "**Bankruptcy Code**")) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a "**Bankruptcy Rejection**"):
- (i) any and all of the licensee and sublicensee rights of TxDOT arising under or otherwise set forth in this Agreement, including the rights of TxDOT referred to in [Section 14.6 Ongoing TxDOT Rights](#), shall be deemed fully retained by and vested in TxDOT as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Service Provider is the debtor;
 - (ii) TxDOT shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code; and
 - (iii) to the extent any rights of TxDOT under this Agreement which arise after the expiration or any termination of this Agreement are determined by a bankruptcy court not to be "intellectual property rights" for purposes of Section 365(n) of the Bankruptcy Code, all of such rights shall remain vested in and fully retained by TxDOT after any Bankruptcy Rejection as though this Agreement were terminated or expired. TxDOT shall under no circumstances be required to terminate this Agreement, in whole or in part, after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including any of the rights of TxDOT set forth in [Section 14.6 Ongoing TxDOT Rights](#), unless and to the extent required by applicable Laws.

20.6 Termination for Material Adverse Change in Service Provider's Financial Condition.

If (i) Service Provider receives a "going concern" qualification from its external auditor, or (ii) Standard & Poor's lowers Service Provider's long term credit rating to lower than BB- and in the reasonable opinion of TxDOT such change in the financial condition of Service Provider may impair or otherwise compromise the ability of Service Provider to perform its obligations under this Agreement, then TxDOT may, in its sole discretion, terminate this Agreement by giving Service Provider at least thirty (30) days prior notice. With respect to the events described in (ii) above, prior to exercising its right to terminate, TxDOT shall meet with Service Provider within ten (10) days following notification (or awareness) of such event and permit Service

Provider to submit to TxDOT within fifteen (15) days of such meeting a plan that comprehensively addresses TxDOT's concerns related to Service Provider's ability to perform its obligations under this Agreement. If TxDOT, in its sole discretion, determines that the plan does not adequately address its concerns, TxDOT shall have the right to terminate this Agreement as described above.

20.7 Step-In Rights.

Without limiting TxDOT's rights under [Section 20.1 Termination for Cause](#), if Service Provider commits a material breach which has a significant impact on the ability of TxDOT to conduct a material aspect of its operations, and Service Provider is unable to cure such breach within forty-eight (48) hours, TxDOT may, in addition to its other remedies at Law and in equity, obtain from a third party or provide for itself comparable services which shall allow TxDOT to conduct their operations until Service Provider has cured the breach or this Agreement is terminated. Service Provider shall reimburse TxDOT for all reasonable costs and expenses of obtaining or providing such services during such period of non-performance. The express inclusion of this remedy in this [Section 20.7](#) does not limit TxDOT's right to use a similar remedy for other breaches by Service Provider of this Agreement.

20.8 Absolute Right.

If Service Provider becomes (i) listed on the prohibited vendors list authorized by Executive Order Number 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control or (b) Service Provider becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System maintained by the General Services Administration, then TxDOT may, upon notice to Service Provider, terminate this Agreement, in whole or, to the extent possible under applicable Law, in part, as of the termination date specified in the notice.

20.9 Lack of Sufficient Funds or Statutory Authority.

If funding for TxDOT's obligations under this Agreement is reduced by Law or funds sufficient to pay Service Provider for the Services provided hereunder are not appropriated by applicable governing bodies or otherwise made available by Law, then TxDOT may, upon at least thirty (30) days prior notice to Service Provider, decrease the amount and types of the Services in such manner and for such periods of time as TxDOT may elect. In such event, the Charges shall be adjusted downward in accordance with **Exhibit 4.0 Business Model**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4.0 Business Model** does not provide for such reduction. TxDOT shall promptly notify Service Provider if TxDOT believes that the necessary funding or authorizations shall not be obtained. If partial funding sufficient only for a portion of the Services shall be made available, the Parties may agree to perform their respective obligations relative to such Services, and this Agreement shall be amended accordingly. TxDOT is a State agency whose authority is subject to the actions of the State legislature. If funds sufficient to pay TxDOT's obligations under this Agreement are not appropriated by applicable governmental authorities or if TxDOT's statutory authority to enter into this Agreement is repealed by the State legislature or ruled unconstitutional by a court of competent jurisdiction, then TxDOT may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. If TxDOT and/or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (a) render the continued provision of the Services impossible or unnecessary, (b) render this Agreement invalid, illegal or otherwise unenforceable, (c) substantially decrease the amount and types of the Services or (d) terminate the appropriations for this Agreement, then TxDOT may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

20.10 General Termination Rights

- (a) **Partial Terminations.** If TxDOT chooses to terminate only a portion of this Agreement, the Charges shall be adjusted downward in accordance with **Exhibit 4.0 Business Model**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4.0 Business Model** does not provide for such reduction.

(b) **Other Terminations.** In addition to the provisions of this Section, TxDOT may terminate this Agreement as expressly provided in this Agreement or under Law.

20.11 Effect of Termination.

Following termination of this Agreement, in whole or in part, upon TxDOT's request, Service Provider shall provide Termination Assistance Services directly to TxDOT, its successors or assigns and any of their designee(s) in accordance with **Section 4.3**.

21 GENERAL

21.1 Delegation of Authority.

Whenever, by any provision of this Agreement, any right, power, or duty is imposed or conferred on TxDOT, the right, power, or duty so imposed or conferred is possessed and exercised by the TxDOT Executive Director unless any such right, power, or duty is specifically delegated to the duly appointed agents or employees of TxDOT. The TxDOT Executive Director will reduce any such delegation of authority to writing and provide a copy to Service Provider on request.

21.2 No Waiver of Sovereign Immunity.

The Parties expressly agree that no provision of this Agreement shall be construed as or constitute a waiver by TxDOT or the State of Texas of any immunities from suit or from liability that TxDOT or the State of Texas have by operation of law.

21.3 RFO Errors and/or Omissions.

Service Provider shall not take advantage of or exploit any errors and/or omissions in the RFO or the resulting Agreement. Service Provider must promptly notify TxDOT of any such errors and/or omissions that are discovered.

21.4 Abandonment or Default.

Abandon means to relinquish or renounce the Agreement for any reason other than for a force majeure event. If Service Provider abandons the Agreement, TxDOT reserves the right to cancel the Agreement without notice and either re-solicit and re-award the Agreement, or take such further action, or no action, in the best interest of the State. The abandoning Service Provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of Services, unless the specifications or scope of work significantly changes.

21.5 Place of Performance.

Unless otherwise agreed to in writing, all Services performed by Service Provider, its Subcontractors and agents must be performed in the United States.

21.6 Buy Texas.

Pursuant to Section 2155.4441 of the Texas Government Code, Service Provider shall buy products and materials produced in the State for use in providing the Services required under this Agreement when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside of the State.

21.7 Binding Nature and Assignment.

(a) **Binding Nature.** This Agreement shall be binding on the Parties and their respective successors and permitted assigns. Except in the instance of an assignment or transfer by TxDOT of all or any portion of this Agreement pursuant to **Section 21.7(b)**, the assigning Party shall remain liable for the performance of any assigned or transferred obligations hereunder.

(b) **Assignment.** Service Provider may not assign all or any portion of its rights under or interests in this Agreement (including by operation of law) or delegate any of its duties without the prior written consent

of TxDOT, which consent may be withheld in TxDOT's sole discretion. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment by the Assignee, in a form acceptable to TxDOT in its sole discretion. Except where otherwise specifically agreed in writing by TxDOT, TxDOT's acceptance of any assignment or delegation does not release Service Provider from its obligations pursuant to this Agreement. TxDOT may, without the approval of Service Provider, assign or transfer its rights or obligations under this Agreement, in whole or in part, to any other State agency as directed by the State legislature or as otherwise required under Law. The consent of a Party to any assignment of this Agreement shall not constitute such Party's consent to further assignment. Each party to whom an assignment or transfer is made must assume all or any part of Service Provider's or TxDOT's interests in this Agreement, the Services, and any documents executed with respect to this Agreement, including, without limitation, its obligation for all or any portion of the payments due hereunder.

- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void *ab initio*; provided, however, that if Service Provider assigns this Agreement in contravention of this Section by operation of Law, such assignment shall be voidable at the option of TxDOT.

21.8 Entire Agreement; Amendment.

This Agreement, including any Exhibits and attachments referred to herein or attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver or discharge is sought to be enforced.

21.9 Notices.

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party pursuant to the following:
- (i) [Section 4.3 Termination Assistance Services](#). (Termination Assistance Services);
 - (ii) [Section 4.4 \(a\) Right of Use](#). (Use of Third Parties – Right of Use);
 - (iii) [Section 10.2 Savings Clause](#). (Savings Clause);
 - (iv) [Section 11.6 Extraordinary Events](#). (Extraordinary Events);
 - (v) [Section 13.1 \(d\) Loss of Confidential Information](#) (Loss of Confidential Information);
 - (vi) [Sections 17.3 Indemnification Procedures](#). (Indemnification Procedures);
 - (vii) [Section 18.2 Force Majeure](#). (Force Majeure);
 - (viii) [Section 18.3 \(g\) Waiver of Liability Cap](#) (Waiver of Liability Cap);
 - (ix) [Section 19.1 Informal Dispute Resolution](#). (Informal Dispute Resolution);
 - (x) [Article 20 TERMINATION](#) (Termination); and
 - (xi) [Section 21.7 Binding Nature and Assignment](#) (Binding Nature and Assignment)

shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (A) by hand, (B) by an express courier with a reliable system for tracking delivery or (C) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of TxDOT:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Designated TxDOT Representative

With a copy to:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Procurement Division Director

And:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Contract Services Division Director

And:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: General Counsel

In the case of Service Provider:

With Copy to:

- (b) **Other Notices.** All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 21.9(a)**, may be sent in hard copy in the manner specified in **Section 21.9(a)**, or by e-mail transmission (where receipt is acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of TxDOT:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Designated TxDOT Representative

With a copy to:

Texas Department of Transportation

125 East 11th Street
Austin, Texas 78701
Attention: Procurement Division Director

And:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Contract Services Division Director

And:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: General Counsel

In the case of Service Provider:

With Copy to:

- (c) **Written Complaints.** In addition to other remedies contained in this Agreement, Service Provider may direct its written complaints regarding TxDOT to the following office:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Chief Information Officer

With a copy to:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: Contract Services Division Director

And:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention: General Counsel

- (d) **Notice of Change.** A Party may from time to time change its address or designee for notification purposes by giving the other Party prior notice of the new address or designee and the date upon which it shall become effective.

21.10 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

21.11 Headings.

The article and section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

21.12 Relationship of Parties.

Service Provider, in furnishing Services hereunder, is acting as an independent contractor, and Service Provider has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Service Provider under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership or joint venture for any purpose. Service Provider is not an agent of TxDOT and has no right, power, or authority, expressly or impliedly, to represent or bind TxDOT as to any matters.

21.13 Severability.

If any provision of this Agreement (or any portion thereof) or the application of any such provision (or portion thereof) to any person, Entity or circumstance is held to be invalid, illegal, or otherwise unenforceable in any respect by a final judgment, order of the State Office of Administrative Hearings or a court of competent jurisdiction, such provision shall be deemed to be void and unenforceable. Notwithstanding the preceding sentence, the remaining provisions of this Agreement, if capable of substantial performance, shall remain in full force and effect. By entering into this Agreement, TxDOT makes no representations or warranties regarding the enforceability of the terms of this Agreement and TxDOT does not waive any applicable Law that conflicts with the terms of this Agreement.

21.14 Consents and Approval.

Except where expressly provided as being in the sole discretion of a Party, where any agreement, approval, acceptance, consent, confirmation, determination, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

21.15 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** Except as expressly set forth herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at Law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at Law, in equity, by contract or otherwise.

21.16 Survival.

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

21.17 Publicity.

- (a) Except as provided in Subsection (b) below, Service Provider shall not use the name of TxDOT or the State, or refer to TxDOT directly or indirectly in any media release, or public announcement, relating to this Agreement or its subject matter, including, in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to TxDOT an administrative agency of the State, or the Federal government).
- (b) Except with prior written consent of TxDOT, Service Provider shall not publish any media release or public announcement relating to this Agreement or its subject matter, including but not limited to, in any promotional or marketing materials, customer lists, business presentations (other than as required by TxDOT under this Agreement or by applicable law), or results of Service Provider's performance under this Agreement. Service Provider shall provide TxDOT a copy of any such pre-approved publication not less than five (5) Business Days prior to its intended public release. Service Provider shall provide additional copies at the request of TxDOT.

21.18 Service Marks.

Service Provider agrees that it shall not, without TxDOT's prior written consent, use any of the names, service marks, or trademarks of TxDOT in any of its advertising or marketing materials.

21.19 Export.

The Parties acknowledge that certain Equipment, Materials and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the Laws of the United States, the European Union, the United Nations and other jurisdictions. Without limiting the Parties' respective obligations under [Section 15.11 Compliance with Laws.](#), no Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such Laws and, to the extent within Service Provider's control, Service Provider shall be responsible for, and shall coordinate and oversee, compliance with such export Laws in respect of such items exported or imported hereunder.

21.20 No Third Party Beneficiaries.

This Agreement is entered into solely between, and may be enforced only by, TxDOT and Service Provider and shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

21.21 Covenant Against Pledging.

Service Provider agrees that, without the prior written consent of TxDOT, it shall not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from TxDOT under this Agreement for any reason whatsoever. To the extent TxDOT permits Service Provider to assign, transfer, pledge, hypothecate, or otherwise encumber its rights to receive payments from TxDOT under this Agreement, Service Provider shall continue to be TxDOT's sole point of contact with respect to this Agreement, including with respect to payment. The person or Entity to which such rights are assigned, transferred, pledged, hypothecated, or otherwise encumbered shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action against TxDOT.

21.22 Solicitation and Hiring of Employees.

Except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Service Provider shall not directly or indirectly recruit for employment in a position involved in the performance of Service Provider's obligations under this Agreement, any employees of TxDOT or individual TxDOT Contractors without the prior approval of TxDOT. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.

21.23 Further Assurances.

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

21.24 Liens.

Service Provider shall not file, or by its action or inaction permit one of the Service Provider Personnel to file, any liens on or against property or realty of TxDOT. In the event that any such liens arise as a result of Service Provider's action or inaction, Service Provider shall obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) Business Days. If Service Provider fails to do so, TxDOT may, in its sole discretion, pay the amount of such lien, and/or deduct such amounts from payments due to the Service Provider.

21.25 Covenant of Good Faith.

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

21.26 Acknowledgment.

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, with the assistance of legal counsel, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

21.27 References.

Unless otherwise directed by TxDOT, Service Provider shall regularly use TxDOT as a reference for all prospective Service Provider customers interested in purchasing services that include the same or substantially similar services to the Services. The Parties anticipate that, unless otherwise directed by TxDOT, Service Provider shall use TxDOT as a reference for all major state and local sector efforts within the United States of America and not less than one (1) major non-state and local sector pursuit per year. Notwithstanding [Section 13.1 Confidentiality](#), but subject to appropriate confidentiality arrangements and applicable Law, Service Provider acknowledges and agrees that TxDOT may freely discuss all aspects of Service Provider's performance and TxDOT's satisfaction with such performance with prospective Service Provider customers. Service Provider shall provide such prospective Service Provider customers with appropriate TxDOT contact information.

21.28 Guaranty

As a material condition to the effectiveness of this Agreement, Service Provider shall cause to be executed and deliver to TxDOT the guaranty set forth in **Attachment D Form of Parent Guaranty**.

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures. This Agreement shall be effective from the date of the last signature thereto (the "**Effective Date**").

Texas Department of Transportation

Service Provider

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____



Texas Department of Transportation

Application Services

MSA Attachment A

Form of Non-Disclosure Agreement

Version 1.0

Solicitation No. 60144000032007

FORM OF NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) is made as of this _____ day of _____, 20____, by and among the State of Texas, acting by and through the Texas Department _____ of Transportation (“TxDOT”), _____, (“Service Provider”) and _____, (“Receiving Party”), a third party retained by TxDOT.

WHEREAS, Service Provider and TxDOT are parties to that certain Master Services Agreement dated as of [_____], 20____, as amended, supplemented or otherwise modified from time to time (the “Services Agreement”);

WHEREAS, Service Provider is the owner and licensor of certain Confidential Information (as defined below); and

WHEREAS, TxDOT wishes to disclose, or have Service Provider disclose, to Receiving Party, and Receiving Party wishes to receive, under the terms and conditions of this NDA, Confidential Information.

NOW, THEREFORE, in consideration of the promises hereinafter set forth, TxDOT, Receiving Party and Service Provider acknowledge and agree as follows:

1. **Confidential Information.**

- a. “**Confidential Information**” shall mean information marked by Service Provider as “Proprietary”, “Confidential” or with a similar legend, or otherwise promptly after disclosure identified in writing as proprietary or confidential.
- b. Confidential Information shall not include information Receiving Party can demonstrate (i) is, at the time of disclosure to it, in the public domain, (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of Receiving Party, (iii) is in the possession of Receiving Party at the time of disclosure to it without any obligation of confidentiality, (iv) is received without obligation of confidentiality from a third party having a lawful right to disclose such information or (v) is independently developed by Receiving Party without reference to Confidential Information.

2. **Receiving Party's Duties.**

- a. During the term of this NDA and at all times thereafter, Receiving Party shall not disclose, and shall maintain the confidentiality of, all Confidential Information. Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosing to third parties Confidential Information as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. Receiving Party may disclose Confidential Information to its employees as and to the extent such disclosure is necessary for the performance of such person's or entity's

obligations or otherwise naturally occurs in such person's or entity's scope of responsibility. Receiving Party assumes full responsibility for the acts or omissions of such person or entity and must take all reasonable measures to ensure that Confidential Information is not disclosed or used in contravention of this NDA.

- b. Receiving Party shall not (i) make any use or copies of Confidential Information except as contemplated by this NDA, (ii) acquire any right in or assert any lien against Confidential Information, (iii) sell, assign, transfer, lease, or otherwise dispose of Confidential Information to third parties or commercially exploit such information, or (iv) refuse for any reason to promptly provide Confidential Information (including copies thereof) to Service Provider if requested to do so.
- c. Receiving Party shall not be considered to have breached its obligations under this NDA for disclosing Confidential Information as required to satisfy any legal, accounting, or regulatory requirement of a competent government body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, Receiving Party advises Service Provider of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that Service Provider may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.
- d. Receiving Party shall (i) promptly notify Service Provider of any known possession, use, knowledge, disclosure or loss of Confidential Information in contravention of this NDA, (ii) promptly furnish to Service Provider all known details and assist Service Provider in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure or loss, (iii) reasonably cooperate with Service Provider in any investigation or litigation deemed necessary by Service Provider to protect its rights to or under Confidential Information and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA. Receiving Party shall bear its own costs in complying with this subsection.

3. Termination.

- a. Upon completion of Receiving Party's assignment for TxDOT, Receiving Party shall return or destroy, as Service Provider may direct, all Confidential Information, and retain no copies; provided, however, that if and to the extent that Receiving Party performed audit or Benchmarking functions for TxDOT, Receiving Party may retain its work papers that are related to such functions.
- b. The obligation to maintain confidentiality, the restrictions on use, disclosure, duplication, protection and security of Confidential Information and indemnification for breach thereof by Receiving Party shall survive the rescission, termination, or completion of this NDA, and remain in full force and effect until such Confidential Information, through no fault of Receiving Party, becomes part of the public domain.

4. General Provisions.

- a. This NDA shall be governed by and construed, and the legal relations between and among the parties shall be determined, in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of laws. Nothing in this NDA shall be construed to waive the State's sovereign immunity.
- b. This NDA supersedes all prior understandings and negotiations, oral and written, and constitutes the entire understanding among the parties on this subject.
- c. No waiver, modification, or amendment to this NDA shall be binding upon the parties unless it is in writing signed by an authorized representative of the party against whom enforcement is sought.
- d. Nothing in this NDA nor any disclosure made hereunder shall be deemed to grant to Receiving Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Confidential Information.
- e. Capitalized terms used in this NDA that are not defined herein shall have the meanings ascribed to them in the Services Agreement.

IN WITNESS WHEREOF, the parties have caused this NDA to be executed by their respective duly authorized representatives as of the date first set forth above.

**THE STATE OF TEXAS, acting by and through
THE TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Name: _____
Title: _____
Legal: _____

[SERVICE PROVIDER]

By: _____
Name: _____
Title: _____

[FULL NAME OF RECEIVING PARTY]

By: _____
Name: _____
Title: _____



Texas Department of Transportation

Application Services

MSA Attachment B

Insurance and Risk of Loss

Version 1.0

Solicitation No. 601440000032007

1 INSURANCE

(a) **Requirements.** Service Provider agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the Term of the Agreement:

(i) Workers' Compensation and Employer's Liability Insurance in full compliance with the applicable Laws of the State and, as applicable, such other state in which the work is to be performed. Each such policy shall contain a waiver of subrogation endorsement against TxDOT, and its officers, directors, employees, agents, successors and assigns.

The limits of liability of Workers' Compensation Insurance shall be not less than the limits required by applicable Law.

The limits of liability of Employer's Liability Insurance shall not be less than \$1,000,000 per employee by accident / \$1,000,000 per employee by disease / \$1,000,000 policy limit by disease (or, if higher, the policy limits required by applicable Law).

(ii) Commercial General Liability Insurance (including coverage for Contractual Liability assumed by Service Provider under this Agreement, Premises-Operations, Completed Operations-Products and Independent Contractors and, to the extent commercially reasonable, coverage for explosion, collapse, and underground property damage hazards) providing coverage for bodily injury, personal injury and property damage with limits of not less than \$5,000,000 per occurrence. This coverage may be provided with a combination of primary and excess insurance policies.

(iii) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, except as may otherwise be required by Law.

(iv) Professional Liability Insurance (also known as Errors and Omissions Liability) and, as and to the extent becoming commercially available, Cyber Risk Insurance covering acts, errors and omissions arising out of Service Provider's operations or Services in an amount not less than \$10,000,000 per claim and policy aggregate.

(v) Comprehensive Crime Insurance including Employee Dishonesty Insurance and Computer Fraud Insurance, covering the loss of money, securities, and other property belonging to TxDOT resulting from any fraudulent or dishonest acts committed by Service Provider employees, acting alone or with others, in an amount not less than \$5,000,000 per occurrence.

(vi) All-risk property insurance covering loss or damage to Service Provider owned or leased Equipment and other tangible assets used to provide the Services in an amount not less than the full replacement cost of such Equipment and assets.

- (b) **Approved Companies.** All such insurance shall be procured with reputable insurance companies and in such form as is usual and customary to Service Provider's business. Such insurance companies shall maintain a rating at least "A-" and be at least a Financial Size Category VIII as both criteria are defined in the most current publication of Best's Policyholder Guide or comparable rating agency equivalent where applicable.
- (c) **Endorsements.** Service Provider shall obtain the following endorsements to its policy or policies of insurance (or so reflect in appropriate policy certificate(s)) as are necessary to cause the policy or policies to comply with the requirements stated herein.
- (i) Service Provider's insurance policies as required herein under Sections 1(a)(ii) and (iii) shall include TxDOT and its officers, directors and employees as Additional Insureds thereunder for liability (subject to the terms of this Agreement) arising at any time in connection with the performance of Service Provider or Service Provider Personnel under this Agreement. The policy required under Section 1(a)(ii) shall have no cross-suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

The Service Provider insurance policies required under Sections 1(a) must either (A) provide coverage on a per occurrence basis (i.e., not claims-based) or (B) if the insurance described in Section 1(a) is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following the expiration or termination of the Agreement. The Service Provider shall use best efforts to ensure that coverage, including any renewals, shall have the same retroactive date as the Agreement.

- (ii) The Service Provider insurance policy required under Section 1(a)(v) shall include TxDOT and its officers, directors and employees as loss payees as their interests may appear.

All policies required to be maintained by Service Provider hereunder shall provide (or to the extent such policy does not so provide, Service Provider shall cause the applicable insurance company to agree to provide such notice) that should the policy be cancelled before the expiration date thereof, Service Provider shall use best efforts to provide thirty (30) days notice (ten (10) days for non-payment) prior to cancellation. Should any policy expire or be canceled during the Term and should Service Provider thereafter fail to immediately procure replacement insurance as specified, TxDOT may at its option procure such insurance and to deduct the cost thereof from any sums due Service Provider under this Agreement.

- (iii) All insurance required under this Section 1 shall be primary insurance and any other valid insurance existing for TxDOT's benefit shall be excess of such

primary insurance with respect to the scope of this Agreement and Service Provider's liability.

- (d) **Minimum Amounts, Self-Insurance.** These insurance provisions set forth the minimum amounts and scopes of coverage to be maintained by Service Provider and are not to be construed in any way as a limitation on Service Provider's liability under this Agreement. Any and all deductibles in the above-referenced insurance policies shall be assumed by, for the account of, and at the sole risk of the Service Provider.
- (e) **Certificates.** Service Provider shall provide TxDOT with certificates of insurance evidencing compliance (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect.
- (f) **No Implied Limitation.** The obligation of Service Provider to provide the insurance specified herein shall not limit or expand in any way any obligation or liability of Service Provider provided elsewhere in this Agreement. The rights of TxDOT to insurance coverage under policies issued to or for the benefit of it are independent of this Agreement and shall not be limited by this Agreement.
- (g) **Waiver of Subrogation.** With respect to insurance coverage to be provided by Service Provider pursuant to Sections 1(a) (ii) and (iii) herein, the insurance policies shall provide that the insurance companies waive all rights of subrogation against TxDOT, and its Affiliates, officers, directors and employees. Service Provider waives its rights to recover against TxDOT and its respective officers, directors, employees, agents, successors and assigns in subrogation or as subrogee for another party and shall, to the extent available on a commercially reasonable basis, similarly arrange for such waiver with respect to the coverage provided by Service Provider pursuant to Section 1(a)(i). Notwithstanding the foregoing, Service Provider acknowledges and agrees that the enforceability of any such waivers is effective to the extent authorized by applicable Laws.

2 RISK OF LOSS

- (a) **General.** Each Party shall be responsible for risk of loss of, and damage to, any Equipment, Materials, or other items in its possession or under its control. Service Provider shall be deemed to possess and control of all Equipment, Materials, and other items located in Service Provider Facilities or in TxDOT Facilities used by Service Provider to provide the Services excluding Equipment, Materials, and other items owned by Service Provider. Each Party shall promptly notify the other of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of any such Equipment, Materials, and other items in the possession or under the control of such Party, whether or not insured against by such Party, whether partial or complete, which is caused by any act, omission, fault or neglect of such Party (an "**Event of Loss**"). Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party's tangible property or real property (whether owned or leased).

- (b) **Waiver.** Service Provider and TxDOT each waive all rights to recover against the other Party for damage, destruction, loss, theft, or governmental taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. Service Provider shall cause its insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies.



Texas Department of Transportation

Application Services

MSA Attachment C

Form of Source Code Escrow

Version 1.0

Solicitation No. 601440000032007

FORM OF SOURCE CODE ESCROW

This Source Code Escrow Agreement (this “**Escrow Agreement**”) is entered into on _____, 20__ (the “**Escrow Agreement Effective Date**”), by and among _____, a _____ organized and existing under the laws of the State of _____ (“**Escrow Agent**”), _____, a _____ organized and existing under the laws of the State of _____ (“**Depositor**”) and The Texas Department of Transportation (“**Registrant**”). Escrow Agent, Depositor and Registrant are each referred to herein individually as “party” and collectively as “the parties.”

A. Depositor and Registrant have entered into that certain Master Services Agreement dated as of _____, 20__, as amended, supplemented or otherwise modified from time to time (for purposes of this Escrow Agreement, the “**Services Agreement**”), pursuant to which Depositor licensed to Registrant certain Service Provider Owned Materials and Third Party Materials consisting of Software (as such terms are defined in the Services Agreement) and agreed to provide to Registrant support and maintenance Services for such Software.

B. Depositor has agreed to place in escrow with Escrow Agent the Source Code (as hereinafter defined) for such Service Provider Owned Materials and Third Party Materials, as required by the Services Agreement.

C. Such Materials (as such term is defined in the Services Agreement) are critical to Registrant (as such term is defined in the Services Agreement) in the conduct of their operations.

D. Depositor and Registrant desire to establish an escrow with Escrow Agent to ensure the availability to Registrant of such Materials and all necessary proprietary information related to such Materials in the event certain Release Conditions (as hereinafter defined) should occur.

E. The parties desire this Escrow Agreement to be supplementary to the Services Agreement pursuant to 11 United States Code, Section 365(n), as amended.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. DEFINITIONS. When used herein with initial capital letters, the following terms shall have the following meanings:

a. “**Ancillary Agreement**” means the Services Agreement and any other agreements between or among the parties and/or their Affiliates that are entered into in connection therewith.

b. “**Deposit Materials**” means the Source Code for: (i) the Service Provider Owned Materials that constitute Software, and (ii) to the extent available pursuant to Depositor’s then-current license, the Third Party Materials that constitute Software, in each case if and to the extent

Registrant has requested that Depositor deposit the Source Code for such Software in escrow pursuant to applicable provisions of the Services Agreement.

c. “Services Agreement” shall have the meaning given such term in the preamble of this Escrow Agreement.

d. “Release Condition” shall have the meaning given such term in Section 5(a) below.

e. “Source Code” means, with respect to any Software, the full source language, human-readable statement of such Software and complete source materials, user documentation and program maintenance documentation for such Software, including all available flow charts, schematics and annotations which comprise the precoding detailed design specifications for such Software, together with all configurations, settings, compiler switches, library routines and files, data files, templates and the like necessary or desirable for creating the executable code form of such Software, all in a form suitable for reproduction by computer and photocopy equipment, and all Software necessary to convert such source code into the executable code form of such Software.

f. “Verification” means a procedure or process to determine the accuracy, completeness, sufficiency and quality of the Deposit Materials at a level of detail reasonably requested by Registrant. Verification may include, as required by Registrant (or by a third party on behalf of Registrant), file listing, compilation, size comparison, function comparison and on-line comparison services.

Terms that are used herein with initial capital letters but are not defined herein shall have the meanings given such terms in the Services Agreement. Without limiting the generality of the foregoing, the following terms shall have the meanings given to them in the Services Agreement: “**Control**”, “**Materials**”, “**Service Provider Materials**”, “**Software**” and “**Third Party Materials**.”

2. DELIVERY.

a. Obligation to Deliver Deposit Materials. Within ten (10) business days after Registrant has requested pursuant to the Services Agreement that Depositor deposit any Deposit Materials in escrow, and thereafter from time to time as required hereunder, Depositor shall deliver to Escrow Agent a parcel (the “**Parcel**”) sealed by Depositor, which Depositor warrants contains two (2) complete sets of such Deposit Materials. Depositor shall deliver updated Deposit Materials to Escrow Agent in accordance with **Section 2(g)** below.

b. Identification of Tangible Media. Prior to each delivery of the Deposit Materials to Escrow Agent, Depositor shall (i) conspicuously label for identification each document, magnetic tape, disk or other tangible media upon which the Deposit Materials are written or stored and (ii) properly complete and sign a copy of the attached Source Code Escrow Attachment A (a “**SCE Attachment**”) to list such tangible media by the item label description, the type of media and the quantity provided. Each SCE Attachment must be properly completed, signed and delivered by Depositor to Escrow Agent together with each deposit of the Deposit Materials. Each SCE

Attachment that is executed by Depositor shall be deemed a part of this Escrow Agreement and is incorporated herein by this reference.

c. **Deposit Inspection.** When Escrow Agent receives a Parcel and any supplements to or update of the Deposit Materials, Escrow Agent shall promptly conduct a deposit inspection by opening the Parcel and visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the applicable SCE Attachment. Escrow Agent shall complete each such inspection no more than five (5) business days after receiving a Parcel. In addition to such inspection, upon Registrant's request, Escrow Agent shall promptly conduct a Verification of the Deposit Materials in accordance with Registrant's requirements and Section 2(e) below. In the event Escrow Agent determines that the labeling of the tangible media comprising a Parcel matches the information listed on the applicable SCE Attachment, Escrow Agent shall sign the SCE Attachment and mail a copy thereof to Depositor and Registrant. Alternatively, in the event Escrow Agent determines that the labeling of the tangible media comprising a Parcel does not match the information listed on the applicable SCE Attachment, Escrow Agent shall immediately (i) note the discrepancies in writing on the SCE Attachment, (ii) sign the SCE Attachment with the exceptions noted and (iii) immediately provide a copy of such SCE Attachment to Depositor and Registrant. Within five (5) days after receiving from Escrow Agent written notice of such discrepancies, Depositor shall remedy such discrepancies and re-deliver to Escrow Agent the applicable Parcel. Escrow Agent's acceptance of each Parcel shall be deemed effective upon the earlier of the signing on behalf of Escrow Agent of the applicable SCE Attachment or the expiration of the five-day period commencing with Escrow Agent's receipt of the applicable Parcel.

d. **Depositor's Warranties and Representations.** Depositor represents, warrants and covenants, as appropriate, as follows:

- (1) Depositor lawfully possesses all of the Deposit Materials deposited with Escrow Agent;
- (2) with respect to all of the Deposit Materials, Depositor has the right and authority to grant to Escrow Agent and Registrant the rights and licenses as provided in this Escrow Agreement and the Services Agreement;
- (3) the Deposit Materials are not subject to any lien or other encumbrance;
- (4) the Deposit Materials consist of the proprietary information and other Materials identified in the Services Agreement and comply in all respects to, and are covered by Depositor's representations, warranties, covenants and indemnities contained in, the Services Agreement, as applicable pursuant to the Services Agreement;
- (5) there are no known intended or unintended copy inhibitors or limiters, locking mechanisms, lockout encryption or security devices or Malicious Code contained in or related to the Deposit Materials that may prevent Registrant or a third party from using, copying and modifying the Deposit Materials; and

- (6) the Deposit Materials delivered to Escrow Agent shall at all times (i) conform to the version(s) of the Service Provider Owned Materials and, as applicable, the Third Party Materials then in use in connection with the Services, (ii) be a complete and correct set of the Source Code version of the Service Provider Owned Materials and, as applicable, the Third Party Materials and (iii) be sufficient to enable a reasonably skilled computer programmer of Registrant to maintain and support the Service Provider Owned Materials and, as applicable, the Third Party Materials without further assistance from Depositor or reference to any other Software or Materials.

e. Verification. Registrant (or a third party on behalf of Registrant) reserves the right from time to time and at any time to cause Verification of the Deposit Materials and to examine the Deposit Materials to verify conformance to the requirements of the Services Agreement and this Escrow Agreement. Except as otherwise required by Registrant (or by a third party on behalf of Registrant and reasonably approved by Depositor), all Verification tasks shall be performed solely by employees of Escrow Agent and, at Registrant's option, of Registrant or a third party engaged by Registrant (subject to by Depositor's reasonable approval of Registrant), without interference from Depositor; provided, however, that if and to the extent requested by Registrant (or by a third party on behalf of Registrant), Depositor shall at Depositor's expense provide to Escrow Agent and/or Registrant all reasonably necessary assistance and cooperation in connection with the performance of any Verification, including, without limitation, assisting in the performance of tests and inspections ancillary to such Verification and compiling the Source Code into the executable code version of the Service Provider Owned Materials and, as applicable, the Third Party Materials. Any Verification performed by Escrow Agent or a third party engaged by Escrow Agent (and acceptable to Registrant) shall be performed in a good, workmanlike, timely and professional manner by qualified persons fully familiar with the requirements, Materials and technology involved in performing such Verifications.

f. Degeneration Prevention. The parties agree that since the Deposit Materials are susceptible to loss of quality either resulting from improper storage or the passage of time:

- (1) Escrow Agent represents and warrants that it shall store the Deposit Materials in a fire-proof, weatherproof, demagnetization-proof and environmentally controlled locked receptacle, under climatic conditions sufficient to safeguard the quality and integrity of the Deposit Materials, and in the event the Deposit Materials have not been updated within twelve (12) months subsequent to Depositor's most recent deposit, Escrow Agent shall promptly notify Depositor and Registrant in writing of the foregoing fact.
- (2) Within ten (10) business days after such notification is sent to Depositor, Depositor shall provide Escrow Agent with the latest and then-current version of the Deposit Materials. After the expiration of such ten (10) Business Day period, Escrow Agent shall notify Registrant that either (i) Escrow Agent has received from Depositor an update to the Deposit Materials and Escrow Agent shall identify the contents of such update or (ii) Escrow Agent has not received from Depositor any response to Escrow Agent's notice.

g. Deposit Updates. In addition to deliveries of the Deposit Materials pursuant to Section 2(f), Depositor shall deliver to Escrow Agent updates to the Deposit Materials as described in this Subsection. Such updates shall consist of the Source Code version of each Upgrade of the Service Provider Owned Materials and, as applicable, the Third Party Materials and Upgrades to any other components of the Deposit Materials. Depositor shall deliver such updates within thirty (30) days after the calendar quarter in which Depositor develops or obtains such Upgrades. Such Upgrades shall be added to or replace the existing Deposit Materials as appropriate in accordance with Depositor's instructions contained in the applicable SCE Attachment; provided, however, that Escrow Agent shall not remove, destroy or replace any Deposit Materials without Registrant's prior written consent. All Upgrades to Deposit Material shall be listed on a new SCE Attachment, and such new SCE Attachment shall be signed by Depositor. Escrow Agent shall ensure that each SCE Attachment shall be held and maintained separately within Registrant's account. Escrow Agent shall create an independent record to document all activity occurring in connection with Registrant's account and each SCE Attachment. All references in this Escrow Agreement to the Deposit Materials shall be read and understood to mean and include the initial Deposit Materials and any Upgrades thereto.

h. Removal of Deposit Materials. The Deposit Materials may be removed or exchanged solely (i) upon the joint written consent of both Depositor and Registrant or (ii) as otherwise provided in this Escrow Agreement.

i. Retained Rights. Depositor hereby acknowledges and agrees that in the event of bankruptcy, if Depositor as a debtor-in-possession, or a trustee or other guardian for Depositor's creditors (either, a "**Trustee**"), rejects this Escrow Agreement, the Services Agreement or any agreement supplementary thereto (collectively, for purposes of this Section, "**this Agreement**"), Registrant (or a third party on behalf of Registrant) may elect to retain its rights hereunder as provided in Section 365(n) of the Bankruptcy Code. Notwithstanding any prior delivery of Deposit Materials under this Agreement or any right thereto, Registrant (or a third party on behalf of Registrant) shall have the right to (i) obtain from Depositor and/or its Trustee and (ii) use a copy of the Deposit Materials and all other Software to which Registrant has a right or license under this Agreement as of the first time Depositor becomes the subject of an action in bankruptcy, insolvency, liquidation or reorganization (or the equivalent) or has appointed for it a Trustee. Depositor shall not interfere with the rights of Registrant as provided in this Agreement to obtain Deposit Materials from the Trustee. Depositor or the Trustee shall, if requested by Registrant (or by a third party on behalf of Registrant) prior to any permitted rejection by the Trustee of this Agreement, or following such rejection if Registrant (or a third party on behalf of Registrant) elects to retain its rights under this Agreement pursuant to said Section 365(n), promptly make a complete copy of the Deposit Materials on appropriate magnetic or optical media available to Registrant or, at Registrant's request (or at a third party's request on behalf of Registrant) and reasonable expense, cause such a copy of the Deposit Materials to be delivered to Registrant.

3. CONFIDENTIALITY AND RECORD KEEPING.

a. Confidentiality. Escrow Agent shall maintain the confidentiality of all Deposit Materials and restrict access of such Deposit Materials solely to those employees who are

necessary to perform services under this Agreement on behalf of the Escrow Agent and who are under contractual obligations restricting such persons from use or disclosure of Deposit Materials. Except as provided in this Escrow Agreement, Escrow Agent shall not disclose, transfer, make available or use the Deposit Materials. If Escrow Agent receives a subpoena or other order of a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, Escrow Agent will immediately notify Depositor and Registrant. It shall be the responsibility of either Depositor or Registrant to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will not be required to disobey any court or other judicial tribunal order.

b. Status Reports. At least semi-annually, or as reasonably requested by Depositor or Registrant, Escrow Agent shall issue to Depositor and Registrant a report that describes any activity related to Registrant's account and inventories the Deposit Materials held by Escrow Agent.

c. Audit Rights. Escrow Agent shall retain and make available for audit purposes, upon request by Depositor or Registrant (or by a third party on behalf of Registrant), all Depositor- and Registrant-related records and documentation, including invoices, correspondence, contracts and service logs. During the term of this Escrow Agreement and for a two-year period thereafter, Depositor and Registrant (or a third party on behalf of Registrant) shall each have the right to inspect the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall be held during normal business hours and following at least three (3) Business Days' prior notice. The party requesting such audit shall bear the cost of conducting the same; provided, however, that in the event such audit uncovers inaccuracies in such records, Escrow Agent shall reimburse such party for such costs and provide a credit to Registrant of all fees paid to Escrow Agent hereunder attributable to such inaccuracies.

4. GRANT OF RIGHTS TO ESCROW AGENT. Depositor hereby grants Escrow Agent the right to transfer all media and tangible embodiments that comprise the Deposit Materials in accordance with this Escrow Agreement. However, except for the rights and licenses granted hereunder, such transfer does not include the ownership or transfer of the intellectual property rights in such Deposit Materials. Escrow Agent shall have the right to make copies of the Deposit Materials as necessary to perform under this Escrow Agreement. Escrow Agent shall not remove any titles, proprietary rights notices or similar legends contained on the Deposit Materials. As of the Escrow Agreement Effective Date, Depositor hereby grants to Escrow Agent a world-wide, non-exclusive, irrevocable, royalty-free right and license to sublicense the Deposit Materials to Registrant in accordance with the terms of this Escrow Agreement but only as needed to perform its obligations hereunder. Except as provided herein, Escrow Agent shall not sublicense or otherwise transfer its rights to the Deposit Materials.

5. RELEASE OF DEPOSIT.

a. Release Conditions. For all purposes under this Escrow Agreement, "**Release Condition**" means the occurrence of any of the following:

- (i) The sale, assignment, or transfer to any third party of any of Depositor's rights in the Service Provider Owned Materials (or any portion thereof) or as applicable, the Third Party Materials (or any portion thereof), if such sale, assignment, or transfer would prevent Depositor from discharging any of its obligations under any Ancillary Agreement or this Escrow Agreement;
- (ii) Depositor becomes insolvent or commits any affirmative act of insolvency, or generally fails to pay, or admits in writing its inability to pay, debts as they become due, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under, or case in, any bankruptcy or insolvency law, or Depositor takes any action to authorize, or in the furtherance of, any of the foregoing;
- (iii) Depositor discontinues providing full support and maintenance Services for the Service Provider Owned Materials (or any material portion thereof) or, as applicable, the Third Party Materials in accordance with its obligations pursuant to any Ancillary Agreement;
- (iv) Depositor has ceased to do business or improperly refuses to provide the Services (in the case of Service Provider Owned Materials (as defined in the Ancillary Agreement) and for purposes of **Section 14.3** of the Master Services Agreement relating to the maintenance of such Materials to Registrant in accordance with the terms of any Ancillary Agreement;
- (v) Depositor has breached (and if subject to a cure period, has not cured such breach within such period) any material term or condition of any Ancillary Agreement or this Escrow Agreement, including, without limitation, Depositor's obligation to provide Services thereunder.
- (vi) Any change in Control of Depositor (or that portion of Depositor providing all or any material part of the Services under any Ancillary Agreement) or Depositor's parent company, where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Depositor (or that portion of Depositor providing all or any material part of the Services) are acquired by any entity, or Depositor (or that portion of Depositor providing all or any material part of the Services) is merged with or into another entity to form a new entity; or
- (vii) Any other circumstance in which Registrant (or a third party on behalf of Registrant) would be entitled to access or use the applicable Deposit Materials under the express terms of any Ancillary Agreement.

b. Release of Deposit. In the event that Registrant (or a third party on behalf of Registrant) provides Escrow Agent with written notice stating that a Release Condition has occurred, Escrow Agent shall follow the following procedures:

- (1) *[Note: Alternative 1—for use with Deposit Material consisting of Service Provider Owned Materials:* Promptly upon the receipt of such written notice notifying Escrow Agent of the occurrence of a Release Condition and confirmation of current Escrow Agent account status, Escrow Agent shall verify such Release Condition with Depositor. If Depositor verifies the Release Condition or fails to respond within five (5) business days, then Escrow Agent shall release to Registrant or its designee the Deposit Material. In the event of a dispute respecting Release Condition pursuant to the proviso of the foregoing sentence, Depositor and Registrant shall submit the dispute to the dispute resolution procedures in **Section 19.1** of the Services Agreement, provided that in the event such process shall not produce a resolution within thirty (30) days of initiation of such process, this issue will be immediately presented to Depositor’s General Manager of Public Sector (or equivalent position) and Registrant’s General Counsel for further efforts at resolution. If after fifteen (15) days following such escalation for further efforts at resolution the dispute is not resolved, the Deposit Material shall be released, provided that such release shall not waive any rights of either party hereunder. *[Note: Alternative 2-- for use with other Deposit Material:* Promptly upon the receipt of such written notice notifying Escrow Agent of the occurrence of a Release Condition and confirmation of current Escrow Agent account status, Escrow Agent shall release to Registrant or its designee the Deposit Material.
- (2) Immediately upon release of the Deposit Material to Registrant or its designee, Escrow Agent shall notify Depositor thereof in writing.
- (3) Notwithstanding the procedures set forth above in clauses (1) and (2) of this Subsection, Escrow Agent shall also release to Registrant the Deposit Materials upon instruction from Depositor.

This Escrow Agreement shall terminate upon the release to Registrant of all of the Deposit Materials held by Escrow Agent, provided that Registrant has accepted the Deposit Materials within thirty (30) days of the date of delivery by Escrow Agent and provided that all fees due to Escrow Agent with respect to this Escrow Agreement have been paid in full. *[** Note: The following sentence to be deleted in the case of escrow of Service Provider Owned Materials:]* A dispute regarding the existence of a Release Condition shall not affect Escrow Agent’s obligation to release the Deposit Materials pursuant to this Subsection.

c. License. Depositor hereby grants to Registrant (and their respective successors and assigns), at no additional charge, a world-wide, non-exclusive, irrevocable, royalty-free right and license to Use, with the right to allow third parties the right to Use on Registrant’s (as defined in the Services Agreement) behalf, the Deposit Materials, in each case in accordance with the applicable terms and conditions of the Services Agreement. Depositor acknowledges and agrees that the foregoing right and license is in addition to, and not in lieu of, any rights or licenses granted to Registrant under any Ancillary Agreement.

6. TERM AND TERMINATION.

a. Term of Agreement. The initial term of this Escrow Agreement is for a period of one (1) year starting on the Escrow Agreement Effective Date. Thereafter, this Escrow Agreement shall automatically renew from year to year unless:

- (1) Depositor and Registrant jointly instruct Escrow Agent in writing at any time after the initial one (1) year term that this Escrow Agreement is terminated; or
- (2) this Escrow Agreement is terminated as otherwise provided hereunder.

b. Termination for Nonpayment. In the event of the nonpayment of fees properly due to Escrow Agent hereunder, Escrow Agent shall provide written notice of delinquency to Depositor and Registrant within thirty (30) days of such delinquency. Any party to this Escrow Agreement shall have the right to make the payment to Escrow Agent to cure such nonpayment. If the past-due payment is not received in full by Escrow Agent within sixty (60) days after the date of latest receipt of such notice, then Escrow Agent shall provide to Depositor and Registrant a second written notice of such delinquency. If the past-due payment is not paid to Escrow Agent within sixty (60) days after the date of the latest receipt of such second notice, then Escrow Agent shall have the right to terminate this Escrow Agreement any time thereafter by sending written notice of termination to Depositor and Registrant.

c. Termination for Convenience. Registrant reserves the right to terminate this Escrow Agreement at any time, with or without cause. Upon termination, Escrow Agent shall be entitled to payment of amounts owed up to the effective termination date. Notwithstanding the foregoing, in the event of any termination hereunder, Escrow Agent shall immediately reimburse Registrant on a pro rata basis for any advance payments or payments made to Escrow Agent for services not performed as of the effective termination date.

d. Default. The occurrence of any of the following shall constitute an event of default of Escrow Agent hereunder:

- (1) a breach, by Escrow Agent, of any term or provision of this Escrow Agreement, whether or not material;
- (2) any false or misleading representation or warranty made by Escrow Agent;
- (3) any affirmative act of insolvency by Escrow Agent, or the filing by Escrow Agent of any petition or action under any bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or moratorium law, or other similar proceedings instituted by or against Escrow Agent or against all or any part of its property under the Federal Bankruptcy Code or other law of the United States or of any other competent jurisdiction;
- (4) the filing of any involuntary petition under any bankruptcy statute against Escrow Agent, or the appointment of any receiver or trustee to take possession of the

properties of Escrow Agent, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days from the date of said filing or appointment; or

- (5) the subjection of any of Escrow Agent's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

In the event of Escrow Agent's default, at Registrant's election, Registrant may continue with this Escrow Agreement, cancel or terminate this Escrow Agreement and/or have recourse to any other right or remedy available at law or in equity. Upon Registrant's election to cancel or terminate this Escrow Agreement, Registrant and Depositor shall enter into a new escrow agreement with a mutually agreed-upon third party escrow agent. Any and all terms and conditions stated herein shall, without modification, be incorporated into the new escrow agreement; provided, however, that Depositor agrees to negotiate in good faith with such escrow agent in the event such escrow agent or Registrant requests modification of any terms and conditions contained herein.

e. Disposition of Deposit Materials Upon Termination. Upon termination of this Escrow Agreement by joint instruction of Depositor and Registrant or for non-payment of Escrow Agent's fees properly due hereunder, Escrow Agent shall destroy, return or otherwise deliver the Deposit Materials in accordance with Depositor's instructions.

f. Survival of Terms Following Termination. Upon any termination or expiration of this Escrow Agreement, the following provisions of this Escrow Agreement shall survive:

- (1) this Section 6(f);
- (2) Depositor's warranties, representations, or covenants hereunder;
- (3) the obligations of confidentiality with respect to the Deposit Materials;
- (4) the rights and licenses granted hereunder if a Release Condition has occurred or if Depositor and Registrant have jointly instructed Escrow Agent to release the Deposit Materials;
- (5) the obligation to pay Escrow Agent any undisputed fees and expenses due;
- (6) the provisions of Section 8 and Section 9 below; and
- (7) any provisions in this Escrow Agreement which specifically state they survive the termination or expiration of this Escrow Agreement.

7. ESCROW AGENT COMPENSATION.

a. **Fee Schedule.** Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided as such fees are listed on **Schedule A** attached hereto and incorporated herein by this reference. For any service not listed on **Schedule A**, Escrow Agent will provide a quote prior to rendering the service, if requested.

b. **Payment Terms.** All fees are due within sixty (60) days of receipt of Escrow Agent's invoice. Registrant shall be responsible for all fees and charges payable pursuant to this Escrow Agreement.

8. LIABILITY AND DISPUTES.

a. **Right to Rely on Instructions.** Escrow Agent may act in reliance upon any instruction, instrument or signature reasonably believed by Escrow Agent to be genuine. Escrow Agent may reasonably assume that any employee of Depositor or Registrant who gives any written notice, request or instruction has the authority to do so.

b. **Indemnification.** Escrow Agent shall be responsible for performing its obligations under this Escrow Agreement and acting in a reasonable and prudent manner with regard to the matters contemplated herein. Provided Escrow Agent has acted in the manner stated in the preceding sentence, Depositor and Registrant each agree to indemnify, defend and hold harmless Escrow Agent from any and all Losses arising out of third party claims relating to this Escrow Agreement. Notwithstanding anything to the contrary contained herein, Escrow Agent shall not be entitled to indemnification or payment of Losses in connection with any matter if (i) it did not act in good faith and in a manner reasonably believed to be in the best interests of Depositor and Registrant or (ii) such Loss arises from Escrow Agent's breach of this Escrow Agreement, negligence, gross negligence, willful or intentional misconduct, fraud, violation of applicable Law, actions taken outside the scope of this Escrow Agreement or failure to observe standards of performance of a reasonably prudent escrow agent under similar circumstances.

c. **Controlling Law.** This Agreement shall be construed in accordance with the laws of the State of Texas without reference to the conflicts of law provisions thereof. For such purposes, the parties shall accept as due and binding service of legal process by receipted mail directed to the respective addresses provided herein for notices.

9. GENERAL PROVISIONS.

a. **Publicity.** Escrow Agent shall not use the name, trade name, service marks, trademarks, trade dress or logo of Registrant or Depositor in any form of publicity, whether as a press release, a brochure, a verbal announcement, an advertisement or any similar activity without Registrant's or Depositor's written consent, respectively.

b. **Time is of the Essence.** Depositor and Escrow Agent expressly acknowledge and agree that time is of the essence in the performance of their respective obligations hereunder. Registrant is relying on timely performance by Depositor and Escrow Agent and shall schedule operations

and incur obligations to third parties in reliance upon such timely performances by Depositor and Escrow Agent, and shall sustain substantial Losses by reason of any failure of timely performance.

c. Remedies. All remedies available to Registrant for breach of this Escrow Agreement shall be cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

d. Waiver. The failure or delay of the Registrant and Depositor to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Escrow Agreement or to exercise any right, power or privilege under this Escrow Agreement, including, but without limiting the generality of the foregoing, rights, powers or privileges arising from course of performance, course of dealing and usage of trade, shall not operate or be construed as a relinquishment of future performance under this Escrow Agreement or as a waiver or modification of any of the same or similar rights, powers or privileges in the future, and the obligation of the Registrant and Depositor with respect to such future rights or performance shall continue in full force and effect as if such failure or delay had never occurred.

e. Entire Agreement. This Escrow Agreement, which includes the Attachments and Schedules described herein or attached hereto, embodies the entire understanding between all of the parties with respect to the subject matter hereto and supersedes all previous communications, representations or understandings, either oral or written, other than the terms and conditions of the Ancillary Agreements. In the event, and to the extent, of a conflict, express or implied, or any ambiguity between the terms of this Escrow Agreement and the terms of any Ancillary Agreements, the terms of this Escrow Agreement shall prevail. No amendment or modification of this Escrow Agreement shall be valid or binding unless signed by an authorized representative of each of the parties hereto, except that Attachment A need not be signed by Registrant.

f. Notices. Any notice or other communication required or permitted under this Escrow Agreement shall be in writing and shall be sent by certified mail, return receipt requested, telegram or hand delivered to the parties at the respective addresses set forth below or to such other address as the party to receive the notice designates by notice to the other party, provided that payments, notices and communications sent by Registrant shall be sufficient if sent by regular mail or any other reasonable method.

IF TO DEPOSITOR: _____

Attention: _____
[ADDRESS]
Telephone:
Email Address:

With a copy to:
Attention: _____
[ADDRESS]
Telephone:

Email Address:

Attention:_____

IF TO ESCROW AGENT: Escrow Agent
Attention:____
[ADDRESS]
Telephone:
Email Address:

IF TO REGISTRANT: Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention:
Telephone:
Email Address:

With a copy to:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention:
Telephone:
Email Address:

g. Assignment. Registrant may assign any interest in this Escrow Agreement or any of its duties or rights hereunder in connection with the permitted assignment of the Services Agreement. Neither Depositor nor Escrow Agent may assign this Escrow Agreement without the prior written consent of Registrant. Any assignment or attempted assignment of this Escrow Agreement other than in accordance with this Section shall be void and of no effect. Escrow Agent shall not mortgage, grant a security interest in, pledge, transfer, delegate or assign, in whole or in part, this Escrow Agreement, whether voluntary, involuntary or by operation of law, without the prior written consent of Registrant. Upon Registrant’s consent to the foregoing, Escrow Agent warrants that all said successors shall comply with any and all obligations arising under this Escrow Agreement and shall be liable for all obligations breached by Escrow Agent. Furthermore, Escrow Agent warrants that as a condition to any of the foregoing, Escrow Agent shall covenant in writing with each successor that said successor shall be liable for any and all obligations arising under this Escrow Agreement and for any breach committed by Escrow Agent in the past.

h. Headings. The Article and Section headings contained in this Escrow Agreement are embodied herein for the purpose of convenience of reference only and are not intended to limit or affect any terms or conditions hereof.

i. Severability. In the event any provision of this Escrow Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless such invalidity, voidability or unenforceability materially affects the entire intent and purpose of this Escrow Agreement, it shall affect neither the validity of this Escrow Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with the valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have entered into this Escrow Agreement as of the later of the dates set forth below.

DEPOSITOR: _____

By: _____

Name: _____

Title: _____

Date: _____

**REGISTRANT: THE TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____

Name: _____

Title: _____

Date: _____

ESCROW AGENT: _____

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE A

FEES

Fees to be paid shall be as follows:

Initialization fee (one time only) \$ _____
(\$ _____ for current clients)

Annual maintenance fee \$ _____
• includes two Deposit Material Updates (\$ _____/product)
• includes two cubic feet of storage space (foreign \$ _____)

International (outside of U.S.) - \$ _____/product

Additional Updates (\$ _____/product)
(above two per year)

Additional Storage Space (\$ _____/cubic ft.)

Payable by Depositor or Registrant Only Upon Release Request:

Due Upon Depositor's or Registrant's Request for Release of Deposit Materials \$ _____ for initial 2 hours
\$ _____/hour for additional hours

SCE ATTACHMENT

A-1 **Product Name** _____
Version # _____

Additional products (and versions) provided to Registrant hereafter shall be deposited in source code form with Escrow Agent and deemed included within the scope of this Escrow Agreement.

Prepared and Confirmed by:

Title:

Date:

Signature:

Type of deposit:

_____ Initial Deposit
_____ Update Deposit to replace current deposits
_____ Other (please describe) _____

Items Deposited:

Quantity	Media Type	Description of Material
A) _____		
B) _____		
C) _____		

A-2 **Product Name** _____
Version # _____

Prepared and Confirmed by:

Title:

Date:

Signature:

Type of deposit:

_____ Initial Deposit
_____ Update Deposit to replace current deposits
_____ Other (please describe) _____

Items Deposited:

Quantity	Media Type	Description of Material
A) _____		
B) _____		
C) _____		



Department of Transportation

Application Services

MSA Attachment D

Form of Parent Guaranty

Version 1.0

Solicitation No. 601440000032007

FORM OF PARENT GUARANTY

GUARANTY OF OBLIGATIONS

THIS GUARANTY OF OBLIGATIONS ("**Guaranty**") is made and entered into as of [____], and is executed and delivered by [____], a [____] corporation (the "**Guarantor**"), in favor of the Texas Department of Transportation ("**TxDOT**").

WHEREAS, [**Service Provider**] (the "**Subsidiary**") and TxDOT have entered into that certain Master Services Agreement dated as of [____], (as amended, restated, supplemented, or otherwise modified from time to time, the "**Agreement**") with respect to certain services to be provided by Subsidiary to TxDOT;

WHEREAS, the Guarantor is the parent, directly or indirectly, of Subsidiary;

WHEREAS, the Guarantor's execution and delivery of this Guaranty is a condition to TxDOT entering into the Agreement; and

WHEREAS, the Guarantor acknowledges that it will receive direct and indirect benefits from TxDOT entering into and performing its obligations under the Agreement and, accordingly, the Guarantor is willing to guarantee all of the obligations of Subsidiary to TxDOT under the Agreement on the terms and conditions contained herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Guarantor, the Guarantor agrees as follows:

Section 1. Guaranty. The Guarantor hereby absolutely, irrevocably, and unconditionally guaranties the due and punctual performance when due of all obligations of Subsidiary (including any obligation for the payment of money) under the Agreement (collectively referred to as the "**Guarantied Obligations**"). Notwithstanding anything in this Guaranty to the contrary, the obligations of Guarantor hereunder shall be subject to the rights, privileges and defenses otherwise available to Subsidiary with respect to the Guarantied Obligations.

Section 2. Guaranty of Payment and Not of Collection. This Guaranty is a guaranty of performance and payment, and not of collection, and an obligation and debt of the Guarantor for its own account; provided, however, TxDOT may resort to the Guarantor for the performance of any of the Guarantied Obligations only if in TxDOT's reasonable judgment efforts to obtain performance of the Guarantied Obligations against Subsidiary are not likely to result in the full and timely performance of such Guarantied Obligations. Accordingly, except as provided in the preceding sentence, TxDOT shall not be obligated or required before enforcing this Guaranty against the Guarantor: (a) to pursue any right or remedy TxDOT may have against Subsidiary, or any other Person or commence any suit or other proceeding against Subsidiary or any other Person in any court or other tribunal; or (b) to make any claim in a liquidation or bankruptcy of Subsidiary or any other Person. As used herein, "Person" means an individual, corporation, limited liability

company, partnership, trust, association, joint venture, unincorporated organization or entity of any kind or nature, or a governmental authority.

Section 3. Guaranty Absolute. The Guarantor guarantees that the Guaranteed Obligations will be performed or paid, as applicable, strictly in accordance with the terms of the Agreement and any other documents evidencing the same. The Guarantor waives any right that it might have to challenge the amount or validity of any amounts (i) acknowledged by the Subsidiary to be due under the Agreement or (ii) determined to be due under the Agreement pursuant to the dispute resolution procedures, mediation procedures, and arbitration proceedings or otherwise pursuant to or in connection with the Agreement. Subject to Section 1 hereof, the liability of the Guarantor under this Guaranty shall be absolute and unconditional in accordance with its terms and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever (other than full and timely performance or indefeasible payment in full, as applicable).

Section 4. Action with Respect to Guaranteed Obligations. TxDOT, at any time and from time to time, without the consent of, or notice to, the Guarantor, and without discharging the Guarantor from its obligations hereunder, may, with any required consent of the Subsidiary: (a) amend, modify, alter, or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations; (b) amend, modify, alter, or supplement the Agreement; (c) release any other person liable in any manner for the payment or collection of the Guaranteed Obligations; (d) exercise, or refrain from exercising, any rights against Subsidiary, or any other Person, subject to Section 2 hereof.

Section 5. Representations and Warranties. The Guarantor hereby represents and warrants to TxDOT as follows:

(a) Organization; Power; Qualification. The Guarantor is a [_____] corporation, duly incorporated and validly existing under the jurisdiction of its incorporation, and has the power and authority to carry on its business.

(b) Authorization. The Guarantor has the right and power, and has taken all necessary action to authorize it, to execute, deliver, and perform this Guaranty in accordance with its terms. This Guaranty has been duly executed and delivered by the duly authorized officers of the Guarantor and is a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations.

(c) Compliance with Laws, etc. The execution, delivery and performance of this Guaranty in accordance with its terms and the guaranties hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any governmental approval or violate any applicable law relating to the Guarantor; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Guarantor, or any indenture, agreement or other

instrument to which the Guarantor is a party or by which it or any of its properties may be bound; or (iii) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the Guarantor.

Section 6. Waiver. Except as otherwise provided herein, the Guarantor, to the fullest extent permitted by applicable law, hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind, and any other act or thing, or omission or delay to do any other act or thing, which in any manner or to any extent might vary the risk of the Guarantor or which otherwise might operate to discharge the Guarantor from its obligations hereunder and hereby waives all rights the Guarantor may now or in the future have under any statute relating to sureties or otherwise related to the foregoing waiver. Except as otherwise provided herein, any right which at any time the Guarantor has under the existing or future laws to require that recourse be had to the assets of any other person before any claim is enforced against such Guarantor in respect of the obligations hereby assumed by the Guarantor is hereby abandoned and waived. If at any time TxDOT sues the Guarantor in respect of this Guaranty and the Subsidiary is not sued also, the Guarantor shall not claim that the Subsidiary must be made a party to the proceedings. The Guarantor agrees to be bound by this Guaranty whether or not it is made a party to legal proceedings for the recovery of any amount due or owing to TxDOT by the Subsidiary and whether the formalities required by any law whether existing now or in the future in regard to the rights or obligations of sureties shall or shall not have been observed.

Section 7. Reinstatement of Guaranteed Obligations. If claim is ever made on TxDOT for repayment or recovery of any validly owing amount or amounts received in payment or on account of any of the Guaranteed Obligations, and TxDOT repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (b) any settlement or compromise of any such claim effected by TxDOT with any such claimant, then and in such event, the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of the Agreement, and the Guarantor shall be and remain liable to TxDOT for the validly owing amounts so repaid or recovered to the same extent as if such amount had never originally been paid by TxDOT.

Section 8. Payments Free and Clear. Except as otherwise provided herein or by law, all sums payable by the Guarantor hereunder shall be paid in full, without set-off or counterclaim or any deduction or withholding whatsoever.

Section 9. Information. The Guarantor assumes all responsibility for being and keeping itself informed of the financial condition of Subsidiary, and of all other circumstances bearing upon the risk of non-performance or nonpayment of any of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that TxDOT shall not have any duty whatsoever to advise the Guarantor of information regarding such circumstances or risks.

Section 10. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS. THIS GUARANTY IS INCLUDED IN THE AGREEMENT.

Section 11. Jurisdiction. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, EACH PARTY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING BROUGHT BY SUCH PARTY IN ANY WAY ARISING OUT OF THIS AGREEMENT MUST BE BROUGHT SOLELY AND EXCLUSIVELY IN THE STATE COURTS OF TRAVIS COUNTY, TEXAS, OR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, AS APPLICABLE, AND IRREVOCABLY ACCEPTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION OF EACH OF THE AFORESAID COURTS GENERALLY AND UNCONDITIONALLY WITH RESPECT TO ANY ACTION, SUIT, OR PROCEEDING BROUGHT BY IT OR AGAINST IT BY THE OTHER PARTY.

Section 12. Waiver of Remedies. No delay or failure on the part of TxDOT in the exercise of any right or remedy it may have against the Guarantor hereunder or otherwise shall operate as a waiver thereof, and no single or partial exercise by TxDOT of any such right or remedy shall preclude other or further exercise thereof or the exercise of any other such right or remedy.

Section 13. Termination. This Guaranty shall remain in full force and effect until three (3) years following the termination or cancellation of the Agreement.

Section 14. Successors and Assigns. Each reference herein to TxDOT shall be deemed to include TxDOT's respective successors and assigns (including, but not limited to, any holder of the Guaranteed Obligations) (and Guarantor acknowledges and agrees that TxDOT may assign the Agreement in whole or in part to the extent permitted by the Agreement, and in the case of one or more partial assignments, any reference to TxDOT shall include both TxDOT and such assignees with respect to the part of the Agreement so assigned) in whose favor the provisions of this Guaranty also shall inure, and each reference herein to the Guarantor shall be deemed to include the Guarantor's successors and assigns, upon whom this Guaranty also shall be binding. The Guarantor may not assign or transfer its obligations hereunder to any Person.

Section 15. Amendments. This Guaranty may not be amended except in writing signed by TxDOT and the Guarantor.

Section 16. Payments. All payments to be made by the Guarantor pursuant to this Guaranty shall be made in U.S. Dollars, in immediately available funds to TxDOT, not later than 2:00 p.m. within ten (10) days of the date of demand therefor.

Section 17. Notices. All notices under this Guaranty will be in writing and will be deemed to have been duly given if delivered personally or by commercial overnight delivery, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses set forth below:

If to TxDOT:

Texas Department of Transportation

[_____]

Austin, Texas [_____]

Attention: [_____]

With a copy to:

[_____]

Attention: [_____]

If to Guarantor:

[Address]

Attention: [_____]

With a copy to:

[Subsidiary Address]

Attention: [_____]

All notices under this Guaranty that are addressed as provided in this Section 17, shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery or (iii) by registered or certified mail, return receipt requested, postage prepaid. Either party from time to time may change its address or designee for notification purposes by giving the other party notice of the new address or designee and the date upon which such change will become effective.

Section 18. Severability. In case any provision of this Guaranty shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 19. Headings. Section headings used in this Guaranty are for convenience only and shall not affect the construction of this Guaranty.

IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guaranty as of the date and year first written above.

[Guarantor]

By: _____
Name: _____
Title: _____

Accepted, Acknowledged and Agreed:

State of Texas, acting by and through the Texas Department of Transportation

By: _____
Name: _____
Title: _____



Department of Transportation

Application Services

MSA Attachment E

Form of Work Order

Version 1.0

Solicitation No. 601440000032007

1 STRUCTURE

This Attachment E is intended as a framework for establishing Work Orders in accordance with **Section 4.6** of the Agreement entitled “Projects”. This Attachment E and each issued Work Order are hereby incorporated into and made part of the Agreement and are governed by the terms of the Agreement.

Each Work Order shall include, to the extent appropriate, (a) the information described in the form of Work Order attached hereto; and (b) additional provisions applicable to the Work Order not otherwise set forth in this Attachment E or the Agreement.

2 DEFINITIONS AND INTERPRETATION

Defined terms used in this Attachment E and the applicable Work Order(s) shall have the meanings set forth in **Exhibit 1.1 Definitions** to the Agreement, unless otherwise defined in this Attachment E, or the applicable Work Order(s).

3 TERM

The term of each Work Order shall commence on the date set forth therein (the “Work Order Effective Date”) and shall continue until the expiration date set forth in the Work Order (which if not specified, shall be the date all Services and Work Product under such Work Order are complete, including warranty Services), unless such Work Order is terminated earlier in accordance with the terms of this Attachment E, the Agreement or the applicable Work Order (the “Work Order Term”).

4 WORK ORDER PLANNING

Each Work Order shall list the milestones relating to Service Provider’s obligations under such Work Order and the Deliverables to be completed by Service Provider. The Work Order shall specify any Critical Deliverable Credits or payments associated with the successful completion of each milestone or Deliverable in accordance with its acceptance criteria. The acceptance process for milestones and Deliverables is set forth in **Section 4.5** of the Agreement.

A project plan shall be attached to each Work Order (“Work Order Plan”). The Work Order Plan shall describe Service Provider’s overall approach, including: (a) the overall design, methodology, steps, construction, validation, testing and/or implementation processes; (b) major activities and schedules for each phase or release; and (c) any modified timeframes relating to acceptance testing and completion, as further described in **Section 4.5** of the Agreement. Each Work Order Plan must be approved by TxDOT. TxDOT has the right to interview and approve Service Provider lead positions on all Work Orders (Work Order Managers, technical leads).

5 COMPENSATION

Work Order payments shall be tied to Deliverable or milestone completion. The payment schedules for a specific Work Order shall be set forth in the applicable Work Order. All Work

Order payments shall be invoiced in accordance with **Article 12** of the Agreement and **Exhibit 4.0 Business Model**.

All fees and expenses (if any) to be invoiced shall be expressly specified in the applicable Work Order. Unless expressly specified in the Work Order, there are no additional or other fees or expenses to be paid by TxDOT that are applicable to Service Provider's performance of its obligations and the provision of the Services and Deliverables under such Work Order.

6 TERMINATION RIGHTS

TxDOT may terminate a Work Order at any time. Upon Service Provider's termination notice receipt, Service Provider shall not undertake any new work relating to the terminated Work Order and Service Provider shall cooperate with TxDOT to wind-down all work under the terminated Work Order. In no event shall TxDOT be obligated to compensate Service Provider for any work under a Work Order that has not been performed as of the effective date of such termination or, if applicable, the end of any Termination Assistance Services, or for any subsequent phases of such Work Order or related Work Orders, regardless of whether work under such subsequent phases or Work Orders has been scheduled.

At TxDOT's request, Service Provider shall deliver to TxDOT any and all Deliverables existing as of the termination effective date or the end of any Termination Assistance Services, whichever is later. The Parties' respective ownership and license rights to Deliverables is governed by **Article 14** of the Agreement.

Service Provider shall, upon TxDOT's request, provide Termination Assistance Services (as described in the Agreement). The provisions of **Section 4.3** of the Agreement shall apply in the event of the termination or expiration of a Work Order including, the termination rights provisions in **Section 20**.

ATTACHMENT E: FORM OF WORK ORDER (SAMPLE)

This Work Order no. [x.x] (“**Work Order**”) is made and entered into as of the [] day of [], 20[] (the “**Work Order Effective Date**”) by and between the Texas Department of Transportation (TxDOT) and Service Provider (Name).

This Work Order is issued under and subject to the terms and conditions of the Agreement between TxDOT and Service Provider.

1.0 DEFINITIONS

Capitalized terms used herein and not otherwise expressly defined shall have the respective meanings assigned to them in **Exhibit 1.1 Definitions** of the MSA.

[define any additional terms for this Work Order here if necessary]

2.0 WORK ORDER

2.1 Scope

The scope of the Work Order consists of:

1. [Insert Work Order activities and scope]
2. [Describe the Services to be provided, and specify any TxDOT responsibilities and any additional standards, policies or procedures with which Service Provider must comply]
3. [Specifications]
4. [List any milestones, Deliverables, and/or reports to be completed, if any.]
5. [Work Order Plan, detailing tasks and start and finish dates for each task.]
6. [Work Order schedule]
7. [Work Order location – list the TxDOT Facilities/Sites and/or Service Provider Facilities/Sites where Services are to be performed]
8. [Preexisting works / Third Party products to be used, if any]
9. [Identity of Work Order manager; identity / role of other key consultant personnel]
10. [Testing requirements and acceptance testing criteria]
11. [Other required resources and estimated related charges]

- 12. [Required documentation or training, and the Party providing such documentation or training]
- 13. [Equipment, Software or other items required]
- 14. [Other respective responsibilities of the Parties]
- 15. [Service Levels, if any]
- 16. [Any Permitted Subcontractors that will perform Services under this Work Order, together with the type of Services to be performed.]
- 17. [Any specific Termination Assistance Services to be provided]

2.2 Work Order Staffing

Service Provider will provide the following resources:

Service Provider Personnel Table					
Number of Service Provider Personnel	Service Rate (from Exhibit 4.1)		Service Expenses	Target Service Start Date	Target Service Completion Date

Notes to the Service Provider Personnel Table:

- *[NOTE: If using rates from an existing rate card under the MSA, include the following:] “The columns labeled “Service Rate” correspond to the rates set out in the [Name of Rate Card] tabs in **Exhibit 4.1 Pricing Structure**; and”*
- *Service Provider and TxDOT agree to work in good faith to determine which personnel shall be assigned to perform the Services, and to replace or reassign such personnel during the term of this Work Order.*

2.3 Work Order Fees and Expenses /Payment Schedule

Pursuant to **Exhibit 4.1 Pricing Structure**, Service Provider estimates that its Fees for the Services during the Work Order Term, estimated at ___ hours, are \$ _____, plus all applicable taxes (the “**Work Order Fees**”).

[Detail how the fees are being determined, e.g., 1 Work Order manager for 40 hr a wk - \$XXX]

[Estimate total fees.]

[Include applicable payment criteria (e.g., milestones, time and materials, fixed fee, discounts, etc.)]

[Add whether reimbursement of certain expenses is allowed – and if so, what; identify explicit timetable – must have a start and stop date]

Work Order payments shall be invoiced in accordance in accordance with the Work Order and the Agreement.

2.4 Changes

Either Party may request a Change to the scope or manner of provision of the Services under this Work Order subject to the Change Control Procedures. This Work Order may only be changed by a written Work Order amendment executed by the Parties.

3.0 ASSETS

3.1 TxDOT Equipment or Software

If applicable and if agreed to by the Parties, TxDOT shall provide Service Provider with the TxDOT Equipment or Software specified below for the purpose of performing the Services.

Quantity	Description of TxDOT Equipment or Software

4.0 TERM

4.1 Work Order Term

The Work Order Term shall commence as of 12:00:01 a.m., Central Time on the Work Order Effective Date and continue until 11:59:59 p.m., Central Time, on [_____, 20[___]] unless extended by mutual written agreement of the Parties or terminated in accordance with the terms

of the MSA, in which case the Work Order Term shall end at 11:59:59 p.m., Central Time, on the termination effective date or the date to which this Work Order is extended.

4.2 Effective Date

IN WITNESS WHEREOF, the Parties have caused this Work Order to be executed by their respective duly authorized representatives as of the Work Order Effective Date (*the date of the last signature thereto*).

TxDOT

Service Provider

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE



Texas Department of Transportation

Application Services

Exhibit 1.1

Definitions

Version 1.0

Solicitation No. 601440000032007

EXHIBIT 1.1
DEFINITIONS

When used in this Agreement with initial capital letters, the terms listed in this Exhibit shall have the meanings set forth herein.

Term	Definition
Accept, Acceptance <i>or</i> Accepted	Means TxDOT's written acceptance of any Deliverable, Critical Deliverable, Payment Deliverable, Time Critical Deliverable, milestone, Corrective Action Plan, Disaster Recovery Plan, or other plans which may be given or withheld in accordance with the Agreement. In accordance with Section 4.5(e) of the Agreement.
Acceptance Criteria	The criteria that Service Provider must confirm have been met prior to submitting a Deliverable for Acceptance by TxDOT. Acceptance Criteria include: (i) any mutually agreed written criteria identified as Acceptance Criteria, (ii) Compliance, (iii) for all Software and System deliverables that process data, such item successfully integrates with all other Services, Software, Equipment, Systems, and other resources and is fully documented such that the anticipated end user can utilize the functionality of such Deliverable in the manner and for the purpose intended and that reasonable knowledgeable professionals can understand, maintain, support, and modify such Deliverable in accordance with its intended use.
Acceptance Review Period	Has the meaning given in Section 4.5(e)(i) of the Agreement, provided that any provision of written notice alerting TxDOT that a Deliverable is complete and ready for review that is submitted outside a Business Day shall be considered to be submitted for the purpose of TxDOT internal review, on the Business Day immediately following the day on which such notice was submitted.
Accessibility Standards	Has the meaning given in federal and State of Texas accessibility laws and regulations which include Chapter 2054, Subchapter M of the Texas Government Code and 1 Texas Administrative Code Chapter 213 (Electronic and Information Resources).
Accessibility Testing	A level of software testing in which software is tested to evaluate compliance to defined accessibility technical standards as defined in Accessibility Standards.
ACD	Automatic Call Distributor
Addendum	A modification of the Request for Offer (RFO) issued by the Texas Department of Transportation (TxDOT) and posted on the Electronic State Business Daily (ESBD).
Actual Uptime	Means, of the Critical Uptime, the aggregate number of minutes during which the applicable Service component defined in Exhibit 3.1 is Available.
Affiliate	With respect to an Entity, any other Entity that directly or indirectly Controls, is Controlled by, or is under common Control with that Entity at the time in question.
Agreement (also Master Services Agreement and MSA)	The final version of any contractually binding agreement between TxDOT and the Service Provider relating to the subject matter of the RFO; references to the Agreement include all Exhibits, Attachments and other documents attached thereto or incorporated therein by reference. Notwithstanding the foregoing, unless expressly provided or the context otherwise requires, references to the Agreement in conjunction with section or article references shall be deemed references to the body of the Agreement (that is, Articles 1 through 21).
Ancillary Agreement	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Annual Charges	Has the meaning given in Exhibit 4.0 of the Agreement.
API	Application Program Interface

Term	Definition
Application(s)	All software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials, media, on-line help documentation and tools related thereto) that perform user - related information processing functions or support day-to-day operations (including the supporting documentation, media, on- line help facilities, and tutorials), or otherwise used in the provision of Services by Service Provider. Applications include all such programs and programming in use or required to be used as of the Commencement Date. Applications also include all such programs and programming developed and/or introduced by or for TxDOT or Service Provider during the Term. Applications do not include the tools, utilities, or Operating Software or Systems Software used to deliver Applications.
Application Availability Tier (includes 1, 2, and 3)	Classification denoting support level of Applications in Exhibit 3.1.
Application Development and Maintenance (ADM) Services	The TxDOT Service Component for Application Development and Maintenance Services as defined in Exhibits 2.1.1 and 2.1.4.
Assistance Event	(i) any termination (in whole or in part) under, or the expiration of, the Agreement, or (ii) the discontinuance of the provision of the Services (in whole or in part).
At-Risk Amount	For any month during the Term, the percent (%) of the Service Level Invoice Amount, which is the maximum amount that the Service Provider will have at risk for Service Level Credits as set forth in Exhibit 3.1. Each Service Component will have its own At-Risk Amount tied to the corresponding portion of the Service Level Invoice Amount. See the formula in Exhibit 3.1.
Audit Period	Has the meaning given in Section 9.8(a) of the Agreement.
AUP	Acceptable Use Policy.
Authorized User(s)	Unless otherwise indicated, the officers, directors, employees, contractors, agents, customers, customer technical staff, and vendors of TxDOT and any other person(s) designated by TxDOT to receive or use the Systems or Services provided by Service Provider.
Availability or Available	The period for which the full functionality of a Service Component is ready for use by Authorized Users and is not degraded in any material respect.
Availability Management	Means the evaluation, design, implementation, measurement and management of the IT Infrastructure Availability from a component and an end-to-end perspective (e.g., Services), including new or modified IT service management methodologies and tools, as well as technology modifications or upgrades of IT infrastructure systems and components.
Bankruptcy Code	Has the meaning given in Section 20.5(b) of the Agreement.
Bankruptcy Rejection	Has the meaning given in Section 20.5(b) of the Agreement.
Benchmarker	Has the meaning given in Section 10.4(a) of the Agreement.
Benchmarking	Has the meaning given in Section 10.4(a) of the Agreement.
Business Continuity Services	Means the overall enterprise plans and specific activities of TxDOT and/or Service Provider that are intended to enable continued business operations in the event of any unforeseen interruption (e.g. plans and activities to move a department to a new location in the event of a disruption).
Business Day	Means each day from Monday through Friday 7:00 a.m. through 6:00 p.m. (Central Time), excluding national holidays as defined by Tex. Gov't Code § 662.003(a).
Call	A contact (including by telephone, voicemail, electronic mail, fax, walk-up, automated tool or web request) to Service Provider reporting a problem, requesting assistance or Services, or asking a question pertaining to the Services, as well as automated alerts and other problem and Service notifications communicated to Service Provider.
CAP Notice	Has the meaning given in Section 4.1.(e) of the Agreement.
CAP Failure Credit	Has the meaning given in Exhibit 3.0 of the Agreement.
CAPPS	Means Centralized Accounting and Payroll/Personnel System.
Capacity Management	Means the processes responsible for ensuring that the elements that collectively make up the Service can deliver the identified capacity in a cost effective and timely manner.

Term	Definition
Change(s)	<p>Any addition, modification, alteration, or deletion to (i) any installed and supported IT Equipment or Software components or (ii) the policies, procedures, or documentation on how Services are performed. This includes all production, test, and development system Equipment and Software, any management and support tools and utilities deployed in the IT environment, all associated documentation, as well as the methodologies used to manage and support delivery of the Services.</p> <p>Changes may arise reactively in response to incidents/problems or externally imposed requirements (e.g., legislative Changes), or proactively from attempts to (a) seek greater efficiency or effectiveness in the provision or delivery of Services; (b) reflect business initiatives; or (c) implement programs, Projects or Service improvement initiatives.</p> <p>Changes must be approved by TxDOT through the Change Management process, prior to implementation.</p>
Change Advisory Board (CAB)	The representative group that is responsible for assessing from both a business and technical viewpoint all high impact request for Change.
Change Control Procedures	Has the meaning given in Section 9.5(a) of the Agreement.
Change Management or Change Management Process	The processes relating to planning and performing all Changes in TxDOT IT environment pertaining to the Services, including Changes to individual components and coordination of Changes across all components. The Change Management Processes will support and include checkpoints to determine any potential or required Change Control Procedures.
Charges	Means the fees defined in Exhibit 4.0 .
CJIS	Criminal Justice Information Services
CMDB	Configuration Management Database
CMIS	Change Management Information System
CMS	Configuration Management System
Commencement Date	Means 12:00 a.m., Central Time, on the day following the date of Acceptance of all Transition Services set forth in the Transition Plan, or such other date as the Parties may agree upon in writing.
Commercial Off-The-Shelf (COTS)	Services, Equipment, and/or Software, as applicable, that is readily available to the public from a Third Party that is not an Affiliate of a Party.
Compliance (also Comply)	With respect to Deliverables, fulfilling the requirements of the Specifications, the Acceptance Criteria, the Agreement, and all other applicable operational and/or functional requirements.
Complement	Has the meaning given in Section 9.8(i) of the Agreement.
Comptroller of Public Accounts (CPA)	The State’s chief tax collector, accountant, revenue estimator, purchasing manager, and treasurer.
Confidential Information or Confidential Data	Has the meaning given in Section 13.1(a) of the Agreement.
Configuration Item (CI)	Any component part of Services that is (or is to be) under the control of Configuration Management and therefore subject to formal Change Control.
Configuration Management	The process of identifying and defining the functional and physical characteristics of any Equipment or Software in the Service recipient environment, controlling any modifications to any Configuration Item (CI) characteristics throughout their life cycle, tracking, recording, and updating any CMDB as a result of any Changes, and reporting on the status of and verifying the completeness, accuracy, and currency of CI data.
Configuration Management Database (CMDB)	A System that contains details regarding the Software, Equipment, and Systems that are used in the provision and management of Services, including information that relates to the maintenance, movement and problems experienced with such Software, Equipment, and Systems.
Continuous Integration (CI)/Continuous Delivery (CD)	Development process by which developers frequently merge code changes into central repository and use frequent automated builds and testing run against the code. As a part of DevOps integrations, this method also combines more frequent releases to reduce time to value and are tested prior to release using automated methods.
Contract	Any contract resulting from this procurement/RFO, consisting of the contract document(s) as described in RFO Section 2.5 Form of Contract and Section 2.1 of the Agreement.

Term	Definition
Contract Performance Incentive (CPI)	The Service Provider’s proposed initiatives to create value in areas that are not already identified and required in the Agreement. Contract Performance Incentives are outcome-based performance incentives that are designed to reward innovation investments that create value that is shared between the Service Provider and the State.
Contract Records	Has the meaning given in Section 9.8(a) of the Agreement.
Contract Year	Contract Year means each State of Texas fiscal year period commencing on the Commencement Date and each State of Texas fiscal year periods thereafter during the Term. Based upon the Commencement Date, the first Contract Year during the Term may be less than a full 12 months (September 1 st – August 31 st). For a Contract Year that is less than twelve (12) months, the rights and obligations under the Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.
Control (also Controlled, Controlling)	(a) the legal, beneficial, or equitable ownership, directly or indirectly, of (i) at least fifty percent (50%) of the aggregate of all voting equity interests in an Entity, or (ii) equity interests having the right to at least fifty percent (50%) of the profits of an Entity or, in the event of dissolution, to at least fifty percent (50%) of the assets of an Entity; (b) the right to appoint, directly or indirectly, a majority of the board of directors; (c) the right to Control, directly or indirectly, the management or direction of the Entity by contract or corporate governance document; or (d) in the case of a partnership, the holding by an Entity (or one (1) of its Affiliates) of the position of sole general partner.
Control Deficiency	Has the meaning given in Section 9.8 of the Agreement.
Corrective Action Plan (CAP)	Means a written action plan prepared by Service Provider that (i) clearly identifies the applicable problem or failure, (ii) describes the desired situation going forward, and (iii) sets forth the specific steps that shall be taken to solve the identified problem or correct the identified failure.
CPA	Comptroller of Public Accounts
Crisis	Any situation that is threatening or could threaten to harm people or property, seriously interrupt business, significantly damage reputation and/or negatively impact the bottom line.
Critical Deliverable(s)	Means the One-Time Deliverables and Recurring Deliverables that have associated Deliverable Credits payable to TxDOT in the event Service Provider fails to successfully and timely complete such Deliverables as identified in Exhibit 3.1 .
Critical Project Deliverable Credits	Has the meaning given in MSA Attachment E Form of Work Order.
Critical Service Level	Any Service Level designated as "critical" by TxDOT, and with respect to which TxDOT may become entitled to receive Service Level Credits as a result of Service Provider’s failure to satisfy the associated Service Level standards as set forth in Exhibit 3.0 Performance Model .
CRM	Customer Relationship Management
Critical Uptime	Means the aggregate number of minutes in the specified period(s) in the applicable Measurement Window during which a defined Service component is required to be Available. Unless otherwise specified in the Agreement, the Service Management Manual, or the CMDB, Critical Uptime equals the total number of minutes in the Measurement Window. A defined Service component is not required to be Available during Scheduled Downtime.
Cross-Functional Services	Those Services performed in connection with performing, and in support of, each of the Services.
Data Lake	A centralized repository that allows for storage of structured and unstructured data at any scale

Term	Definition
Deliverable	All Materials, processes, inventions, Work Products, and information that Service Provider develops for or on behalf of TxDOT, in whole or in part, solely or jointly with others, including all intermediate and partial versions thereof in whatever medium fixed or embodied, and any and all documentation relating thereto, including any code (including source and object), scripts, APIs, interfaces, menus, structures, operational instructions, text, graphics, animation, audio or digital video components, specifications, data, reports, schematics, research, configurations, flow charts, knowledge bases, notes, outlines, formulae, training materials, documentation, manuals, processes, algorithms and the like created in connection therewith, whether or not protected by copyright, patent, trademark law, or any similar intellectual property law and all materials developed or created by Service Provider for TxDOT under Statements of Work.
Deliverable Charges	Has the meaning given in Exhibit 4.0 .
Deliverable Credits	Has the meaning given in Section 7.3 of the Agreement.
Depositor	Has the meaning given in Attachment C Form of Source Code Escrow to the Agreement.
Deposit Materials	Has the meaning given in Attachment C Form of Source Code Escrow to the Agreement.
Derivative Work(s)	Work based on one (1) or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable Laws, but excluding the preexisting work.
Designated TxDOT Representative	Has the meaning given in Section 10.1(a) of the Agreement.
Developed Material(s)	Any new Materials or any modifications, enhancements, improvements, Upgrades or Derivative Works of such Materials that are developed pursuant to the Agreement and paid for by TxDOT under the Agreement. Developed Materials does not include any underlying Service Provider or Third Party Owned Materials.
Development or Development Environment	The Systems environment in which Software and databases are initially designed and created. TxDOT may have more than one Development Environment.
Development and Testing	A software development process that involves synchronized application of a broad spectrum of defect prevention and detection strategies in order to reduce software development risks, time, and costs.
Development and Testing Environment	A setting in which the software development and testing/test process takes place.
Development Tool	All software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials, and media related thereto) that are used in the development, testing, deployment, and maintenance of Software. Development Tools shall include all such programs and programming in use or required to be used as of the Commencement Date. Development Tools also shall include all such programs and programming developed and/or introduced by or for TxDOT or Service Provider during the Term.
Deviations	Has the meaning given in Section 4.1 of Exhibits 2.1.2 and 2.1.4 ,
DevOps	A set of software development practices that combine software development (Dev) and information technology operations (Ops) to shorten the systems development life cycle while delivering features, fixes, and updates frequently in close alignment with business objectives
Disaster	Means (i) a sudden, unplanned calamitous event causing great damage or loss to TxDOT directly or to any third party that requires an immediate response by TxDOT as part of its Disaster Recovery Plan, (ii) any event that prohibits the ability of TxDOT to provide critical business functions for some predetermined period of time, or (iii) any other event that is designated as a Disaster under the applicable Disaster Recovery Plan.
Disaster Recovery (DR) Services	The process of following specific advance arrangements and procedures in response to a disaster, resumption of the critical business functions within a predetermined period of time, minimizing the amount of loss, and repairing or replacing the damaged facilities as soon as possible. Disaster Recovery Services include support and coordination with the Business Continuity Services.
Disaster Recovery Plan (DRP)	The plan to execute Disaster Recovery Services.
Disaster Recovery Test	The test of the Disaster Recovery Plan

Term	Definition
Document Repository	A repository to store and manage all TxDOT documentation, including the Service Management Manuals, knowledge bases of Services, known errors and workarounds, training content, Frequently Asked Questions, and similar documentation for the Service Provider's organization as well as from other Service Component Providers as specified by TxDOT
DQM	Data Quality Management
Earnback	Means the methodology used to determine the potential return of a Service Level Credit as described in Exhibit 3.0 .
Effective Date	Has the meaning given in the "Authority to Execute" paragraph located on the signature page of the Agreement.
EIR	Electronic and Information Resources
Entity(ies)	A governmental body, agency, unit, or division, corporation, partnership, joint venture, trust, limited liability company, limited liability partnership, association, or other organization or entity.
Equipment	Means the computer, telecommunications, and facility-related hardware, equipment, and peripherals (and all modifications, replacements, Upgrades, enhancements, documentation, materials, and media related thereto) that are used in connection with the Services by Service Provider.
Equipment Leases	Means all leasing arrangements whereby TxDOT, Service Provider or any TxDOT Contractor leases Equipment as of the Effective Date which shall be used by Service Provider to perform the Services after the Effective Date. Equipment Leases shall include all such leasing arrangements entered into by or for TxDOT, any TxDOT Contractor or Service Provider during the Term.
ERP	Enterprise Resource Planning solutions enable the integration of primary business processes such as manufacturing, financial management and human resources enabled via software and technology solution. Typically made up of multiple applications that are integrated and are enabled via multiple modules to expand and enhance functionality.
ERP Managed Application Services (MAS)	The TxDOT Service Component for ERP Managed Application Services as defined in Exhibits 2.1.1 and 2.1.2 .
ESBD	Electronic State Business Daily
Escrow Agent	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Escrow Agreement	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Escrow Agreement Effective Date	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Event of Loss	Has the meaning given in Attachment B Insurance and Risk of Loss to the Agreement.
Expected Service Level	The desired level of performance for a Key Measurement, as set forth in Exhibit 3.0
Expected Service Level Default	Service Provider's level of performance for a particular Service Level fails to meet the applicable Expected Service Level (but does not fail to meet the applicable Minimum Service Level), as specified in Exhibit 3.0 , and its Attachments, and has failed to meet such Expected Service Level for four (4) or more occurrences in any rolling twelve (12) month period.
Extraordinary Event	Has the meaning given in Section 11.6(a) , of the Agreement.
FAQ(s)	Frequently Asked Question(s)
Federal Tax Information (FTI)	Any Federal tax information, including without limitation, and tax return-derived information received from the IRS.
FERPA	Family Educational Rights and Privacy Act
FIPS	Federal Information Processing Standards
Fixed Fees	A set amount paid for work or a service and is independent of a time and effort required to produce the identified deliverable.
Full Time Equivalent (FTE)	A level of effort, excluding vacation, holidays, training, administrative and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one FTE is assumed to be 1,920 productive hours per year. Without TxDOT's prior written approval, one dedicated individual's total work effort cannot amount to more than one FTE.
Fully Managed Third Party	Has the meaning given in Section 6.6 of the Agreement.
Fully Managed Third Party Contract	Has the meaning given in Section 6.6 of the Agreement.
GIS	Geographic Information System

Term	Definition
Governance Committee	Has the meaning given in Exhibit 1.2 Governance of the Agreement.
Governance Escalation Event	Has the meaning given in Section 10.3 of the Agreement.
GRC	Governance, Risk, and Compliance
Guarantied Obligations	Has the meaning given in Attachment D Form of Parent Guaranty to the Agreement.
Guarantor	Has the meaning given in Attachment D Form of Parent Guaranty to the Agreement.
Guaranty	Has the meaning given in Attachment D Form of Parent Guaranty to the Agreement.
Hardware Lifecycle Services	The TxDOT Service Component for Hardware Lifecycle Services as defined in Exhibits 2.1.1 and 2.1.10 .
HSP	Historically Underutilized Business (HUB) Subcontracting Plan
Historically Underutilized Business(es) (HUB)	Shall have the meaning given to such term by the Texas Comptroller of Public Accounts (TCPA).
Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	Has the meaning given in Section 15.7(o) of the Agreement.
Incident	An event which is not part of the standard operation of a service and which causes or may cause disruption to or a reduction in the quality of services and TxDOT productivity.
Income Tax	Used in Section 11.4(a) of the Agreement. Means any tax on or measured by the net income of a Party (including taxes on capital, net worth or revenue that are imposed as an alternative to a tax based on net or gross income), or taxes which are of the nature of excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax, or franchise tax for the privilege of doing business.
Information Custodian	Has the meaning given in Section 9.8 of the Agreement.
Infrastructure (also IT Infrastructure)	The entire portfolio of Equipment, System Software, and Network components required for the integrated provision and operation of TxDOT IT systems and Applications.
Initial Term	Has the meaning given in Section 3.1 of the Agreement.
Integration Testing	A level of software testing in which individual units, functions, systems and components are combined and tested as a group to evaluate compliance to defined requirements, business needs, policies and standards.
In-Scope	Those Services or resources that are the subject of Service Provider's obligations under the Agreement.
IP Rights	Means all rights in and to United States and foreign (i) patents, patent disclosures, and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (iii) copyrights and works of authorship (whether copyrightable or not), including computer programs, and rights in data and databases, (iv) trade secrets, know-how, and other confidential information, and (v) all other intellectual property rights, in each case whether registered or unregistered, and including all registrations and applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Invoice Data	Has the meaning set forth in Section 12.1(b) of the Agreement.
ISO	International Organization for Standards
Issuers	Has the meaning set forth in Section 13.5(d) of the Agreement.
ITD	Information Technology Division of TxDOT.
ITD SG	Information Technology Division Service Governance function.
ITIL	Means the "Information Technology Infrastructure Library," a world-wide recognized best-practice framework for the management and delivery of IT services throughout their full life-cycle.
IT Service Management (ITSM)	The entirety of activities – directed by policies, organized and structured in processes and supporting procedures — that are performed by an organization or part of an organization to plan, deliver, operate and control IT services offered to customers.
ITSCM	Information Technology Service Continuity Management
IVR	Integrated Voice Response

Term	Definition
Key Personnel	Any Service Provider staff in a management or decision-making position regarding the Contract. Key Personnel are those individuals identified as such in the Agreement.
Key Service Level	Any Service Level designated as "key" by TxDOT as set forth in Exhibit 3.0 Performance Model .
Knowledge Database	A centralized repository for information
Known Error Database	A database documenting all Known Errors within a System or Systems
Known Error	A problem that has a documented root cause and a Workaround
LAR	Legislative Appropriations Request
Laws	All federal, state and local laws, statutes, ordinances, regulations, rules, executive orders, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof.
Legacy Applications	Application programs that operate with obsolete or inefficient hardware or software technology.
Level 1 Support	Support that is provided as the entry point for inquiries or problem reports from Authorized Users. If Level 1 personnel cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate Level 2 personnel or a Third Party for resolution.
Level 2 Support	Support that serves as a consolidation point for inquiries and problems between Level 1 and Level 3. For example, Level 2 Support might exist in a computer operations or a distribution/mail out center. If Level 2 personnel cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate Level 3 personnel or a Third Party for resolution.
Level 3 Support	Support provided by the personnel or Third Party that is most knowledgeable about the underlying problem or question and that is utilized when efforts to resolve the problem or question by Level 1 and Level 2 Support have failed or are bypassed. Inquiries or problems are usually reported by Level 1 or Level 2 Support personnel, but may be initiated directly by Authorized Users or the Service Provider.
Level 4 Support	Support provided by the personnel or Third Party that is most knowledgeable about the underlying problem or question and that is utilized when efforts to resolve the problem or question by Level 1, Level 2 and Level 3 Support have failed or are bypassed. Inquiries or problems are usually reported by Level 1 or Level 2 Support personnel, but may be initiated directly by Authorized Users or the Service Provider. This also includes working directly with OEM and Software manufacturer regarding major incidents or problems that require advanced Services
Losses	All losses, liabilities, damages (including punitive and exemplary damages), fines, penalties, settlements, judgments, interest and claims (including taxes), in each case that a court finally awards to a third party or which are otherwise included in the amount payable to a third party and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, experts, settlement, judgment, interest and penalties), as incurred.
Maintainability	The characteristics of a Service that determines how easy or difficult it is to provide existing and potentially enhanced services.
Major Incident	The highest category of impact for an Incident. A Major Incident results in significant disruption to business operations.
Major Problem	A cause of one or more Major Incidents. The cause is not usually known at the time a Problem record is created, and the Problem Management Process is responsible for further investigation.

Term	Definition
Major Enhancement	New application development or enhancement initiative that requires more than one-hundred (100) hours of effort exclusive of Project Management and will be approved through the Request for Solution (RFS) process. Application development includes the services described in Section 4.2 Application Customization and Enhancements of Exhibit 2.1.2 and Section 4.3 Application Customization and Enhancements of Exhibit 2.1.4 . Major Enhancements typically result in change to functionality (add, change, remove) and include, but are not limited to, upgrades, modifications to reports, and enhancement release management. Major Enhancement activities exclude the services described in Section 4.3 Application Break Fix Support and Article 5 Infrastructure Operations and Maintenance of Exhibit 2.1.2 and Section 4.4 Application Break Fix Support and Article 5 Infrastructure and Operations Services of Exhibit 2.1.4 .
Managed Business Network Services	The TxDOT Service Component for Managed Business Network Services as defined in Exhibits 2.1.1 and 2.1.6 .
Managed Third Parties	Means the TxDOT Contractors listed in Exhibit 4.1 (and any substitutes or replacements therefor reasonably designated by TxDOT), including any Fully Managed Third Parties.
Managed Traffic Network Services	The TxDOT Service Component for Traffic Network Services as defined in Exhibits 2.1.1 and 2.1.8 .
Management Tools	All items used by Services Provider to deliver and manage the Services, including but not limited to software products and tools, code, scripts, bots, automation, and any and all methods, processes, inventions, machines, compositions, know-how, and show-how related thereto (and all modifications, replacements, Upgrades, improvements, enhancements, documentation, materials and media related thereto). Management Tools shall include all such products and tools in use or required to be used as of the Commencement Date, including those set forth in Exhibit 3.2 Service Level Definitions , those as to which the license, maintenance, or support costs as required by Exhibit 4.2 Financial Responsibility Matrix , and those as to which Service Provider received reasonable notice and/or access prior to the Commencement Date. Management Tools also shall include all such products and tools selected and/or developed by or for TxDOT or Service Provider during the Term.
Master Services Agreement (MSA)	See "Agreement."
Materials	All tangible and intangible items and property, including but not limited to code; tools; scripts; bots; automation; formulae; algorithms; processes; process improvements; procedures; designs; concepts; inventions; machines; articles of manufacture; compositions; improvements; methodologies; trade secrets; technology; Software (in both object and source code form); configurations; databases; specifications; any all methods, process, inventions, machines, compositions, know-how, and show-how related thereto; and all records thereof, including documentation, design documents and analyses, interface documentation, studies, tools, plans, models, flow charts, reports and drawings.
Measurement Window	The time during, or frequency by, which a Service Level shall be measured. The Measurement Window will exclude approved scheduled maintenance.
Middleware	Software that facilitates interactions and integration between and among two (2) or more separate Software programs, Systems, or platforms.
Minimum Service Level	Means the minimum level of performance set forth in Exhibit 3.2 with respect to each Key Measurement.
Minimum Service Level Default	The Service Provider's level of performance for a particular Key Measurement fails to meet the applicable Minimum Service Level at any time.
Minor Enhancement	New application development or enhancement initiative that requires one-hundred (100) hours or less of effort excluding Project Management.
Monthly Charges	The total Charges invoiced by Service Provider in any calendar month for Services (excluding Pass-Through Expenses, Out-of-Pocket Expenses and Service Taxes).
Monthly Invoice	Has the meaning given in Section 12.1(a) of the Agreement.
Monthly Invoice Amount	Charges due and owing for the preceding month as defined in Exhibit 4.0 and any other amounts payable by TxDOT to Service Provider pursuant to the express terms of the Agreement.

Term	Definition
Monthly Productive Hours Worked	With respect to any month and any Service Provider Personnel, the number of productive hours worked by such Service Provider Personnel, excluding non-productive time (e.g., commuting time, vacation, holidays, training unrelated to the Services, education, marketing, administrative staff meetings, medical leave, and military leave).
Multi-sourcing Services Environment	Has the meaning given in Section 9.12 of the Agreement.
N/N-1	The version of Software designated and/or approved by TxDOT or the applicable governance committee, as the current standard for deployment. N-1 is one (1) release prior to the above-described designated or approved Software version.
NCWF	National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework
Network	Collectively, WAN, LAN, and other communication or transport networks.
Network Topology	The arrangement in which the nodes or interfaces to the Network are connected.
New Service(s)	Services requested by TxDOT or required by applicable Laws (without limiting the obligation of the Parties under Section 11.5 of the Agreement) (i) that are materially different from the Services, (ii) that require materially different levels of effort or resources from Service Provider to provide the Services, and (iii) which are not required for Service Provider to meet the Service Levels. For the avoidance of doubt, New Services shall not include (a) increases in the volume of Services for which there is an associated Resource Baseline or charging methodology, or (b) the disaggregation of an existing service.
NICE	National Initiative for Cybersecurity Education
Noncompliance	Means each instance that a Deliverable fails to meet its Acceptance Criteria, or fails to fulfill the requirements of the Specifications or the Agreement.
Notice of Election	Has the meaning given in Section 17.3 of the Agreement.
Offshore	Refers to an operational location of Service not within the United States of America.
One-Time Charges	Any Charges that are specified by the Service Provider and which are non-recurring and are typically associated with start-up and implementation costs.
One-Time Deliverables	Those Deliverables that are non-recurring as identified in Exhibit 3.1 .
Online System	Computer system that is a part of, or is embedded in, a larger entity, such as a communications system, and that interacts in real or near-real time with the entity and its users.
Onshore	Refers to an operational location of Service within the United States of America.
Onsite	Refers to physical presence at a location of Service delivery.
Operating Agreement (OA)	A documented agreement between the Service Provider and other Service Provider documenting the joint operation, issue resolution, and governance of the delivery of the Services.
Out-of-Pocket Expenses	Reasonable, demonstrable, and actual expenses due and payable to a Third Party by Service Provider that are approved in advance by TxDOT and for which Service Provider is entitled to be reimbursed by TxDOT under the Agreement. Out-of-Pocket Expenses shall not include Service Provider's overhead costs (or allocations thereof), general and/or administrative expenses or other markups. Out-of-Pocket Expenses shall be calculated at Service Provider's actual incremental expense and shall be net of all rebates and allowances.
Outage(s)	A condition such that a System, Service, Application System, Equipment, or network component is not Available or is substantially not Available and is impacting normal business operations.
Parcel	Has the meaning given in Attachment C Form of Source Code Escrow to the Agreement.
Party(ies)	Has the meaning given in the recitals to the Agreement.
Pass-Through Expense(s)	The Service Provider expenses listed in Exhibit 4.0 which TxDOT has agreed to pay directly or reimburse to Service Provider on an Out-of-Pocket Expenses basis.
Payment Card Information	Used in Section 13.6 of the Agreement. Means any personally identifiable information associated with the holder of a credit or debit card.
Payment Deliverable	Has the meaning given in Section 4.5 of the Agreement.
PC	Personal Computer

Term	Definition
PCI	Payment Card Industry
PCI DSS	Has the meaning given in Section 13.6 of the Agreement.
Performance Testing	A level of software testing in which software functions, systems and components are combined and tested evaluate compliance to defined requirements, business needs, policies and standards to determine how a system will perform in terms of responsiveness and stability under a defined workload. .
Person	Has the meaning given in Attachment D Form of Parent Guaranty to the Agreement.
Physical DBA	The database administrator responsible for the environmental aspects of a database, including but not limited to the following activities: <ol style="list-style-type: none"> 1. Supporting the design and implementation of multiple production, test and development database subsystems, exclusive of table creation for Development and Initial Test Environments. 2. Capacity planning for database instances and reorganizing as necessary. 3. Performing stress testing and database performance tuning. Installing, maintaining, and monitoring the DBMS Software and products, including technical advice and support to the ADM staffs and Logical DBAs as may be required.
PII	Personally Identifiable Information
PIR	Post Implementation Review
PMO	Project Management Office
POE	Proof of Entitlement
ITD SG Portal	The online Internet site providing access and links to Services, service governance documentation, reports, SMMs, and other applications.
PPM	Program and Project Management
Pre-commencement	Period between the Effective Date and the Commencement Date of the Agreement.
Priority Level (P1, P2, P3, P4)	The categorization of an incident, request or problem associated with the Services based on the potential impact of the problem to TxDOT, as further defined in Exhibit 3.0 .
Problem(s)	An underlying cause of one (1) or more Incidents. A Problem is labeled a “Known Error” when the root cause is known and a temporary workaround or permanent solution has been identified.
Problem Management	The process of tracking and managing all problems arising in TxDOT’s IT environment, and resolving those problems arising from or related to the Services.
Production or Production Environment	The system environment in which an organization's data processing is accomplished. This environment contains TxDOT business data and has the highest level of security and availability of all environments (includes training and other Production-like environments).
Project(s)	Means discrete units of work approved by TxDOT to be completed within a defined timeframe (as opposed to an ongoing service), undertaken to create a unique product or result, that (A) provides information resources technologies and creates products, services, or results within or among elements of a state agency; and (B) is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.
Project Request(s)	Has the meaning given in Section 4.6(a) of the Agreement.
Project Work Order	Has the meaning given in Section 4.6(b) of the Agreement.
Public Information Act	Has the meaning given in Section 13.1(b)(vii) of the Agreement.
Q&A	Question and Answer
Quality Assurance (QA)	The actions, planned and performed, to provide confidence that all processes, Systems, Equipment, Software, and components that influence the quality of the Services are working as expected individually and collectively.
Quality of Service (QoS)	The measurement of the overall performance and ability to achieve maximum performance based on priority of workloads and applications
Rate Card	A listing of hourly personnel pricing rates as documented in Exhibit 4.1 .
RCA	Root Cause Analysis
Recovery Point Objective (RPO)	The recovery point objectives, as designated in Exhibit 2.3 , expressed as the acceptable amount of data loss measured in time prior to an event that has been declared as a disaster.

Term	Definition
Recovery Time Objective (RTO)	The recovery time objectives, as designated in Exhibit 2.3 , expressed as the duration of time within which an Application, including all technology components included in the TxDOT DR Plan must be recovered, restored and operational starting from the time of declaration of a disaster.
Recurring Deliverables	Means those Deliverables to be provided on a scheduled and recurring basis as identified in Exhibit 3.1 .
Registrant	Has the meaning given in Attachment C Form of Source Code Escrow to the Agreement.
Regression Testing	A level of software testing in which individual units, functions, systems and components are combined and tested to evaluate functional and non-functional aspects to ensure compliance with previously developed systems and software..
Regulated Information or Regulated Data	Has the meaning given in Section 13.4 of the Agreement.
Release Condition(s)	Has the meaning given in Attachment C Form of Source Code Escrow to the Agreement.
Renewal Term	Has the meaning given in Section 3.2 of the Agreement.
Reports	Has the meaning given in Section 9.1(a) of the Agreement.
Request for Change (RFC)	A formal proposal for a Change to be made to any component of an IT infrastructure or any aspect of an IT service. An RFC shall include details of, and the justification for, the proposed Change. TxDOT must approve all RFCs in writing.
Request for Offer (RFO)	A formal document issued by TxDOT to the market or vendor community requesting an offer for goods or services. (This document.)
Request for Solution (RFS)	A Service Request that requires development of a proposal for TxDOT approval to fulfill the request.
Request Management	The process of tracking and managing all requests from Authorized Users arising in TxDOT’s IT environment, and resolving those requests arising from or related to the Services.
Requests	Has the meaning given in Exhibit 2.2 Termination Assistance Services to the Agreement.
Required Consent(s)	The consents (if any) required to be obtained: (i) to assign or transfer to Service Provider TxDOT licensed Third Party Materials, Third Party Contracts, Equipment Leases or Acquired Assets (including related warranties); (ii) to grant Service Provider the right to use and/or access the TxDOT licensed Third Party Materials, Third Party Contracts, and TxDOT Provided Equipment in connection with providing the Services; (iii) to grant TxDOT and/or their designee(s) the right to use and/or access the Service Provider Owned Materials, Third Party Materials and Equipment acquired, operated, supported, used, or required to be used by Service Provider in connection with providing the Services; (iv) to assign or transfer to TxDOT and/or their designee(s) any Developed Materials to the extent provided in the Agreement; (v) to assign or transfer to TxDOT and/or their designee(s) Service Provider Owned Materials, Third Party Materials, Third Party Contracts, Equipment leases or other rights following the Term to the extent provided in the Agreement; and (vi) all other consents required from third parties in connection with Service Provider's provision of, and TxDOT's receipt and use of, the Services and Service Provider's performance of its obligations hereunder.
Requirements Traceability Matrix	A mechanism that allows the follow-up of requirements through the entire SDLC process to ensure a requirement is addressed in all phases and applicable test cases corresponding to requirements can be identified.
Resolution (also Resolve)	The restoration of full service or the completion of the service request in a manner acceptable to TxDOT or the applicable Authorized User in their reasonable discretion. Resolution may include the restoration of full service by workaround or other alternative means.
Resolution Time	The number of minutes between the Start Time for an Incident and the time such Incident is Resolved.
Resolve	See “Resolution.”
Resource Unit (RU)	A measurable device, unit of consumption, or other unit or resource utilization associated with the Services, as described in Exhibit 4.0 to the Agreement, that is used for purposes of calculating Charges.
Respondent	Any individual, partnership, or corporation submitting a Response. Unless the Contract clearly indicates otherwise, all terms and conditions of the Contract that refer to Respondent apply with equal force to Service Provider.
Response	Has the meaning given in the recitals of the Agreement.

Term	Definition
Response Time	The number of elapsed minutes between the time a Call is received and the time Service Provider responds to the Authorized User or other designated TxDOT contact to acknowledge and verify the problem.
Retained Expense	An expense retained by TxDOT and not included in Service Provider's pricing that is related to the services provided by the Service Provider. The Service Provider shall help identify ways to reduce all costs (in price, pass-through or retained), where possible.
Retained Systems and Processes	Means those systems and processes of TxDOT for which Service Provider has not assumed responsibility under the Agreement (including those provided, managed, operated, supported and/or used on TxDOT's behalf by TxDOT Contractors). Retained Systems and Processes include equipment and software associated with such systems and processes.
Root Cause Analysis (RCA)	The formal process, specified in the Service Management Manual, to be used by Service Provider to diagnose the underlying cause of problems at the lowest reasonable level so that effective corrective action can be taken.
SaaS	Software as a Service
SAM	System for Award Management
SCE Attachment	Has the meaning given in <u>Attachment C Form of Source Code Escrow</u> to the Agreement.
Scheduled Downtime	A period in which a subject Service Component is not required to be Available due to scheduled time required to perform system maintenance (for example, preventive maintenance, system upgrades, etc.), provided that such period has been mutually agreed between the Parties and is scheduled so as to minimize the impact to TxDOT's business. The Service Provider shall maintain Availability during such periods to the extent reasonably practicable.
Scheduled Event(s)	A planned activity that is to occur in the future and may impact system availability and can create a Scheduled Downtime.
Secretary	Has the meaning given in <u>Section 13.3(j)</u> of the Agreement.
Security Breach	Is the unauthorized acquisition of computerized data that compromised the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner.
Security Incident	An event which results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of information or information resources.
Security Incident Management Plan	Has the meaning given in <u>Exhibit 2.1.1</u> of the Agreement.
Sensitive Information	Information that could be subject to release under the Texas open records request process but should be controlled to protect third parties. This information and any disclosure must be reviewed and approved by TxDOT prior to release.
Sensitive Personal Information	As defined by the Texas Business and Commerce Code 521.002.
Service(s)	Has the meaning given in <u>Article 4</u> of the Agreement.
Service Catalog	Has the meaning given in <u>Exhibit 2.1.1</u> of the Agreement.
Service Component	A single area which is represented with an Agreement between TxDOT and the Service Component Provider or delivered by TxDOT ITD directly (e.g., ERP Managed Application Services, Application Development and Maintenance Services, Managed Network Services, DCS TPC, DCS PCM, Desktop Engineering, MSI, etc.).
Service Component Provider (SCP)	Collectively, all Service Providers, who have entered into an agreement with TxDOT to provide the Services contemplated by one or more Statement(s) of Work (i.e. ERP MAS, ADM, Business Network, Traffic Network, Hardware Lifecycle, Service Desk, Technical Field Services, Mobile Device Management Services, etc.).
Service Continuity Management	The activities associated with providing prioritized service continuity and disaster recovery Services for the Applications, and their associated infrastructure.
Service Delivery Failure	Has the meaning given in <u>Exhibit 3.0</u> to the Agreement.

Term	Definition
Service Desk	The facilities, associated technologies, and fully trained staff who respond to Calls, facilitate all Incident Management and Request Management activities, and act as a single point of contact for coordination and communication to Authorized Users and Service Providers in regard to the Services.
Service Desk User	An Authorized User
Service Level(s)	Individually and collectively, the quantitative performance standards for the Services set forth in Exhibit 3.0 to the Agreement.
Service Level Credit	The monetary amounts that the Service Provider shall be obligated to pay to TxDOT (or apply against Monthly Charges) in the event of Service Level Defaults.
Service Level Default	Has the meaning given in Exhibit 3.0 to the Agreement.
Service Level Escalation Event	Has the meaning given in Exhibit 3.0 to the Agreement.
Service Level Invoice Amount	Charges due and owing for the preceding month, including, to the extent applicable, ECA adjustments and any other amounts payable by TxDOT to Service Provider pursuant to the express terms of the Agreement (excluding SSC, Rate Card Charges, Transition, and Other charges as approved by TxDOT).
Service Management Manual (SMM)	The management procedures manual for Services as described in Exhibit 1.3 .
Service Provider	Has the meaning set forth in the preamble to the Agreement.
Service Provider Account Director	Has the meaning given in Section 8.2 of the Agreement and shall describe the Service Provider representative responsible for both the day-to-day relationship with TxDOT as well as the delivery of all Services to TxDOT.
Service Provider Affiliates	Means any Affiliate of Service Provider.
Service Provider Laws	Has the meaning given in Section 15.11(d) of the Agreement.
Service Provider Facility(ies)	Means, individually and collectively, the facilities owned or leased by Service Provider (or its Affiliates or Subcontractors) from which Service Provider (or its Affiliates or Subcontractors) provides any Services; itemized in Exhibit 4.1
Service Provider Personnel	Those employees, representatives, contractors, subcontractors, and agents of Service Provider and its Subcontractors.
Service Provider-Provided Software	Refers to any software product that the Service Component Provider provides in the course of delivery of Services.
Service Request (or Request for Service)	A request for information, advice, access or standard change to an IT service that does not require solution proposal development. Examples of such Service Request include provisioning ID access, password resets, and Service Catalog requests.
Service Revenue	Texas.gov program revenue that is not transaction based, such as monthly hosting fees and recurring payment fees.
Services	Has the meaning given in Section 4.1 of the Agreement.
Services Agreement	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Service Taxes	All sales, use, excise, and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by TxDOT from Service Component Providers, excluding Income Taxes.
SKU	Stock Keeping Unit
SLA	Service Level Agreement
SMM	Service Management Manual
Software	Means all Materials consisting of software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto), including Antivirus Software, Application Software, Development Tools and System Software.
Software Development Life Cycle (SDLC)	A term used in system engineering, information systems and software engineering to describe a process for planning, creating, testing, and deploying an information system. The method is designed to ensure high quality software is built and released in a rapid manner, with minimal defects and a cost effective manner.
Source Code	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Specialized Services	Has the meaning given in Section 9.7 of the Agreement.

Term	Definition
Specifications	Means, with respect to processes, Software, Equipment, Systems or other Deliverables to be designed, developed, delivered, integrated, installed, and/or tested by Service Provider, the technical, design and/or functional specifications set forth in the applicable Third Party documentation, in TxDOT's description of any New Services, or otherwise agreed upon in writing by the Parties.
SSC	Software Services Charge(s). Has the meaning given in Exhibit 4.0 of the Agreement.
Start Time	With respect to an Incident or a Call, the time when the Incident ticket is created. With respect to an Outage, the earlier of the time when the Incident is detected or should have been detected (by the applicable monitoring for the System). If more than one (1) ticket is created for the same root cause, the Start Time shall be based on the earliest of the ticket creation times.
State	The State of Texas, unless expressly stated otherwise.
State Auditors	The State Auditor's Office and the State Comptroller Claims Division
State Legislature	The governmental legislative body of the State.
State Travel Regulations	Means Chapter 660 of the Texas Government Code, the General Appropriations Act, and any rules or regulations adopted by the State Comptroller of Public Accounts thereunder.
Strategic Plan(s)	The plan(s) that may be periodically developed by TxDOT that set forth TxDOT's key operational objectives and requirements and outline its strategies for achieving such objectives and requirements. TxDOT may revise the Strategic Plan from time to time. The Strategic Plan is likely to include both annual and multi-year strategies, objectives, and requirements.
Statement(s) of Work (SOW)	Means Exhibit 2.1.1, Exhibit 2.1.2, and Exhibit 2.1.4 and their associated Exhibits and Attachments.
Statewide Code Baseline	Means the master ERP Peoplesoft software provided by the Texas Comptroller of Public Accounts which modifies the base Oracle Peoplesoft software to incorporate state and federal legal mandates. There are mandatory code changes and updates that ERP Hub state agencies must adopt and discretionary code changes that they may or may not adopt.
Statewide Data Center(s)	The State data center in San Angelo, Texas, or Austin, Texas.
Statewide DCS Service Provider	The TxDOT Service Component for infrastructure services as provided through the Statewide Data Center Services Program.
Statewide MSI	The TxDOT MSI Service Component for infrastructure services as provided through the Statewide Data Center Services Program.
Subcontractors	Subcontractors (of any tier) of Service Provider, including Affiliates of Service Provider performing Services under the Agreement pursuant to Section 9.9 of the Agreement. The initial list of Subcontractors is set forth in Exhibit 4.1 to the Agreement.
Subsidiary	Has the meaning given in Attachment D Form of Parent Guaranty to the Agreement.
System(s)	An interconnected grouping of manual or electronic processes, including Equipment, Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, Upgrades or enhancements to such System. Systems shall include all Systems in use or required to be used as of the Commencement Date, all additions, modifications, substitutions, Upgrades, or enhancements to such Systems and all Systems installed or developed by or for TxDOT or Service Provider during the Term.
System Testing	A level of software testing in which complete and fully integrated software is and tested to evaluate compliance to defined requirements, business needs, policies and standards in an end to end manner.
Systems Development Life Cycle	A term used in system engineering, information systems and software engineering to describe a process for planning, creating, testing, and deploying an information system.

Term	Definition
Technology Evolution	Any improvement, upgrade, addition, modification, replacement, or enhancement to the standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, standards, equipment, software, systems, tools, products, transport systems, interfaces and personnel skills available to provide the Services in line with the best practices of first tier leading providers of services that are the same as or similar to the Services. Technology Evolution includes, as relating to such items for such purpose: higher capacity, further scaling and commercializing of processes, more efficient and scalable processes, new versions and types of applications and systems/network software, new operational or IT Infrastructure processes, and new types of hardware and communications equipment that shall enable Service Provider to perform the Services more efficiently and effectively as well as enable TxDOT to meet and support their operational requirements and strategies.
Technology Refresh Plan	A deliverable designed to maximize business value by identifying optimal replacement of Equipment based on mean time between failure, ongoing maintenance and operational costs and industry best practices.
Technical Recovery Guide (TRG)	Means a compilation of technical information, procedures, environmental configurations, operations and dependencies required to document each application and environment to ensure technical recovery of hardware, Operating System, storage, Network and other Equipment. Technical Recovery Guides capture operational elements, dependencies and instructions which must be re-enabled and sequenced appropriately to restore business operations. Exhibit 2.3 further defines the specific content which must be included in the Technical Recovery Guides.
Technical Requirement(s)	The underlying hardware and software requirements that would be required to support and run a solution.
Technology Plan	Has the meaning given in Exhibit 3.1 of the Agreement.
Time Critical Deliverable	Has the meaning given in Section 4.5 of the Agreement.
Term	The Initial Term and the Renewal Terms, if any, including any period during which Termination Assistance Services are provided by Service Provider under the Agreement.
Termination Assistance Services	(i) The Services (including the terminated, insourced, resourced, or expired Services, the Services described in Section 4.3 of the Agreement, the Services described in Exhibit 2.2 , to the Agreement and, in each case, any replacements thereof or supplements thereto), to the extent TxDOT requests such Services during a Termination Assistance Services period; (ii) Service Provider's cooperation with TxDOT and their designee(s) in the orderly transfer of the Services (or replacement or supplemental services) to TxDOT and/or their designee(s); and (iii) any New Services requested by TxDOT in order to facilitate the transfer of the Services (or replacement or supplemental services) to TxDOT and/or their designee(s).
Termination Charge	The termination charges payable by TxDOT as set forth in Exhibit 4.0 to the Agreement. The Termination Charge shall be calculated as of the later of (i) the end of the Term (or the date of termination of the applicable Services under the Agreement), and (ii) the satisfactory completion of all Termination Assistance Services.
Third Party(ies)	A legal entity, company, or person(s) that is not a Party to the Agreement and is not an Affiliate of a Party.
Third Party Contract(s)	All agreements between Third Parties and TxDOT or Service Provider that have been or shall be used to provide the Services.
Third Party Materials	Materials that are owned by Third Parties and provided under license or lease to Service Provider, TxDOT and that have been or shall be used to provide or receive the Services. Third Party Materials shall include Materials owned by Subcontractors (excluding Affiliates of Service Provider) and used in the performance of the Services.
Third Party Software	Used in MSA Section 14.3.(c) . Means Software owned by a Third Party that is used by Service Provider in the performance of Services.
Third Party Vendor(s)	A Third Party that provides products or services to any Party that is related to, or is in support of, the Services (e.g., hardware vendors, premier support contracts, etc.). Third Party Vendors do not include Subcontractors.

Term	Definition
TOGAF	Means the Open Group Architecture Framework, a framework for enterprise architecture that provides an approach for designing, planning, implementing and governing an enterprise information technology architecture.
Time Critical Deliverable	Has the meaning given in Section 4.5 of the Agreement
Transaction Fee	Texas.gov Fees charged per transaction.
Transition	Has the meaning given in Section 4.2 of the Agreement.
Transition Plan	Means the plans set forth in Exhibit 3.1 to the Agreement and developed and updated pursuant to Section 4.2 of the Agreement.
Transition Services	Used in Section 4.2 of the Agreement. Means the transition activities, functions and deliverables described in the Transition Plan and such other tasks as are necessary to enable Service Provider to provide the Services.
TRG	Technical Recovery Guide
Trustee	Has the meaning given in Attachment C Form of Source Code Escrow to the Agreement.
TxDOT	Has the meaning given in the preamble to the Agreement.
TxDOT Auditors	Has the meaning given in Section 9.8(b) of the Agreement.
TxDOT Code of Ethics	Means TxDOT’s ethics code and policies, including the conflicts of interest and sanctions rules and policies, found (i) at 43 Texas Administrative Code, Chapter 10, (ii) in the Ethics Policy promulgated by TxDOT pursuant to Section 572.051 of the Texas Government Code, and (iii) in TxDOT’s Conflicts of Interest Policy at www.txdot.gov.
TxDOT Contractor(s)	Has the meaning as the term is used in Section 4.4.(a) of the Agreement.
TxDOT Confidential Information	Has the meaning given in Section 13.1 of the Agreement.
TxDOT Data	Any data or information of or regarding TxDOT that is provided to or obtained by Service Provider in connection with the negotiation and execution of the Agreement or the performance of Service Provider's obligations under the Agreement, including data and information with respect to the constituency, customer, operations, facilities, products, rates, regulatory compliance, competitors, assets, expenditures, mergers, acquisitions, divestitures, billings, collections, revenues and finances of TxDOT. TxDOT Data also means any data or information (i) created, generated, collected or processed by Service Provider in the performance of its obligations under the Agreement, including data processing input and output, service level measurements, asset information, Reports, third party service and product agreements, contract charges, and retained expense and Pass-Through Expenses, or (ii) that resides in or is accessed through Software, Equipment or Systems provided, operated, supported, or used by Service Provider in connection with the Services, as well as information derived from this data and information, but excluding the following information to the extent not required to be provided or otherwise made available to TxDOT under this Agreement, including with in connection with TxDOT's rights related to Benchmarking, Subcontractors, auditing, Reports, or Termination Assistance Services: (A) financial/accounting information (including costs, expenditures, billings collections, revenues and finances) of Service Provider, its Affiliates or Subcontractors; (B) information created by Service Provider to measure the productivity and efficiency of the Services and/or to improve the processes and procedures used by in the performance of the Services; (C) human resources and personnel information of Service Provider, its Affiliates or Subcontractors; and (iv) information with respect to Third Party Contracts or licenses of Service Provider, its Affiliates or Subcontractors and used in the performance of the Services. Data or information constituting TxDOT Data shall not constitute Service Provider Confidential Information.
TxDOT Facility(ies)	The facilities that are provided by TxDOT for use by Service Provider to the extent necessary to provide the Services as well as those TxDOT and TxDOT Contractor locations at or to which Service Provider is to provide the Services.
TxDOT-Initiated Financial Dispute	Has the meaning given in Section 12.4(d) of the Agreement.
TxDOT Laws	Has the meaning given in Section 15.10(d) of the Agreement.
TxDOT Owned Materials	Has the meaning given in Section 14.1(a) of the Agreement.

Term	Definition
TxDOT Personal Data	That portion of TxDOT data that is subject to any Privacy Laws. This includes, but is not limited to, information which meets the definition of Sensitive Personal Information outlined in Texas Business and Commerce Code 521.002.
TxDOT Provided Equipment	Has the meaning given in Section 6.4(e) of the Agreement.
TxDOT Regulated Data	Has the meaning given in Section 13.4 of the Agreement.
TxDOT Rules	Has the meaning given in Section 6.3(a) of the Agreement.
TxDOT Security Policies	The policies established by TxDOT to support an information resources security function.
TxDOT Standard(s)	Has the meaning given in Section 9.4(a) of the Agreement.
Unanticipated Change	Has the meaning given in Section 11.7 of the Agreement.
Unit Testing	A Software verification and validation method where the programmer gains confidence that individual units of source code are fit for use. A unit is the smallest testable part of an application.
Upgrade(s)	Updates, patch installations, modifications, renovations, enhancements, additions, substitutions and/or new versions or releases of Software or Equipment. For purposes hereof, a workaround or fix to Software or Equipment also constitutes an Upgrade.
Use	To load, access, execute, use, manipulate, practice, process, make, have made, operate, copy, execute, compile, store, purge, reproduce, display, perform, distribute, transmit, receive, modify, maintain, enhance, upgrade, store, create Derivative Works, and exercise any other similar rights; provided however that with respect to Third Party Materials that are Software, unless otherwise permitted under the applicable license agreement, the term "Use" shall not include the right to modify or create Derivative Works.
User Acceptance Test(ing) (UAT)	Testing conducted by the end user using either production or production-like data to validate end-to-end business processes and compare actual and expected results. This is a formal testing step with new Applications or major changes to existing Application, and a successful execution and result leads to the user accepting the system.
Verification	Has the meaning given in Attachment C Form of Source Code Escrow , to the Agreement.
Versioned	Changes are rolled out in distinct releases, the version of the release is maintained in the artifacts being rolled out for compatibility, prior versions are phased out over time through a standard process and all changes are documented.
VM	Virtual Machine
WAN	Wide Area Network
Warranty Period	Means the period commencing on the Effective Date and continuing until the date that is one hundred twenty (120) days after the end of the Term.
Warranty Services	Any activities necessary to repair Problems to enable Applications and Enhancements to perform in accordance with the applicable Acceptance Criteria, documentation or other specifications.
WCAG	Web Content Accessibility Guidelines
Work Orders	Has the meaning given in Attachment E Form of Work Order , to the Agreement.
Work Order Effective Date	Has the meaning given in Attachment E Form of Work Order , to the Agreement.
Work Order Plan	Has the meaning given in Attachment E Form of Work Order , to the Agreement.
Work Product	Means (i) all reports and manuals, including transition plans, business requirements documents, design documents, manuals, training and knowledge transfer materials and documentation, (ii) the Service Management Manual, (iii) Desktop Procedures, and (iv) any intellectual property created as a result of this Agreement to express, embody or execute or perform a function, method or process that is specific to the business of TxDOT.



Texas Department of Transportation

Application Services

Exhibit 1.2

Governance Model

Version 1.0

Solicitation No. 60144000032007

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1 INTRODUCTION

1.1 Governance Model

The Texas Department of Transportation (TxDOT) Information Technology Division (ITD) has established a governance model for TxDOT's ITD services ecosystem. This model governs all ITD services including:

1. Insourced IT functions (including UAM and Server Administration);
2. ITD Service Governance;
3. Application Services: ERP MAS and ADM Services;
4. Managed Network Services: Business and Traffic Services;
5. Infrastructure Services (Statewide DCS Service Provider);
6. Service Desk
7. End User Compute Services (Technical Field Services, Hardware Lifecycle Services, Mobile Device Management, and TxDOT Desktop Engineering); and
8. Information Security Services (including CSOC).

This model involves TxDOT at all levels in governance decision making. This **Exhibit 1.2 Governance Model** describes the governance model, meeting structure; participant roles and responsibilities, and issue management. Within this document the Service Provider is considered and referenced as a Service Component Provider (SCP).

1.2 Service Provider Support of ITD Governance Model Support

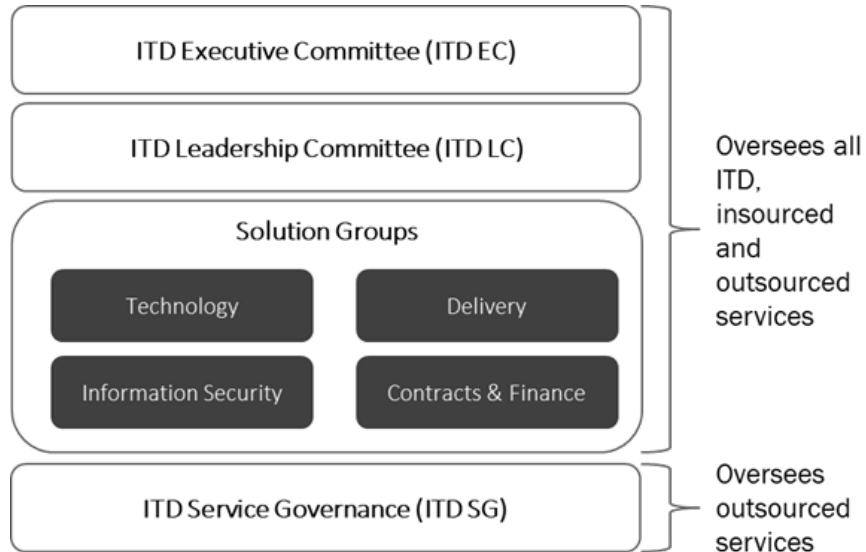
The ITD governance model is a set of defined interactions, roles and expectations that guide the governance of ITD services and the SCP's Agreement. The governance model is designed to facilitate effective communication of direction, service performance, resolution of issues and enable strategic decision making.

To support the governance model, the Service Provider shall:

- 1.2.1.1 Establish working relationships to promote efficient communication, coordination and resolution of issues in a timely manner;
- 1.2.1.2 Support the implementation and operation of a decision-making model that promotes appropriate authority and accountability;
- 1.2.1.3 Support the resolution of issues at the lowest possible organizational level; and
- 1.2.1.4 Support in the formalization and execution of roles and responsibilities regarding contract and issue management among other SCPs and TxDOT.

1.3 ITD Governance Model

1.3.1.1 The model is comprised of four (4) layers:



TxDOT ITD Governance Model

1. The ITD Executive Committee is the highest governance committee with overall responsibility for ITD services strategy, managing customer relationships, setting information security direction, and achieving financial objectives.
2. The ITD Leadership Committee defines ITD enterprise technology and operational goals and promotes their achievement. The committee focuses on enterprise operational performance, customer satisfaction, and resolves enterprise IT issues escalated from the Solution Group level and makes operational enterprise IT decisions.
3. Solution Groups are the front line for overseeing day to day service standards, service delivery and operational information security while also addressing most operational issues that are not initially resolved between SCPs, ITD Service Governance and TxDOT operational staff. The goal is to resolve ITD service issues and at this level through collaboration, data, and consensus-based solution building efforts. Service Provider representatives are fully participating members of the solution groups and committees, except for the Contract & Finance Solution Group and the ITD Executive Committee where they participate by invitation.
4. ITD Service Governance (ITD SG) provides objective administrative oversight of the ITD services through the execution of:
 - a. Service delivery oversight and escalations;
 - b. Performance management including service level management, deliverable management; and

- c. Financial management including SCP invoice management and Service Level Credit and Earnback management.
- 1.3.1.2 Each committee and group have responsibility for operational decisions in their area of expertise and for SCPs, in accordance with their respective Agreements.
- 1.3.1.3 The ITD Governance model committee and group charters and standard meeting agendas are defined in the SMM and subject to change at the discretion of TxDOT as needed to best provide and manage ITD services.

2 Meeting Structure

- 2.1.1.1 Committee and solution group meeting objectives, participants, and standing agendas are defined in the SMM.

3 Roles and Responsibilities

3.1 TxDOT Responsibilities

TxDOT provides overall leadership and coordination for governance. In this role, TxDOT's responsibilities include:

- 3.1.1.1 Facilitate governance committee and solution group meetings and activities, including providing organizational, logistical, and communication support;
- 3.1.1.2 Facilitate the issue management process;
- 3.1.1.3 Triage issues and attempt immediate resolution if possible, and route unresolved enterprise issues to appropriate governance committees for resolution;
- 3.1.1.4 Provide relationship management for customers including serving as a point of escalation for issue resolution;
- 3.1.1.5 Interpret the Agreement from TxDOT's perspective;
- 3.1.1.6 Manage financial interactions, processes, and relationships with SCPs;
- 3.1.1.7 Manage communications;
- 3.1.1.8 Coordinate ongoing training related to Agreement changes, process changes, and New Services; and
- 3.1.1.9 Perform vendor management and compliance functions including development and execution of Agreement amendments.

3.2 SCP Responsibilities

To enable the governance model, all SCPs have an important role as subject matter experts on technology, solutions, and delivery. Service Provider shall, at a minimum, perform the following responsibilities:

- 3.2.1.1 Engage directly with other SCPs and TxDOT to resolve their specific operational issues at the lowest level;
- 3.2.1.2 Assign empowered subject-matter experts to participate as requested in governance committees and solution groups to resolve enterprise issues;
- 3.2.1.3 Research, as necessary, and document Service Providers perspective for issue resolution;
- 3.2.1.4 Provide timely and accurate data, information, and responses to promote prompt resolution of issues; and
- 3.2.1.5 Enable and facilitate use of the issue management process.

3.3 ITD SG Responsibilities

The ITD SG, in its role of overseeing ITD services, has governance responsibilities to support an effective Service Component operating environment, including:

- 3.3.1.1 Plan, schedule and facilitate governance meetings including preparing agendas and presentation materials and taking meeting actions;
- 3.3.1.2 Coordinating issue escalation when multiple Service Components are involved;
- 3.3.1.3 Coordinating Service Component participation in governance meetings;
- 3.3.1.4 Offering process improvement solutions to reduce the number of escalated issues;
- 3.3.1.5 Streamlining the issue escalation processes between Service Components;
- 3.3.1.6 Coordinating implementation of decisions and solutions that are approved by the governance committees; and
- 3.3.1.7 Posting all governance agendas, presentations, meeting notes, decisions, and policies on the Portal.

4 Issues and Escalations

4.1 Issue Management

The Service Provider shall, at a minimum:

- 4.1.1.1 Work with the ITD governance committees and solution groups to address two (2) types of decisions:
 - 4.1.1.1.1 Issue resolution; and
 - 4.1.1.1.2 Strategic decisions as per the roles and responsibilities.
- 4.1.1.2 Escalate issues and present to the appropriate governance committee or solution groups based on their defined charters in the SMM
- 4.1.1.3 Following the escalation protocol as defined in the SMM, which may include:
 - 4.1.1.3.1 TxDOT performs triage and routes unresolved issues to appropriate committees and solution groups;
 - 4.1.1.3.2 All SCPs can present their perspective and position to the committee or solution group;

- 4.1.1.3.3 All decision-making agenda items will be broadcast in advance of the meeting; and
- 4.1.1.3.4 After the meeting, decisions will be documented with the issue.

4.2 Escalation Process

The Service Provider shall, at a minimum:

- 4.2.1.1 The Service Provider strives to resolve issues at the operational level; however, if unable to resolve, follow the defined escalation process to communicate the issue promptly and efficiently to the appropriate committee or solution group for resolution.
- 4.2.1.2 After TxDOT and the Service Provider determine an issue cannot be resolved at the assigned committee or solution group level, the issue is escalated to TxDOT contract manager for further triages and attempts to resolve.

4.3 Notice by Service Provider

- 4.3.1.1 Without limiting its obligations under this Agreement, Service Provider shall expeditiously notify TxDOT when it becomes aware that an act or omission a TxDOT, SCP, or TxDOT contractor personnel shall cause, or has caused, a problem or delay in providing the Services, and shall work with TxDOT, SCP, or TxDOT contractor to prevent or circumvent such problem or delay.
- 4.3.1.2 Service Provider shall cooperate with TxDOT, SCP, or TxDOT contractor to resolve differences and conflicts arising between the Services and other activities undertaken by TxDOT, SCPs, or TxDOT contractors.



Texas Department of Transportation

Application Services

Exhibit 1.3

Service Management Manual (SMM) Content and Organization

Version 1.0

Solicitation No. 601440000032007

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1 INTRODUCTION

This document describes the general content and organization of the Service Management Manual (or the SMM) that will be developed to support governance of the Services. It is intended that the structure of the SMM is established by the TxDOT ITD Service Governance (ITD SG) function with the Service Provider providing support and content as required to support the Service Provider's Services.

The SMM is intended to be maintained and updated on a regular basis. The Service Provider will be required to complete significant additional detail to record the further development of the SMM to be applied in the performance of the Services by Service Provider as required in **Exhibit 3.1 Service Level and Deliverable Matrix**.

2 REQUIREMENTS

The Service Provider should adhere to the TxDOT-established framework for defining, documenting, communicating, maintaining, and monitoring the processes and procedures in the SMM.

3 DELIVERY AND CONTENTS

1. The Service Provider shall deliver to TxDOT portions and versions of the SMM for TxDOT's review and comment on the dates provided in this Attachment and **Exhibit 3.1 Service Level and Deliverable Matrix**. TxDOT will review the SMM drafts and provide the Service Provider with comments and revisions.
2. The Service Provider shall incorporate TxDOT's comments and revisions into the SMM and shall deliver subsequent versions thereof on or before the dates set forth in this exhibit and **Exhibit 3.1 Service Level and Deliverable Matrix** for TxDOT's review and comment in accordance with this Section.
3. The Service Provider shall document appropriate policies, processes, and procedures for inclusion in the SMM to provide effective Service interfaces between Service Provider and TxDOT.
4. The Service Provider shall deliver a final version of the SMM to TxDOT on or before the dates set forth in **Exhibit 3.1 Service Level and Deliverable Matrix** for TxDOT's final approval, which TxDOT may withhold in its sole discretion.
 - a. In the event of Noncompliance, the Service Provider shall submit to TxDOT a revised SMM in alignment with the terms of the Agreement addressing each of the points raised by TxDOT in its notice of Noncompliance.
 - b. The Service Provider shall continue making subsequent revisions of the SMM until approved by TxDOT.

5. The Service Provider shall include in the SMM, at a minimum:
- a. a detailed description of the manner in which each of the Services shall be performed by the Service Provider, including:
 - i. the Equipment, Materials, and Systems to be procured, operated, supported or used;
 - ii. documentation (including operations manuals, user guides, specifications, policies/procedures, and disaster recovery/business continuity plans) to be created and/or maintained by Service Provider in the course of performing the Services;
 - iii. the specific activities to be undertaken by Service Provider in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning, and oversight activities to be performed by Service Provider under this Agreement;
 - iv. the checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality;
 - v. the TxDOT-approved policies, processes, methodologies and controls to be implemented and used by Service Provider to comply and confirm compliance with TxDOT Rules and TxDOT Standards;
 - vi. the processes, methodologies, and controls to be implemented and used by TxDOT and the Service Provider to identify TxDOT Data TxDOT are legally prohibited from disclosing, including any confidentiality requirements specific to any TxDOT;
 - vii. subject to the Agreement, the processes, methodologies and controls to be implemented and used by Service Provider to comply and confirm compliance with applicable Laws (including applicable Privacy Laws relating to the privacy and security of TxDOT Data); and
 - viii. the processes, methodologies, and controls to be implemented and used by Service Provider to implement TxDOT-approved billing structure changes.
 - b. the procedures for TxDOT and Service Provider interaction and communication, including:
 - i. call lists;
 - ii. Application methodologies;
 - iii. Application testing methodologies, policies, processes and procedures;
 - iv. Application Implementation policies, processes and procedures;
 - v. Application Operations and Maintenance policies, processes and procedures;
 - vi. Non-Technical Operations policies, processes and procedures;
 - vii. Quality Assurance procedures and checkpoint reviews; and
 - viii. Acceptance testing and procedures (subject to Agreement);
 - ix. Interfaces between and among SCPs and TxDOT.

- c. practices and procedures addressing such other issues and matters as TxDOT reasonably requires.
- d. The Service Provider shall incorporate TxDOT's then-current policies and procedures in the Service Management Manual to the extent it is directed to do so by TxDOT.

4 COMPLIANCE

The Service Provider shall perform the Services in accordance with the terms of the Agreement and TxDOT's then-current policies and procedures until the SMM is finalized and agreed upon by the Parties. Thereafter, the Service Provider shall perform the Services in accordance with the terms of the Agreement including the SMM. In the event of a conflict between the provisions of the Agreement and the SMM, the provisions of the Agreement shall control unless the Parties expressly agree otherwise and such agreement is set forth in the relevant portion of the SMM.

5 MAINTENANCE, MODIFICATION, AND UPDATING

1. The Service Provider shall support TxDOT in the maintenance of the SMM so as to be accessible electronically to TxDOT, and Authorized Users via the Portal or such other electronic means as approved by TxDOT, and in any case in a manner consistent with TxDOT's security policies.
2. TxDOT shall have the right, but not the obligation, to distribute hard copies of the SMM to Authorized Users.
3. The Service Provider shall promptly and timely support TxDOT to modify and update the SMM to reflect changes in the operations or procedures described therein and to comply with TxDOT Standards, TxDOT Rules, the Technology Plan and strategic plans.
4. The Service Provider shall provide the proposed changes in the SMM to TxDOT for prior review, comment, and approval, which TxDOT may withhold in its sole discretion.

6 TRAINING

The Service Provider shall provide training to TxDOT and other Service Component Provider (SCP) personnel in accordance with the terms of **Exhibit 2.1.1 Cross Functional SOW** and as otherwise required by TxDOT to provide effective Service interfaces between the Service Provider and SCPs.

7 ANNUAL REVIEW

The Parties shall meet to perform a formal annual review of each section of the SMM on a mutually agreed-upon review schedule. Reviews are coordinated by TxDOT and scheduled at quarterly intervals.

8 GENERAL CONTENT AND ORGANIZATION

[Table 1: TxDOT-led Service Management Manual Content](#) below provides the general organization and content of the SMM. Although not intended to replicate the Agreement, the SMM should provide comprehensive documentation of the procedures that the Service Provider shall follow to implement and manage the Agreement and the overall relationship. Specific references to detailed text or requirements in the Agreement may be incorporated within the SMM.

The responsibilities of the Service Provider and TxDOT should be clearly indicated within the document (including specific responsibilities by job title or function). The SMM will be used jointly by the Parties to assist with overall coordination and communication regarding the Agreement.

Please reference [Exhibit 3.1 Service Level and Deliverable Matrix](#) for additional information on the requirements for delivery.

Table 1 contains content created by the ITD SG function whereas the Service Provider is to work with TxDOT to review, update, and affirm the entire set of contents (e.g., Process, Procedure, Work Instructions, etc.) to ensure it fully supports the Service Providers operation. The Service Provider provides the content for the Governance section of [Table 1: TxDOT-led Service Management Manual Content](#) in collaboration with ITD SG.

Table 2 contains content to be developed by the Service Provider whereas the Service Provider is to take a leadership role in the design, drafting, and coordination of reviews and approvals.

8.1 TxDOT-led Service Management Manual Content

Table 1: TxDOT-led Service Management Manual Content

Content	Due Date	Description	Phase
Governance			
Contacts Lists	20 days after Effective Date	Key personnel for the Service Provider. Includes a list of contacts that are key users of the Services and/or perform a liaison function in regard to the Services (by location). Includes contact information for key Authorized Users.	Phase 1
Organizational Charts	20 days after Effective Date	Include Service Provider organization charts, description of functions performed, contact information.	Phase 1

Content	Due Date	Description	Phase
Standards and Configurations	10 days prior to Commencement Date	Document Service Provider’s standards and configurations for Services.	Phase II
Service Responsibilities Matrices	60 days after Commencement Date	The Responsibility Assignment Matrix (RACI) Charts illustrating the correlating levels of responsibilities for the various teams (including other SCP dependencies) required to support the Service Provider’s services.	Phase III
Operational Reports Inventory	10 days prior to Commencement Date	Current list of Service Provider operational reports.	Phase II
Marketplace Procedures			
Portal 1. Policies 2. Processes 3. Procedures	10 days prior to Commencement Date	Describes the Operational Procedures that support TxDOT portal services tool. Includes processes and procedures necessary to inform the Service Component Providers on the use of the tool.	Phase II
Service Catalog Management 1. Policies 2. Processes 3. Procedures 4. Work Instructions	10 days prior to Commencement Date	A database or structured Document with information about select Services, including those available for deployment. The Service Catalog is the only part of the Service portfolio published to Customers and is used to support the request and delivery of select Services. The Service Catalog may include information about Deliverables, prices, contact points, ordering and request processes.	Phase II

Content	Due Date	Description	Phase
<p>IT Service Desk</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The facilities, associated technologies, and fully trained staff who respond to Calls, coordinate all Incident Management and Request Management activities, and act as a single point of contact for Authorized Users regarding the Services.</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
Service Management Procedures			
<p>Incident Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The use of people, processes and technology with the primary goal to restore normal Service operations as quickly as possible and minimize the adverse impact on business operations, thus ensuring that the best achievable levels of service quality and availability are maintained.</p> <p>Includes Major Incident Management.</p> <p>Includes Event Management function collects and aggregates forwarded events, correlates them, and incorporates them into the TxDOT ITSM system (e.g., Incident Management System) for efficient management and resolution.</p>	<p>Phase II</p>
<p>Problem Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The process, software, techniques and procedures that aid in identification, tracking, communication, and resolution of Problems arising in TxDOT’s IT Environment, and resolving those Problems arising from or related to the Services. The goal of Problem Management is to minimize the adverse impact of Incidents and Problems on the business that are caused by errors within the IT infrastructure, and to prevent recurrence of Incidents related to these errors. To achieve this goal, Problem Management seeks to get to the root cause of Incidents and then initiate actions to improve or correct the situation.</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
<p>Information Security Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The process that ensures the confidentiality, integrity and Availability of an organization’s assets, information, data and IT Services. Includes handling of paper, building access, phone calls etc., for the entire organization. Includes security operations management procedures.</p>	<p>Phase II</p>
<p>Access Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Access Management is focused on the platform, process and operations to enable Authorized Users to request access to and use an IT service.</p>	<p>Phase II</p>
<p>Request Management and Fulfillment</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The process responsible for managing the lifecycle of all Service Requests.</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
<p>Change Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The processes relating to planning and performing all changes in IT environment pertaining to the Services, including changes to individual components and coordination of changes across all components. The Change Management processes will support and include checkpoints to determine any potential or required Change Control Procedures and includes a process of controlling changes to the infrastructure or any aspect of Services, in a controlled manner, enabling approved changes with minimum disruption.</p>	<p>Phase II</p>
<p>Asset Inventory and Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Leverage automated CMDB tools and Data Quality Management (DQM) capabilities and processes to capture, manage, and maintain assets for all Services.</p>	<p>Phase II</p>
<p>Software License Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Defines the process and procedures for managing Software License compliance and renewals to ensure accurate tracking, reporting and timely updates.</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
<p>Configuration Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The process of identifying and defining relationships and dependencies both upstream and downstream from CIs, identifying business services and mapping CIs to those services (e.g., ERP application, Infrastructure), and verifying the completeness and correctness of the CIs.</p>	<p>Phase II</p>
<p>IT Service Continuity Management (ITSCM)</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The process responsible for managing risks that could seriously impact IT Services. ITSCM ensures that the Service Provider can always provide minimum agreed Service Levels, by reducing the risk to an acceptable level and Planning for the recovery of IT Services. ITSCM should be designed to support Business Continuity Management.</p>	<p>Phase II</p>
<p>Project Management and Support</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Project Management and Support will align projects to TxDOT requirements and deliver projects from request through end-to-end solutioning including turnover to the TxDOT validation that project requirements were met in terms of timing, quality, and cost.</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
<p>Release Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>60 days after Commencement Date</p>	<p>The process responsible for planning, scheduling and controlling the movement of Releases to test and Production environments as well as the software development and delivery processes as part of DevOps. The primary objective of Release Management is to ensure that the integrity of the Production environment is protected, that the correct components are released, and reduce down time and customer impact. Release Management works closely with Configuration Management and Change Management.</p>	<p>Phase III</p>

Content	Due Date	Description	Phase
Business Management Procedures			
<p>Operational Intelligence</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Procedures and activities regarding key standard Reports and requests for ad hoc reports from TxDOT.</p>	<p>Phase II</p>
<p>Service Level Management (SLM)</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>The process responsible for monitoring SLAs, and ensuring that these are met. SLM is responsible for ensuring that all IT Service Management Processes, OAs, and Underpinning Contracts are appropriate for the agreed Service Level targets. SLM monitors and reports on Service Levels, facilitates Service Delivery Failure actions with the appropriate Governance Committee and holds regular TxDOT reviews. Procedures for calculating Service Level Credits on invoices and Earnback calculations</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
<p>IT Financial Management (ITFM) – Supplier Invoice Statements</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Procedures for invoicing (and verification of invoice by TxDOT).</p> <p>The content should include procedures for calculating Resource Unit volumes for pricing (per Service Component, as applicable), invoicing of Projects, etc.</p> <p>The content should include procedures regarding disputed invoice amounts.</p> <p>The content should include procedures for charge back of costs related to the Services and the overall Agreement to TxDOT.</p>	<p>Phase II</p>
<p>CRM – Customer Satisfaction Surveys</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>60 days after Commencement Date</p>	<p>Process to be used for conducting customer satisfaction surveys.</p> <p>Content should include procedures regarding action items and attempts to resolve customer issues.</p>	<p>Phase III</p>
<p>CRM – Escalation Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>60 days after Commencement Date</p>	<p>Describes the roles, responsibilities, and processes to manage the escalation of urgent or lingering issues to ensure resolution. The document also summarizes how people, processes, tools, and technology are used to resolve issues as quickly as possible when issues are not resolved through normal business practices. The goal of escalation management is to minimize adverse impacts on business operations and ensure that the best achievable levels of service quality and availability are maintained.</p>	<p>Phase III</p>

Content	Due Date	Description	Phase
<p>Service Delivery Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Procedures and responsibilities regarding responding to Authorized Users’ (including listing of Authorized Users) problems, requests, and questions.</p>	<p>Phase II</p>
<p>Strategy Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior to Commencement Date</p>	<p>Strategy Management links the business demand with the supporting IT strategies and services along with service enhancement initiatives including a long-term strategy roadmap with timelines and high-level costs, and shorter-term technology plans which guide the annual improvement and budgeting process. Within this capability, TxDOT provides the leadership and coordination for the long-term strategy efforts, including but not limited to a long-term strategy roadmap, and TxDOT will support those efforts by leading and coordinating the annual technology plan, ongoing technology refresh program, coordinate the approval and communication of Standard Products and Reference Architecture, and coordinating the effective use and disposal of Equipment and Software.</p>	<p>Phase II</p>

Content	Due Date	Description	Phase
Operations Management Procedures			
<p>Data Quality Management</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>60 days after Commencement Date</p>	<p>DQM provides a platform to collect data internally, from SCPs and Third Party Vendor(s) enabling automated intake and analysis of hardware, software and application integrity in support of the Asset Inventory and Management and Configuration Management processes.</p> <p>The processes will describe how the SCP data will be validated for integrity.</p>	<p>Phase III</p>
Vendor and Contract Management Procedures			
<p>Contract Change Control</p>	<p>10 days prior to Commencement Date</p>	<p>Procedures supporting changes to the Agreement, including changes to any Exhibit or Attachment.</p> <p>Content should include procedures to classify services as a New Service, and resulting processes to change the Agreement (including pricing).</p> <p>Content should include notification period and process, authority levels, and escalation procedures for changes to the Agreement.</p>	<p>Phase II</p>
<p>Contract Deliverables Management</p>	<p>30 days after Effective Date</p>	<p>Describes the process for SCPs to produce, develop, track, revise, review, and submit Deliverables to TxDOT pursuant to the terms and conditions of the Service Provider’s MSA.</p>	<p>Phase I</p>

Content	Due Date	Description	Phase
Issue Resolution	10 days prior to Commencement Date	Describes the process for resolving program issues which may arise during the performance of Services under the MSAs with the Service Providers. The purpose of the Program Issues Management Process described herein is to resolve Program Issues at the management level prior to initiating the Dispute Resolution process set forth in the Providers MSAs. The process occurs within the management organizations of the TxDOT and the Service Provider.	Phase II
Dispute Resolution	10 days prior to Commencement Date	Procedures regarding formal dispute resolution process used to comply with the Agreement.	Phase II

Note: All days are calendar days unless otherwise noted.

8.2 Service Provider developed Service Management Manual Content

Table 2: Service Provider developed Service Management Manual Content

Content	Due Date	Description	Phase
Service Component Provider Operational Procedures			
Key Personnel and Subcontractors	20 days after Effective Date	The Service Provider shall describe procedures for TxDOT approval regarding replacement or removal of Service Provider Key Personnel and major Service Provider Subcontractors.	Phase I
ERP MAS Services 1. Policies 2. Processes 3. Procedures 4. Work Instructions	10 days prior Commencement Date	Document SCP processes and procedures necessary to deliver Services included in the respective Statement of Work.	Phase II

Content	Due Date	Description	Phase
<p>ADM Services</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior Commencement Date</p>	<p>Document SCP processes and procedures necessary to deliver Services included in the respective Statement of Work.</p>	<p>Phase II</p>
<p>Service Provider Tools Support</p> <ol style="list-style-type: none"> 1. Policies 2. Processes 3. Procedures 4. Work Instructions 	<p>10 days prior Commencement Date</p>	<p>Includes any tool in use in delivery of Services.</p> <p>Describes the operational procedures that support the Service Provider’s tools, including processes necessary to inform, as required, TxDOT and other SCPs about engaging the Service Provider team for support of the toolset. This document also informs about those maintenance and support functions performed by the Service Provider.</p>	<p>Phase II</p>

Note: All days are calendar days unless otherwise noted.



Texas Department of Transportation

Application Services

Exhibit 2.1.1

Cross Functional Statement of Work

Version 1.0

Solicitation No. 60144000032007

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1 INTRODUCTION

1.1 Operating Model

This **Exhibit 2.1.1 Cross Functional SOW** contains specific cross functional requirements that all Service Component Providers (SCPs) must meet in order to perform the requested Services and responsibilities defined in **Exhibit 2.0 Service Model**.

TxDOT contracts with multiple SCPs to deliver services to TxDOT Authorized Users. Those services are integrated into a common service delivery model by TxDOT’s ITD Service Governance (ITD SG) function. The ITD SG provides the systems, process leadership and service delivery oversight necessary to ensure consistent, quality service delivery. Figure 1 below depicts the relationships between SCPs and ITD SG, ITD Sourcing Management, and TxDOT ITD Governance.

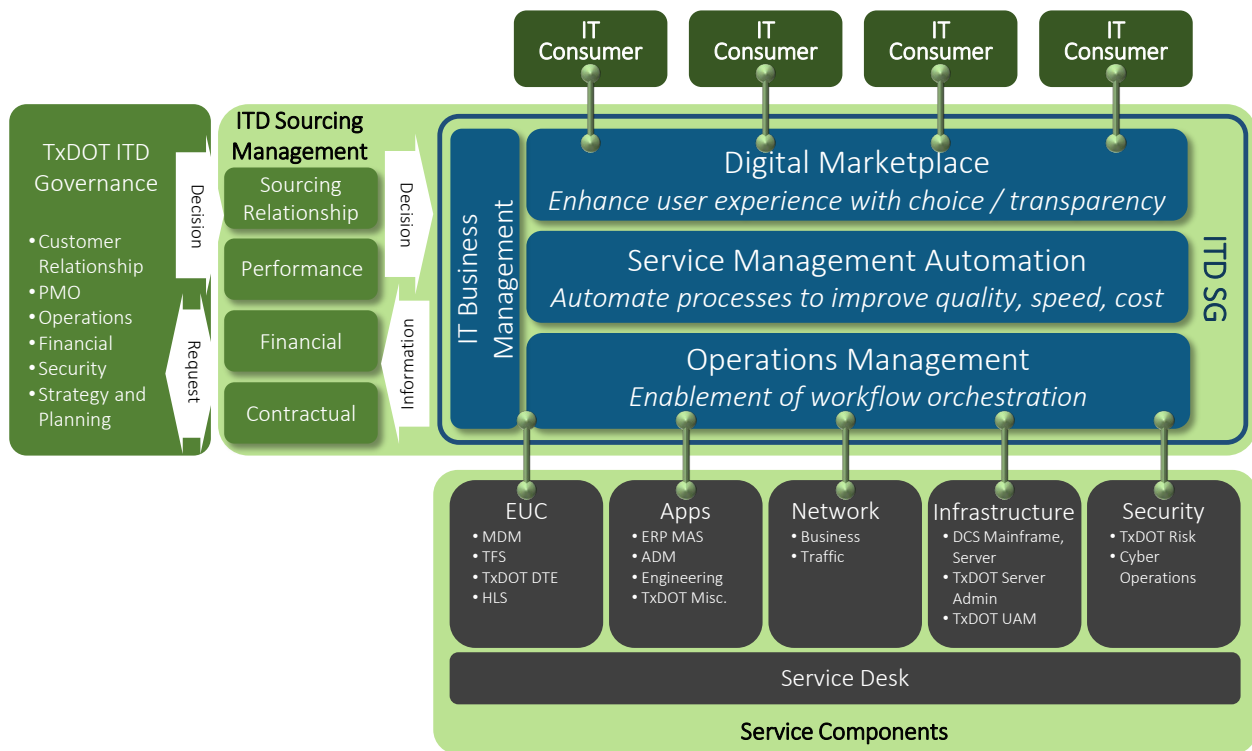


Figure 1 – TxDOT ITD Operating Model

TxDOT ITD Governance and ITD Sourcing Management

As the overall service owner, TxDOT ITD operates overall governance functions that provide customer relationship leadership, PMO, operations, financial, security and planning roles. The ITD Sourcing Management function works closely with the SCPs to ensure the provided services individually adhere to the required Service Providers requirements, and collectively meet TxDOT's desired outcomes.

1.2 Document Overview

This document contains cross functional service management categories of responsibilities that apply to the delivery of Services. These categories are considered cross functional in that they are functions which cross all SCPs. The Service Provider shall provide Services for transition, steady state, and service evolution consistent with **Exhibit 4.2 Financial Responsibilities Matrix**.

1.3 Cross Functional Systems and Processes

TxDOT bases its service management practices on the Information Technology Infrastructure Library (ITIL), which focuses on the service management lifecycle and the linkages between service management components. The Service Provider shall be responsible for using TxDOT provided cross functional systems and complying with the ITIL framework in cooperation with and as established by the ITD SG and documented in the Service Management Manual (SMM).

1.3.1 Cross Functional Processes

The Service Provider shall, at a minimum:

- 1.3.1.1 Conform and deliver to a set of processes based on ITIL guidance to enable consistent management of IT services seamlessly across the ITD SG and among SCPs.
- 1.3.1.2 Verify that processes effectively integrate with the processes, functions and roles deployed within and used by TxDOT and the other SCPs.
- 1.3.1.3 Design processes and procedures to enable the effective monitoring and reporting of Service Provider's Services.
- 1.3.1.4 Coordinate and support the execution of Service Provider processes across TxDOT Authorized Users and with the ITD SG to ensure all the individual components that make up the required Services are managed in an end-to-end manner.
- 1.3.1.5 Document Service Provider-level processes and procedures in the integrated SMM.
- 1.3.1.6 Deploy any necessary processes, procedures, and controls to provide effective end-to-end management, monitoring, and reporting of the Services.
- 1.3.1.7 Deploy and integrate any tools and systems as required to enable such processes, procedures, and controls.
- 1.3.1.8 Implement change and configuration management for systems, services, and components managed by Service Provider.
- 1.3.1.9 Maintain security tools to meet performance standards, processes and policy requirements, to maximize efficiency, and to minimize outages, as necessary.
- 1.3.1.10 Provide audit logs for any systems managed by the Service Provider.

1.3.2 Process Documentation

All documentation maintained by the Service Provider shall be subject to approval by TxDOT and will conform to the documentation standards and format provided by the ITD SG and agreed upon between TxDOT and the Service Provider. The Service Provider shall develop documentation in accordance with the requirements in **Exhibit 1.3 Service Management Manual**.

The Service Provider shall, at a minimum:

- 1.3.2.1 Maintain operations documentation related to the Services for currency, accuracy, and post in the SMM.
 - 1.3.2.1.1 Identify owners (business, operational, quality assurance, and engineering) of documentation.
 - 1.3.2.1.2 Align Systems documentation to architectural standards.
 - 1.3.2.1.3 Identify TxDOT Data to the associated System(s) and the associated security risk classification.
 - 1.3.2.1.4 Provide access to architecture and design documentation for Systems and services managed by Service Provider.
 - 1.3.2.1.5 Create and maintain current documentation as required (e.g., support documentation).
- 1.3.2.2 Develop and maintain documentation on all Operations procedures, Services, Equipment, and Software for which Service Provider is responsible according to the standard SMM format.
- 1.3.2.3 Provide documentation in an electronic format provided by the ITD SG and agreed upon between TxDOT and the Service Provider.
- 1.3.2.4 Validate documentation at least annually for completeness and accuracy, and verify that all documentation is present, organized, readable, and updated in accordance with agreed upon schedule.
- 1.3.2.5 Participate in the reporting of validation findings to TxDOT on a regular basis, and where it is determined that documentation is inaccurate (e.g., erroneous or out of date), correct and replace such documentation.
- 1.3.2.6 Update the SMM according to schedule described for the Deliverables in **Exhibit 3.1 Service Level and Deliverable Matrix**.

1.3.3 Training & Education

The Service Provider shall, at a minimum:

- 1.3.3.1 Support TxDOT as appropriate to ensure the proper training on cross-functional systems and other tools, including the supporting processes, for Service Provider personnel and other SCPs that interact with the Service Provider tools, processes, and SMMs.
- 1.3.3.2 Develop applicable training content and coordinate with TxDOT to load and manage.
- 1.3.3.3 Customize such applicable Service Provider training to be specific to the Authorized Users for the Services within the TxDOT environment.
- 1.3.3.4 Create and maintain training material for Service Provider staff that includes at least the following information: The Services provided; the value of Services to TxDOT; the financial structure of charges; overview of TxDOT; TxDOT Security Policies; orientation to all applicable laws and regulations (e.g., 1 TAC 202, HIPAA); the location of document stores; and the structure and location of the SMM.
- 1.3.3.5 Verify that all Service Provider staff interacting with TxDOT have reviewed the minimum set of documentation as defined by the Service Provider for operational readiness in accordance with the **Transition Plan**.

1.3.3.6 Upon request, Service Provider shall provide such documentation and training to TxDOT as specified by TxDOT.

2 MARKETPLACE

2.1 Portal

The Service Provider must leverage the ITD SG Portal to provide integrated TxDOT communications and reporting. Reporting functions and specific operational reports are defined in **Exhibit 3.0 Performance Model**, and **Exhibit 3.3 Reports**.

The Service Provider shall, at a minimum:

- 2.1.1.1 Provide the reports and communication content to be posted.
- 2.1.1.2 Provide reports and communication content in the format and standards required of the ITD SG portal.
- 2.1.1.3 Adhere to established processes as documented in the SMM.

2.2 Service Catalog Management

The ITD SG provides the Service Catalog tool for TxDOT Authorized Users to request Services from the Service Provider.

The Service Provider shall, at a minimum:

- 2.2.1.1 Coordinate with the ITD SG to validate integration of Service Provider Services into the Service Catalog.
- 2.2.1.2 Support the ITD SG to categorize and normalize Service Catalog content.
- 2.2.1.3 Support the ITD SG to determine the approval authority required to obtain the Service.
- 2.2.1.4 Support the ITD SG to document Service descriptions and dependencies.
- 2.2.1.5 Participate, in regular communications with TxDOT on updates to the Service Catalog.
- 2.2.1.6 Respond to Service Catalog requests in accordance with defined processes and Service Level Agreements (SLAs).

2.3 IT Service Desk

Service Provider shall be responsible for responding to incidents or requests TxDOT Authorized Users log with the Service Desk, in compliance with policies and procedures set forth in the SMM.

The Service Desk shall be the single point of contact for Authorized Users regarding Incidents, which include events that cause or may cause an interruption or reduction of service, as well as for requests for information and requests for services relating to all TxDOT's IT Services.

The Service Provider shall, at a minimum:

- 2.3.1.1 Actively participate with the Service Desk to develop and document processes.
- 2.3.1.2 Integrate Service Provider's Service processes with the Service Desk processes, TxDOT, and authorized Third Party Vendor(s), where the processes interact.

- 2.3.1.3 Communicate and coordinate the Service Desk processes and policies within Service Provider's own organization and TxDOT.
- 2.3.1.4 Actively participate in defining Service Desk policies and procedures, as approved by TxDOT, which set the objectives, scope, and principles that ensure the success of the Incident Management processes.
- 2.3.1.5 Provide effective and agreed upon mechanisms for properly complying with the Service Desk policies.
- 2.3.1.6 Manage all Incidents, Service Requests, etc., from Authorized Users relating to Services, including the following:
 - 2.3.1.6.1 Assigning categorization and prioritization codes.
 - 2.3.1.6.2 Communicating with users, keeping them informed of progress, notifying them of impending actions, obtaining appropriate agreement, and in all ways engaging and communicating with them about Service Provider activities.
 - 2.3.1.6.3 Ensuring Incidents and Service Requests are assigned and routed to the correct work queue in all situations regardless of whether the Incidents or Service Requests are manually or automatically assigned and routed.
 - 2.3.1.6.4 Closing all resolved Incidents, Service Requests, and other contacts.
- 2.3.1.7 Develop and document processes regarding interfaces, interaction, and responsibilities between Level 1 Support personnel, Level 2 Support personnel, Level 3 Support personnel, and any other internal or external persons or entities that may either submit an Incident or receive an Incident.
- 2.3.1.8 Utilize the Incident Management System provided by the Service Desk and integrate with the Service Desk, including the use of tools, technology, processes, and procedures.
- 2.3.1.9 Analyze Incident trends and recommend and implement actions, with TxDOT approval, to reduce Incidents. Also:
 - 2.3.1.9.1 Provide on-line FAQs and help documentation for common problems.
 - 2.3.1.9.2 Provide the Service Desk with information necessary to keep Authorized Users regularly updated with alerts advising of any new or changed information.

3 SERVICE MANAGEMENT

3.1 Event Management

Event Management generates and detects notifications, while monitoring the status of components, even when no Events are occurring. Events may be detected by a configuration item sending a message, or by a management tool polling the configuration item. After an Event has been detected it may lead to an Incident, Problem or Change, or it may simply be logged in case the information is needed. Service Provider shall, at a minimum:

- 3.1.1.1 Be responsible for providing or supporting Event management services as required.

- 3.1.1.2 Response to an Event may be automated or may require manual intervention. If actions are needed then a trigger, such as an SMS message or an incident being automatically logged, can alert support staff.
- 3.1.1.3 Service Provider shall detect and analyze Events and determine the appropriate process for handling the Events.
- 3.1.1.4 Service Provider's Event management services may include categorizing opened Events, automation processes to initiate Incidents from Events, comparing performance and behavior against SLAs, and creating the basis of service improvement and reporting.
- 3.1.1.5 Coordinate with the ITD SG to develop and approve Service Provider-related Event Management content in the SMM.
- 3.1.1.6 Comply with Event Management processes and procedures in the SMM.
- 3.1.1.7 Utilize the Event Management System provided by TxDOT for all information related to an Event.
- 3.1.1.8 Provide for training on processes and tools for escalations to Service Provider staff and other relevant resources involved with responding to Events.
- 3.1.1.9 Escalate Events in accordance with the SMM.
- 3.1.1.10 Verify that all records (e.g., inventory, asset and configuration management records) are updated.

3.2 Incident Management

Service Provider shall, at a minimum:

- 3.2.1.1 Provide Incident Management Services in the form of Level 2 Support and Level 3 Support. Incident Management is separate and distinct from Security Incident Management.
- 3.2.1.2 Provide knowledge capture and transfer regarding Incident resolution procedures to support the objective of increasing the number of Incidents capable of being resolved by Level 1 Support.
- 3.2.1.3 Coordinate with the ITD SG to develop and approve Service Provider-related Incident Management content in the SMM.
- 3.2.1.4 Comply with Incident Management SMM.
- 3.2.1.5 Utilize the Incident Management System provided by TxDOT for all information related to an Incident.
- 3.2.1.6 Provide for training on processes and tools for Incidents and escalations to Service Provider Incident Management staff and other relevant resources involved with responding to Incidents.
- 3.2.1.7 Resolve Incidents in accordance with the SMM, knowledge database documents, and configuration database(s).
- 3.2.1.8 Escalate Incidents in accordance with the SMM, knowledge database documents, and configuration database(s).

- 3.2.1.9 Participate in Incident review sessions.
- 3.2.1.10 Update the progress of an Incident's resolution within the tracking systems through to final closure.
- 3.2.1.11 Verify that all records (e.g., inventory, asset and configuration management records) are updated to reflect completed and resolved Incidents.
- 3.2.1.12 Document solutions to resolved Incidents in central knowledge base. Accurately update all information pertinent to trouble ticket including general verbiage, codes, etc.
- 3.2.1.13 Determine if an Incident should initiate a Problem investigation (e.g., whether preventive action is necessary to avoid Incident recurrence) and, in conjunction with the appropriate support tier, raise a Problem record to initiate action.
- 3.2.1.14 Conduct follow-up with TxDOT Authorized User who reported the Incident to verify the Incident was resolved to their satisfaction.
- 3.2.1.15 Integrate the Service Provider's Incident Management process with the other service management processes, especially Problem Management, Configuration Management, Service Level Management, and Change Management.
- 3.2.1.16 The Service Provider shall utilize the Incident Management System provided by TxDOT and integrate such with their Incident Management processes, providing a level of detail that allows for a set of Incident Resolution diagnostics.
- 3.2.1.17 The Service Desk shall provide processes and service delivery oversight necessary to ensure consistent, quality service delivery.

3.3 Problem Management

The Service Provider shall, at a minimum:

- 3.3.1.1 Provide Problem Management Services in coordination with the ITD SG Problem Management structure to minimize the adverse impact of Incidents on TxDOT's business operations.
- 3.3.1.2 Cooperate with the ITD SG to provide reactive Problem Management Services by diagnosing and solving Problems in response to one or more Incidents that have been reported through Incident Management.
- 3.3.1.3 Provide proactive Problem Management to identify and solve Problems and known errors before Incidents occur, including:
 - 3.3.1.3.1 performing predictive analysis activities, where practical, to identify potential future Problems,
 - 3.3.1.3.2 develop recommended mitigation plans, and
 - 3.3.1.3.3 implement approved corrective mitigation actions and processes.
- 3.3.1.4 Maintain, update, and disseminate information about Problems and the appropriate workarounds and resolutions to reduce the number and impact of Incidents.
- 3.3.1.5 Provide Problem Management Services for all Problems that are determined to be related to the Services. Service Provider shall also provide coordination and assistance to TxDOT and

other Service Component Providers in performing their Problem Management functions related to the Services.

- 3.3.1.6 Implement resolutions to Problems through the appropriate control procedures, especially Change management, as well as coordinating Problem Management activities with the various teams within Service Provider, TxDOT and other Service Component Providers responsible for performing Configuration Management, IT Service Continuity Management, and Service Level management activities.
- 3.3.1.7 Coordinate with the ITD SG to develop and implement processes for Problem Management and root cause analysis (RCA) (e.g., events that trigger an RCA).
- 3.3.1.8 Comply with Problem Management and RCA policies and procedures.
- 3.3.1.9 Participate in Problem Management review meetings.
- 3.3.1.10 Use and update the Problem Management knowledge database.
- 3.3.1.11 Perform Problem Management activities as set forth in the SMM.
- 3.3.1.12 Coordinate and take responsibility of Problem Management activities of all Problems that reside in Service Provider's area of responsibility (e.g., detection, logging, RCA, etc.) and provide support to other SCPs as required in the Problem Management process.
- 3.3.1.13 Conduct proactive trend analysis of Incidents and Problems to identify recurring situations that are or may be indicative of future Problems and points of failure.
- 3.3.1.14 Develop and recommend corrective actions or solutions to address recurring Incidents and Problems or failures, as well as mitigation strategies and actions to avert potential Problems identified through trend analysis.
- 3.3.1.15 Identify, develop, document, and recommend appropriate workarounds for known errors of unresolved Problems and notify Incident Management and all other appropriate TxDOT stakeholders of its availability, if approved by TxDOT.
- 3.3.1.16 Create documentation with recommended corrective actions to resolve a Problem and submit to Change management for review and approval.

3.4 Information Security Management

Service Provider's delivery of Information Security Management shall be an integral part of the Services and shall assess all security risks associated with the delivery of Services are appropriately identified, evaluated, assessed and appropriate controls are implemented and maintained.

3.4.1 Information Security Management General Requirements

The Service Provider shall, at a minimum:

- 3.4.1.1 Assist ITD Information Security in support of the overall cybersecurity risk management program.
- 3.4.1.2 Integrate and maintain Service Providers operational information security processes and procedures within the SMM.
- 3.4.1.3 Adhere to the Information Security Management processes as defined in the SMM.

- 3.4.1.4 Communicate to Service Provider's staff and comply with the Information Security requirements and processes.
- 3.4.1.5 Service Provider to provide an information security attestation, Third Party Information Security Attestation, as required by ITD Information Security and described in the SMM and **Exhibit 3.1 Service Level and Deliverable Matrix**.
- 3.4.1.6 Service Provider's staff to complete all security-related training as required in the SMM and Service Provider to provide Security Training for Service Provider Personnel reports, as described in **Exhibit 3.3 Reports** to ITD Information Security.
- 3.4.1.7 Service Provider to conduct and pass Security Background Checks of all new and renewed personnel according to the screening and compliance requirements as define in the SMM, and Service Provider to provide Security Background Checks for Service Provider Personnel reports, as described in **Exhibit 3.3 Reports** to ITD Information Security.
- 3.4.1.8 Deliver Services in a manner that aligns Service Provider's security program with TxDOT's information Security program, including at a minimum Incident recording, CMDB, security exception, System Security Plan submission, risk assessment and in integrating Service Provider's Security tools directly with ITD Information Security as required to support these capabilities.
- 3.4.1.9 Implement security capabilities as required to achieve compliance with information security policies, laws, rules and regulations.
- 3.4.1.10 Provide assistance with and support to security evaluations, as directed by TxDOT, which may include supporting TxDOT or external audits, conducting self-assessments, and evaluating information security Incidents.
- 3.4.1.11 Provide assistance with and support to all TxDOT authorized assessments, develop action plans and resolve deficiencies, vulnerabilities, concerns and recommendations identified within six (6) months of the conclusion of the assessment, as defined in **Exhibit 3.1 Service Level and Deliverable Matrix**.
- 3.4.1.12 Meet all Security-related deliverables as defined in **Exhibit 3.1 Service Level and Deliverable Matrix**, which are to be agreed to by TxDOT and Service Provider.
- 3.4.1.13 As requested, attend and contribute to Security Management and Risk Management meetings.
- 3.4.1.14 Resolve agreed actions and activities resulting from Security Management meetings.
- 3.4.1.15 Document and annually refresh System Security Plan that adheres to the ITD Information Security Plan structure and requirements, as defined in the SMM, and as required in **Exhibit 3.1 Service Level and Deliverable Matrix**.
- 3.4.1.16 Develop and execute improvement plans for deficiencies documented in Service Provider's System Security Plan, as agreed to by ITD Information Security.
- 3.4.1.17 Provide ITD Information Security Plan Inputs as requested by ITD Information Security, and defined in the SMM, to be included in the overall ITD Information Security Plan.
- 3.4.1.18 Maintain certificates for Service Provider's staff and verify these are kept current and report the status to ITD Information Security on a quarterly basis.

- 3.4.1.19 Provide a forward-looking schedule for the planned Service Provider Security testing, assessments and analysis.
- 3.4.1.20 In coordination with ITD Information Security, support the evaluation of new technologies/capabilities for improving security and perform activities and/or solutions to address shortfalls in security.
- 3.4.1.21 Where investment decisions are required, support ITD Information Security in providing options with associated costs and benefits for TxDOT review and approval.
- 3.4.1.22 In coordination and support of ITD Information Security, and as related to the Service Provider's Services, evaluate details of the Security requirements for new IT services, including options for meeting these requirements and any associated costs.
- 3.4.1.23 Configure systems in accordance with secure configuration compliance standards as define in SMM.
- 3.4.1.24 Execute processes according to the ITD Information Security-approved security controls catalog and any information security baseline controls approved and referenced in the SMM, collectively referred to as Approved Information Security Configuration Controls (ISCC) to test Services are in compliance with the secure configuration compliance standards.
- 3.4.1.25 Execute ISCC checks and scans monthly that will feed configuration baseline information to ITD Information Security for ITD Information Security to determine the health check of the systems and provide monthly Secure Configuration Compliance Report as required in **Exhibit 3.3 Reports**.

3.4.2 Security Flaw Remediation Management Program

The Service Provider shall, at a minimum:

- 3.4.2.1 Review and analyze vulnerability scans for vulnerabilities, misconfigurations, non-compliance situations, and issues.
- 3.4.2.2 Develop action plans and resolve deficiencies through to closure to ensure compliance with ITD Information Security configuration requirements and standards.
- 3.4.2.3 Provide Monthly Secure Configuration Compliance Report as required in **Exhibit 3.3 Reports**, which, at a minimum, is to contain vulnerability scan information, analysis results, actions taken and status, remaining open items with schedule to close, and items with approved ITD Information Security exceptions.

3.4.3 Security Monitoring Tool

Service Provider to provide event logs, support end-point security monitoring, and will integrate and direct logs and alerts of in-scope Services to the SIEM tool managed by ITD Information Security.

At a minimum, Service Provider will:

- 3.4.3.1 As agreed by TxDOT, deploy security monitoring capabilities, or deploy ITD-provided security monitoring agents for Services including all Equipment identified by Information Security as required for security monitoring.

- 3.4.3.2 As required by ITD Information Security, configure and support integration of system logs alerting services into the ITD Information Security SIEM to enable automated alert analysis and notification.
- 3.4.3.3 As required by ITD Information Security, coordinate and mitigate issues to ensure Service Provider SIEM integration.
- 3.4.3.4 Provide Security Tool Compliance Report as required in **Exhibit 3.3 Reports**, which, at a minimum includes all active asset configuration items, including end points, targeted to provide logs, asset configuration items that are actively providing logs, asset configuration items with approved exceptions, and open actions with the associated service management ticket demonstrating work activities to resolve the open action.

3.4.4 Security Incident Management

The Service Provider shall, at a minimum:

- 3.4.4.1 Assist ITD Information Security and contribute to the creation and testing of a Security Incident Management Plan across the Service Provider's Services.
 - 3.4.4.1.1 Provide plans and exceptions for all security Incident Management plans including security Incident severity matrix, notification rosters, communications plans, and procedures for managing security Incidents.
 - 3.4.4.1.2 Implement the Service Provider's portion of the Security Incident Management Plan in concert with participation from ITD Information Security and required Service Component Providers and TxDOT personnel.
 - 3.4.4.1.3 Coordinate Security Incident Management procedures with Major Incident Management procedures.
- 3.4.4.2 Adhere to the security incident handling and notification processes that follow current NIST guidelines and is defined in the SMM.
- 3.4.4.3 As required, implement and maintain monitoring and alerting services that integrate into the ITD Incident Management System for automated alert notification.
- 3.4.4.4 Promptly investigate, document, and report security incidents in accordance with TxDOT policies, Texas laws, rules and regulations, and the SMM.
- 3.4.4.5 According to the defined process, promptly communicate and escalate security Incidents to ITD Information Security and TxDOT.
- 3.4.4.6 Conduct Root Cause Analysis and if necessary, develop and implement formal corrective actions or remediation plans once approved by TxDOT. Evaluate the analysis and proposed corrective actions to ensure future risks are adequately mitigated.
- 3.4.4.7 Provide Incident investigation support and initiate corrective actions to minimize and prevent security breaches.

3.4.5 Physical Security Administration

The Service Provider's shall, at a minimum:

- 3.4.5.1 Comply with Service Provider physical and logical security responsibilities.

- 3.4.5.2 Inform TxDOT immediately if Service Provider becomes aware of any vulnerability or weakness in the Services and recommend a solution or mitigation.
- 3.4.5.3 Provide near real-time information, to TxDOT to identify those physical access rights that should be removed from TxDOT Facilities and where, within the Service Provider's scope of responsibilities, initiate the access rights revocation request.

3.4.6 Security Assessments

Service Provider shall, at a minimum:

- 3.4.6.1 Support TxDOT while conducting security assessments, including conducting monitoring and testing security programs (e.g., Controlled Penetration Tests), conducting risk assessments and performing Security Design Reviews, (the "Assessment(s)") of all or any portion of the Services in order to evaluate such Security Program and determine whether the Security Program meets or exceeds the Standard of Due Care.
- 3.4.6.2 Support TxDOT or, at TxDOT's sole discretion, a third-party security assessment vendor (the "Security Assessment Company") during Security Program assessments.
- 3.4.6.3 Cooperate fully with TxDOT and/or the Security Assessment Company and provide reasonable access to any premises, equipment, personnel or documents and provide any assistance required by TxDOT and/or the Security Assessment Company to conduct the Assessment; however, TxDOT and the Security Assessment Company shall not have access to Service Provider proprietary information where it is not relevant to the Assessment, and shall further not have access to confidential or proprietary information of other customers of Service Provider than TxDOT.
- 3.4.6.4 Under no circumstances will Service Provider attempt to persuade or control or otherwise influence the Security Assessment Company in the determination of its findings. The Assessment shall be conducted so as not to unreasonably disrupt Service Provider's operations under this Agreement.
- 3.4.6.5 Within fifteen (15) days of an Assessment Notice Date, TxDOT and Service Provider will meet to jointly review the relevant Assessment report and if such report concludes that the Security Program does not meet or exceed the Standard of Due Care, then within thirty (30) days after the applicable Assessment Notice Date, the Service Provider and TxDOT shall develop and agree upon an action plan to promptly address and resolve any deficiencies, vulnerabilities, concerns and/or recommendations identified in such report, consistent with the Service Provider's obligations as set forth in the Agreement.

3.5 Request Management and Fulfillment

Service Provider shall be responsible for the fulfillment of Service Requests in compliance with processes in the SMM.

3.5.1 Request Management Processes

The Service Provider shall, at a minimum:

- 3.5.1.1 Actively participate with the Service Desk to develop and document Request Management processes.

- 3.5.1.2 Actively cooperate with the Service Desk in implementing and maintaining Request Management and Fulfillment processes that are flexible and facilitate effective communication and coordination across all functional areas.
- 3.5.1.3 Actively cooperate in information exchange between and among the Service Provider, other SCPs, and TxDOT to improve end-to-end Request Management.
- 3.5.1.4 Integrate the Service Provider's Request Management process with the Request Management process and systems, where the processes interact.
- 3.5.1.5 Facilitate the automation or mechanization of Service Requests between Service Provider and other Service Component Provider(s) systems.
- 3.5.1.6 Facilitate the transparency of Request Management through appropriate processes to provide a complete audit trail to meet TxDOT policy requirements.
- 3.5.1.7 Communicate and coordinate the Request Management processes and policies within Service Provider's organization.
- 3.5.1.8 Provide effective and agreed upon mechanisms for properly complying with the Request Management Policies.
- 3.5.1.9 Actively participate in developing and establishing Request for Solution processes and appropriate mechanisms to support rapid proposal development that provides a level of accuracy for budgetary information without requiring a full solution.
- 3.5.1.10 Actively support the Service Desk in establishing processes and workflow for the proper routing of Service Requests.

3.5.2 Service Request Operations

- 3.5.2.1 Actively support the Service Desk as appropriate to ensure the proper coordination of Request Management activities across all functions and organizations that provide Services to TxDOT.
- 3.5.2.2 Actively participate in Service Request tracking efforts and provide and maintain regular communications between all parties and Authorized Users through Request fulfillment.
- 3.5.2.3 Manage the effective execution of Request Management for Service Provider to achieve its primary purpose to fulfill service requests within the agreed Service Levels and SMM and promote TxDOT and Authorized User satisfaction.
- 3.5.2.4 Engage in effective Request Management governance process to support TxDOT in ensuring the following:
 - 3.5.2.4.1 Clearly define and document the type of Service Requests that will be handled within the Request Management process so that all parties are clear on the scope of Service Requests and the Request Management process.
 - 3.5.2.4.2 Establish and continually maintain definitions of all Services, including: descriptions, Services that will be standardized, Services that require custom solutions, and Services that can be requested through each medium (e.g., Service Desk, Portal, Service Catalog, Request for Service).

- 3.5.2.4.3 Communicate to TxDOT the definition of Services, the Request Management processes, and changes thereto.
- 3.5.2.4.4 Support regular training for Authorized Users on Request Management processes, Service definitions, and request mediums.
- 3.5.2.4.5 Perform regular collection of feedback from Authorized Users on the effectiveness of Request Management and engage in activities to improve process and service.
- 3.5.2.5 Support the use of online self-service to allow Authorized Users to enter Service Requests from a pre-defined list of options.
- 3.5.2.6 Support the provision for real-time visibility of data records associated with Service Requests.
- 3.5.2.7 Update required information on Service Requests within negotiated timeframes to support an up-to-date accurate view of Service Requests.
- 3.5.2.8 Develop procedures, systems and interfaces that ensure proper approval, including financial authority, or the Service Request through automated means (where practical) prior to Service Request fulfillment.
- 3.5.2.9 Provide and maintain regular communications between all parties and Authorized Users as required until Service Request completion and document the communications in compliance with the Request Management processes.
- 3.5.2.10 The communications frequency shall be determined by the severity or priority of the request and in compliance with the SMM.
- 3.5.2.11 Keep TxDOT informed of any issues with the completion of Service Requests and status changes throughout the Service Request lifecycle and in accordance with the SMM.
- 3.5.2.12 Provide anticipated completion times for active Service Requests and update notification systems as required in the SMM to keep TxDOT and Authorized Users informed in compliance with established Service Levels per **Exhibit 3.1 Service Level and Deliverable Matrix**.
- 3.5.2.13 Support the Service Desk to ensure consistent ownership of the Service Request from recording to completion.
- 3.5.2.14 Close Service Requests, in compliance with the SMM, after receiving confirmation from the requesting Authorized User or Service Provider support personnel that the Service Request has been completed.
- 3.5.2.15 Track the progress of fulfillment efforts and the status of all Service Requests, including:
 - 3.5.2.15.1 Review the proposed fulfillment time for each Service Request with the appropriate party and update the status accordingly.
 - 3.5.2.15.2 Provide regular updates on the status of all Service Requests within designated timeframes.
 - 3.5.2.15.3 Coordinate Service Request tracking efforts and provide and maintain regular communications, per the SMM, between all parties and Authorized Users until Service Request completion.

- 3.5.2.15.4 Keep Authorized User informed of changes in Service Request status throughout the Service Request lifecycle in compliance with the SMM.
- 3.5.2.15.5 Keep Authorized User informed of anticipated Service Request completion times for active Service Requests.
- 3.5.2.15.6 When a Service Request cannot be completed in the committed timeframe, provide a revised completion time or request a meeting with the Authorized User to determine a new timeframe.
- 3.5.2.15.7 Track all Service Request completion against the original committed timeframe, regardless of any revisions.
- 3.5.2.16 Utilize the Request Management System for all Request Management and Fulfillment activities.
- 3.5.2.17 Provide for timely receipt and processing of all requests within designated timeframes from the Request Management System.
- 3.5.2.18 Utilize and update the Request Management System with all relevant information relating to a Service Request.

3.5.3 Request for Solution (RFS)

Requests for Solution (RFS) are those types of TxDOT Service Requests where requirements are captured in the TxDOT Request Management system and SCP's develop solutions and cost estimates for TxDOT review and approval. These solutions typically assume the SCP builds and implements the solution. For TxDOT Service Requests, which require the Service Provider to propose a solution, the Service Provider's shall, at a minimum:

- 3.5.3.1 Support TxDOT in developing and establishing RFS processes and appropriate mechanisms for the fulfillment of complex requests requiring design, price, solution, and proposals; including appropriate communications to adequately set expectations and promote good customer service.
- 3.5.3.2 Support TxDOT in developing and establishing RFS processes and appropriate mechanisms to support rapid proposal development that provides a level of accuracy for budgetary information without requiring a full solution (e.g., rough order magnitude pricing and high-level architecture).
- 3.5.3.3 For all RFS delivered by the Service Provider only and that require no other SCP support:
 - 3.5.3.3.1 Review RFS to validate for completeness.
 - 3.5.3.3.2 Coordinate and lead meetings as required to review request, gather requirements, solution and develop the proposal.
 - 3.5.3.3.3 Coordinate the attendance of all necessary subject matter experts in solution and requirement gathering sessions.
 - 3.5.3.3.4 Deliver the solution proposal in accordance with the SMM, including cost estimates, once requirements are complete.
 - 3.5.3.3.5 Develop the solution which may include the technical solution, effort, acceptance criteria, solution design document, and pricing.

- 3.5.3.3.6 Validate all solutions to requests conform to TxDOT-approved architecture, technical guidelines, standards, and pricing.
 - 3.5.3.3.7 Validate all solutions to requests conform the security policies, procedures, and guidelines of TxDOT.
 - 3.5.3.3.8 Coordinate and facilitate solution reviews across the Service Provider as required to review and gain approval for the solution and pricing.
 - 3.5.3.3.9 Track all changes to RFS in project change requests in accordance with established procedures.
 - 3.5.3.3.10 Provide a single proposal TxDOT.
 - 3.5.3.3.11 Iterate and adjust the solution and cost estimating template as required to adhere to TxDOT feedback and requirements.
 - 3.5.3.3.12 Document TxDOT approvals in accordance with established processes as per the SMM.
 - 3.5.3.3.13 Gather and validate that the proposal acceptance is authorized by TxDOT as required in **Exhibit 4.0 Business Model** and the SMM.
 - 3.5.3.3.14 Provide status to TxDOT ITD and TxDOT Authorized User, as defined in the SMM, status of all outstanding requests such that TxDOT ITD can emphasize their organizational priorities.
 - 3.5.3.3.15 Initiate Project Management, as appropriate and as defined in the SMM, upon proposal acceptance by TxDOT.
- 3.5.3.4 For an RFS where the Service Provider is one of many SCPs, lead and manage the Service Provider's solution development and project delivery using the approved systems and processes and work with the other SCPs as required to work with the other SCPs to develop a coordinated TxDOT solution, including:
- 3.5.3.4.1 Effectively execute the RFS processes and appropriate mechanisms for the fulfillment of Service Provider assigned requests requiring a solution (e.g., requirements, design, solution, price, proposal) and project delivery (e.g., plan, build, testing, cutover).
 - 3.5.3.4.2 Solution the Service Provider's portion of the RFS, including:
 - 3.5.3.4.2.1 Participate in meetings as required to review requests, gather requirements, solution and develop proposals with other SCPs, TxDOT, and other Third-Party Vendors.
 - 3.5.3.4.2.2 Coordinate the attendance of all necessary Service Provider subject matter experts in solution and requirement gathering sessions.
 - 3.5.3.4.2.3 Adhere to the agreed timeframe for delivering a solution proposal, including cost estimates, once requirements are complete.
 - 3.5.3.4.2.4 Validate all solutions to requests conform to TxDOT-approved architecture, technical guidelines, and standards and pricing.
 - 3.5.3.4.2.5 Validate all solutions to requests conform to the security policies, procedures, and guidelines of TxDOT.
 - 3.5.3.4.2.6 Participate in solution reviews across the Service Provider and all affected SCPs as required to review and gain approval for the solution and pricing.

- 3.5.3.4.2.7 Contribute to the solution development, cost-estimation, project plan, status, issues and risks in the systems and in compliance with the processes in the TxDOT-approved SMM.
- 3.5.3.4.2.8 Support the tracking of all project change requests in accordance with established procedures defined in the SMM.
- 3.5.3.4.2.9 Support TxDOT in the development of a single proposal to the requesting TxDOT Authorized User.
- 3.5.3.4.2.10 Iterate and adjust solution and cost estimation as required.
- 3.5.3.4.2.11 Initiate Project Management activities, according to the SMM, upon proposal acceptance by TxDOT.

3.6 Change Management

The Service Provider shall, at a minimum:

- 3.6.1.1 Perform Change Management Services utilizing standardized methods and procedures as defined in the SMM to provide efficient and prompt handling of all Changes.
- 3.6.1.2 Assist TxDOT in creating the schedule for any Changes and implementing such Changes.
- 3.6.1.3 Assist TxDOT to refine and improve upon Change Management processes and training requirements including CAB composition, activities, and the financial, technical, and business approval authorities appropriate to TxDOT requirements.
- 3.6.1.4 Comply with Change Management processes and training requirements.
- 3.6.1.5 Review and approve refinements to Change Management processes and training requirements.
- 3.6.1.6 Provide necessary information to TxDOT to assist in documenting all Request for Change's (RFCs), which could include Change cost, risk impact assessment, and system(s) security considerations.
- 3.6.1.7 Coordinate with TxDOT to assist in the development of a schedule of planned approved Changes.
- 3.6.1.8 Perform maintenance during regular maintenance periods as defined in the SMM, or as scheduled in advance with the approval of TxDOT.
- 3.6.1.9 Provide Change documentation, as required, to ITD SG, including proposed metrics on how effectiveness of the Change might be measured.
- 3.6.1.10 As requested, participate in traditional or digital CAB meetings and workflow to review planned Changes and results of Changes made.
- 3.6.1.11 Utilize the TxDOT Change Management System, tools, and processes for the efficient and effective handling of all Changes, including the CAB, subject to approval from TxDOT, in a way that minimizes risk exposure and maximizes availability of the Services.

3.7 Asset Inventory and Management

Asset Inventory and Management system provides an inventory of the IT service components managed by the Service Provider. ITD SG consolidates information from multiple Service Provider asset inventory and management sources and databases that contain details of equipment, software, applications and similar IT service items (collectively referred to as Configuration Items or CIs) used in the provision, support, and management of IT services.

Service Provider responsibilities include:

- 3.7.1.1 Actively participate with ITD SG to develop and document Asset Inventory and Management processes, as approved by TxDOT, that document the objectives, scope, and principles that ensure the success of the Asset Inventory and Management processes.
- 3.7.1.2 Integrate Service Provider Asset Inventory and Management processes and systems with TxDOT's Asset Inventory and Management process and systems, including providing Service Provider CI data electronically to TxDOT's Configuration Management Database (CMDB) in the agreed data format.
- 3.7.1.3 Communicate and coordinate the Asset Inventory and Management processes and policies within Service Provider's organization.
- 3.7.1.4 Actively cooperate in information exchange between and among the Service Component Provider(s), ITD SG, and TxDOT to improve end-to-end Asset Inventory and Management.
- 3.7.1.5 Support ITD SG to provide a complete Asset Inventory and Management audit trail to meet TxDOT policy requirements.
- 3.7.1.6 Align operations to policies and procedures that set the objectives, scope, and principles that ensure the success of the Asset Inventory and Management process.
- 3.7.1.7 Support ITD SG in establishing categorization and classification structures to support the proper documentation and maintenance of CIs.
- 3.7.1.8 Use the Asset Inventory and Management process to identify, control, maintain, and verify the CIs approved by ITD SG as comprising the Equipment, Software, and Applications to provide the Services.
- 3.7.1.9 Record the CI information for Equipment, Applications, Software and Services.
- 3.7.1.10 Verify that all CIs for the Equipment, Applications, Software, and Services are incorporated into the CMDB.
- 3.7.1.11 Utilize the CMDB provided by ITD SG as the single source of information regarding all CIs within Service Provider scope.
- 3.7.1.12 Document Services consistently in a manner that ensures that all CI data related to the Services resides in the CMDB.
- 3.7.1.13 Integrate the Service Provider's other systems, with TxDOT's CMDB.
 - 3.7.1.13.1 Where Service Provider has an internal asset inventory system or database, integrate that system or database with the TxDOT CMDB as required.
 - 3.7.1.13.2 Provide customization as required to enable the Asset Inventory and Management processes as defined in the SMM.

3.7.1.13.3 Automate processes, discovery tools, inventory and validation tools, enterprise systems and network management tools, etc. to provide electronic Asset Inventory and Management data as required to ITD SG.

3.7.1.14 Comply with existing and established SMM processes.

3.8 Software License Management

3.8.1 Software License Renewal Management

3.8.1.1 Service Provider has responsibility for supporting ITD SG in tracking, monitoring, and reporting the software renewal process to ensure compliance with software agreements and continued operation of Services. Service Provider's responsibilities shall include the following:

3.8.1.2 Comply with the Software License Renewal Management processes, as defined in the SMM.

3.8.1.3 Support Service Requests and Change Requests as appropriate for all renewals and update as needed to reflect the status of each renewal as per the timing and lifecycle process defined in the SMM (e.g., Software expiring in May should be logged as a Change Request in January, 120 days prior to the expiration date).

3.8.1.3.1 Service Provider will execute the processes and procedures defined in the SMM which may include, at a minimum, update the contract data in the approved Software License Renewal System, coordinate with TxDOT to obtain renewal approvals, execute the procurement tasks to renew the software license, install the renewed keys and software, update the Change Request and Contracts data, and log the renewed software keys in the Software License Renewal System as per the process defined in the SMM.

3.8.1.4 In conjunction with TxDOT, monitor Software License Renewal progress and SLA achievement.

3.8.1.5 Support TxDOT to ensure the requests and Change Requests are completed and closed upon renewal completion.

3.8.2 Software License Compliance Management

3.8.2.1 Support ITD SG in determining software license compliance position to ensure compliance with agreements and reduce operating risk in the environment. Service Provider's responsibilities shall include the following:

3.8.2.1.1 For Service Provider provided and managed software, support and execute assigned Software License Compliance Management activities as defined in the SMM.

3.8.2.1.2 For TxDOT-retained Software, at a minimum track and maintain the applicable licensing and use information received from TxDOT as defined in the SMM.

3.8.2.1.3 As defined in the SMM, utilize tools, such as an enterprise management system and remote monitoring agents, to assist in monitoring efforts, subject to TxDOT's approval of all such tools.

1. Monitor Service Providers Services or equipment for the presence of any unauthorized or non-standard Software.
2. Define and check for particular Software signatures.

3. Monitor the use of Software developed by the Service Provider application development groups.
 4. Check the presence and version of Software installed on a particular device and record in the Asset Inventory and Management system.
- 3.8.2.1.4 Provide the required data, on a frequency defined in the SMM, to enable ITD SG to report license information and compliance positions to TxDOT.
 - 3.8.2.1.5 Store and track Software license agreements and associated license keys, including processes and procedures for renewals.
 - 3.8.2.1.6 Track license counts and associations within the CMDB.
 - 3.8.2.1.7 Collect and maintain the Contract and Proof of Entitlement (POE) within the TxDOT provided system.
 - 3.8.2.1.8 Support TxDOT to collect and normalize software titles to standard names.
 - 3.8.2.1.9 Support TxDOT to review the Software License Compliance position and determine appropriate remediation.
 - 3.8.2.1.10 Support assigned actions through the Incident, Request, Change, and Project processes for any reported non-compliance of software purchased versus software installed.
 - 3.8.2.1.11 Support and provide clarifications about information presented in the Software License Compliance Report to eliminate discrepancies.
- 3.8.2.2 Support the use of Service Provider provided and managed Software to maintain strict compliance, including but not limited to:
 - 3.8.2.2.1 Immediately notify and advise TxDOT of all Software license compliance issues associated with Services.
 - 3.8.2.2.2 Support in the tracking, management and implementation of security certificates used to secure confidential sessions (e.g., SSL) for Internet and Intranet transactions and communications, including processes and procedures for renewals, as required by TxDOT.
 - 3.8.2.3 Support TxDOT to confirm the presence and version of Software installed on a particular device and that those attributes are recorded in the Asset Inventory and Management system.
 - 3.8.2.4 Provide reporting of license information and compliance to TxDOT.

3.8.3 Patch Management

The Service Provider shall, at a minimum:

- 3.8.3.1 Be responsible for patch deployment and control of the software and devices under its management.
- 3.8.3.2 Be responsible for participating in TxDOT Change Management processes to deploy patches on a regular basis.
- 3.8.3.3 Deploy patches to the Service Providers service components per TxDOT's policies and ensure compliance as required. Use the TxDOT-approved central deployment tool, as applicable and mutually agreed upon.
- 3.8.3.4 Provide and apply patches to Service Providers service components and devices within the timeframe guidelines in accordance with ITD Information Security policies and SMM.

- 3.8.3.5 Adhere to TxDOT's security configuration management.
- 3.8.3.6 Communicate with and/or alert the ITD Information Security when patches are not installed within the designated timeframe.

3.9 IT Service Continuity Management

Service Provider is responsible for maintaining an IT Service Continuity Management (ITSCM) plan for its own internal staff and systems to respond to an emergency and continue to provide Services to TxDOT.

The Service Provider shall, at a minimum:

- 3.9.1.1 Support ITSCM requirements in **Exhibit 2.3 IT Service Continuity Management**.
- 3.9.1.2 Develop, maintain, and test Disaster Recovery Plans (DRPs) and Technical Recovery Guides (TRGs) as defined in the SMM for the Systems, Software, and Equipment used by Service Provider to provide the Services, including those provided at the TxDOT or Service Provider Facilities.
 - 3.9.1.2.1 The DRPs and TRGs should comply with all applicable Federal and State requirements.
- 3.9.1.3 In the event of a disaster, recover and support affected Systems, Software, and Equipment at the designated recovery location according to the agreed Recovery Time Objective (RTO) and Recovery Point Objective (RPO).
- 3.9.1.4 Coordinate Service Provider's ITSCM plan with the TxDOT ITSCM plans and TxDOT Customer Business Continuity Plan (BCPs) to ensure TxDOT can resume regular business functions in the event of a Disaster or significant event affecting the Systems, Software, and Equipment used by Service Provider to provide the Services.
- 3.9.1.5 In the event of a service disruption, coordinate all Service Provider ITSCM efforts to ensure smooth and efficient resumption of Services.

3.10 Project Management

Project Management provides a way to execute and manage projects with the goal of delivering projects from request through completion, meeting TxDOT requirements in terms of timing, quality, and cost.

The Service Provider shall, at a minimum:

- 3.10.1.1 Be responsible for executing and project managing projects related to the Service Provider's Services.
- 3.10.1.2 Conform Service Provider operations to TxDOT defined policies and procedures to ensure the success of the Project Management process.
- 3.10.1.3 Use the TxDOT approved Project and Program Management (PPM) system as the single source of project management and information regarding all projects and programs.
- 3.10.1.4 Validate that all Service Provider Project Management data resides in the PPM system.
- 3.10.1.5 Execute projects according to the approved Program Management and Project Management methodology as defined in the SMM.

3.10.1.6 Projects that meet the criteria for “major information resources project”, as defined by Texas Government Code 2054.003 (10), are subjected to state Quality Assurance Team (QAT) oversight requiring the Service Provider to support the following:

3.10.1.6.1 Adhere to the requirements and guidelines as outlined in the Project Delivery Framework located here:

<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=16>

3.10.1.6.2 Provide project deliverables as required for the QAT to review and provide proactive monitoring of project outcomes.

3.10.1.6.3 Develop and execute corrective action plans for projects with QAT identified project risks.

3.10.1.6.4 Provide status reports to TxDOT as required to report to QAT stakeholders (state leadership, TxDOT leadership, TxDOT project teams).

3.10.1.6.5 Escalate significant issues to TxDOT and advise on alternative methods for correction.

4 BUSINESS MANAGEMENT

4.1 Operational Intelligence

Service Provider shall provide the data and/or reports to ITD SG for report creation and posting via the Operational Intelligence System, and Portal as specified in **Exhibit 3.3 Reports**. Service Level and operational reports are defined in **Exhibit 3.3 Reports**.

The Service Provider shall, at a minimum:

4.1.1.1 For core Services, provide online reporting capability with near real-time data for use by TxDOT in the generation of sophisticated, custom reports.

4.1.1.2 As appropriate, provide near real-time operational data feeds to the Operational Intelligence System.

4.1.1.3 Provide on-time, monthly service-level performance data for each Service Level requirement, to Service Level Management System.

4.1.1.4 Provide mutually agreed upon reports and data to ITD SG to enable invoice reconciliation.

4.1.1.5 Coordinate with ITD SG and provide data to support the creation of integrated performance dashboards. Dashboard data should support:

4.1.1.5.1 Near real-time health dashboards for any Systems managed by Service Provider highlighting status of health metrics as defined by TxDOT.

4.1.1.5.2 Report monthly, quarterly, and annually in the Security Dashboard on the deployment of tools and procedures to the TxDOT environment.

4.1.1.6 As required, collaborate with other Component Providers, to include sharing reports and information via the portal or other mutually agreed upon mechanism as appropriate to ensure effective Service delivery.

- 4.1.1.7 Support integration of applicable security Service solutions, in which data from multiple sources (e.g., scan results, multiple IDS platforms/IPS devices, and MDS devices) are incorporated and integrated into the Service.

4.2 Service Level Management

Service Level Management includes the activities associated with managing and reporting attainment of Service Level performance, deliverable commitments, and customer satisfaction.

The Service Provider shall, at a minimum:

- 4.2.1.1 Provide accurate and timely SLA data to the ITD SG team, as defined in **Exhibit 3.1 Service Level and Deliverable Matrix** and the SMM.
- 4.2.1.2 When SLAs fail to meet minimum, or expected service level targets, implement Service Level Improvement Plans (SLIP), as described **Exhibit 3.0 Performance Model** and in the SMM.
- 4.2.1.3 Summarize and report on plans and activities that affect the overall Services to TxDOT governance boards in accordance with **Exhibit 1.2 Governance Model**.

4.3 Customer Satisfaction

The ITD CRM team will have responsibility for conducting the development, maintenance, and execution of the customer surveys for all TxDOT Services. The ITD CRM team shall oversee the distribution, collect responses, tabulate results, and report results back to TxDOT customers as part of an ongoing program for measuring and improving customer satisfaction across all TxDOT Services

- 4.3.1.1 The Service Provider shall support the TxDOT Customer Satisfaction by establishing annual performance goals and specific corrective actions for customer satisfaction with input from TxDOT to be included in the Customer Satisfaction Improvement plan.
- 4.3.1.2 The Service Provider shall support the TxDOT Customer Satisfaction Survey which will capture the Customer satisfaction surveys of the Service. The service provider shall:
 - 4.3.1.2.1 Support TxDOT CRM as requested in developing survey questions;
 - 4.3.1.2.2 Promptly review the survey results as provided by TxDOT CRM and develop mitigating actions as requested by TxDOT;
 - 4.3.1.2.3 Create a Customer Satisfaction Improvement plan with specific corrective actions for the Service Provider's scope of services with the participation of TxDOT CRM as specified in **Exhibit 3.1 Service Level and Deliverable Matrix**; and
 - 4.3.1.2.4 Track and report progress of implementations toward the improvement of customer satisfaction on a quarterly basis.
- 4.3.1.3 The Service Desk Survey is intended to identify each Customer's rating pertaining to the level of service they received upon contacting the Service Desk. The Service Provider shall review the Services related survey results, determine corrective actions for assigned issues, lead resolution of assigned corrective actions and support the ITD CRM improvement program. The Service Provider shall:
 - 4.3.1.3.1 Analyze and review Service-related feedback and trends;
 - 4.3.1.3.2 Determine corrective actions for assigned issues and areas for improvement; and

- 4.3.1.3.3 Keep TxDOT CRM informed while leading and executing assigned corrective actions or improvement initiatives.

4.4 IT Financial Management

Service Provider must provide IT Financial Management Services in support of the **Exhibit 4.0 Business Model**.

The Service Provider shall, at a minimum:

- 4.4.1.1 Actively work with the ITD SG to develop and document IT Financial Management processes.
- 4.4.1.2 Actively cooperate in information exchange with TxDOT to improve end-to-end IT Financial Management.
- 4.4.1.3 Facilitate the transparency of IT Financial Management through appropriate processes to provide a complete audit trail to meet TxDOT policy requirements.
- 4.4.1.4 Integrate Service Provider IT Financial Management process and system with the TxDOT IT Financial Management process and system, where the processes interact, and as agreed to with TxDOT.
- 4.4.1.5 Communicate and coordinate the IT Financial Management processes and policies within Service Provider's own organization.
- 4.4.1.6 Utilize the IT Financial System provided by TxDOT such that it serves as the single source of information regarding all IT Financial Information for Services within Service Provider scope.
- 4.4.1.7 Integrate, as agreed, Service Providers' systems with the TxDOT IT Financial System, including providing all appropriate and required licenses and/or interfaces.
- 4.4.1.8 Provide sufficient data and detail to support TxDOT State and Federal funding accounting, grant, and audit requirements.
- 4.4.1.9 Collect, aggregate, and provide Resource Unit (RU) data, service provisioning, and service metric information to TxDOT as required.
- 4.4.1.10 Provide ITD SG with monthly invoice data required to render the Service Provider detail statement of Services.
 - 4.4.1.10.1 Support all charges with detailed invoice data as required in **Exhibit 4.3 Form of Invoice and Data Feed**, and supporting utilization data at the TxDOT customer, Resource Unit, Charge Category (e.g., Programs, Divisions, Districts) as required by TxDOT.
- 4.4.1.11 Actively participate in developing and maintaining the processes for the resolution of invoice disputes within designated timeframes.
- 4.4.1.12 Provide effective and agreed mechanisms for crediting TxDOT as appropriate.
- 4.4.1.13 Effectively execute the processes to record, track, and manage incidents of invoice disputes.
- 4.4.1.14 Research and review invoice disputes for completeness and provide supporting data.

- 4.4.1.15 Support and initiate additional treatment of invoice disputes to facilitate resolution within designated timeframes.
- 4.4.1.16 Develop procedures and verify incidents of invoice disputes are continually updated, at a minimum on a weekly basis.
- 4.4.1.17 Keep TxDOT informed of activity and anticipated resolution times for active incidents of invoice disputes.
- 4.4.1.18 Allow TxDOT to monitor and validate invoice dispute process on an ongoing basis.
- 4.4.1.19 Provide a process for escalating to Service Provider management incidents of invoice disputes not resolved within the time frames established within TxDOT policies.



Texas Department of Transportation

ERP Managed Application Services (ERP MAS)

Exhibit 2.1.2

Statement of Work

Version 1.0

Solicitation No. 601440000032007

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1 Introduction

This **Exhibit 2.1.2 ERP Managed Application Services Statement of Work** sets forth the Services that Service Provider shall provide as of the Commencement Date unless otherwise specified. Further, this **Exhibit 2.1.2 ERP Managed Application Services Statement of Work** sets forth the processes and systems that the Service Provider shall provide and, in conjunction with **Exhibit 2.1.1 Cross-Functional Statement of Work**, describes the Service Provider's obligations to work with other TxDOT Service Component Providers to deliver integrated end-to-end Services. The Service Provider shall work in coordination with TxDOT, Service Component Providers (SCP), and TxDOT Contractors to effectively provide the Services.

The Service Provider confirms that unless otherwise explicitly stated, it will provide a solution that supports all of the business processes described in this **Exhibit 2.1.2 ERP Managed Application Services Statement of Work** and its Exhibits and that all Services are included within the Charges described in **Exhibit 4.0 Business Model**. Accordingly, the Service Provider also confirms that TxDOT will not incur any other charges for the requirements described in this **Exhibit 2.1.2 ERP Managed Application Services Statement of Work**.

The Service Provider shall deliver the Services in the best interests of TxDOT. Service Provider shall be responsive to the current and future requirements of TxDOT by proactively anticipating needs and adjusting Services accordingly within the Charges.

Additionally, the Service Provider shall:

- a. Integrate with TxDOT in an automated service delivery environment.
- b. Provide Services for transition, steady state, and service evolution consistent with **Exhibit 4.2 Financial Responsibilities Matrix**
- c. Assume in scope services responsibility for existing services provided by all Incumbent Service Providers as defined in this exhibit in sections 2-7.
- d. Document the Services environment and resolve or mitigate identified issues and risks.
- e. Implement and maintain TxDOT information security standards and practices as defined in the Service Management Manual (SMM).
- f. Evolve the current environment to improve performance and efficiencies and take advantage of next-generation technologies to decrease costs to TxDOT.

The Service Provider shall be responsible for all activities necessary to ensure Services are performed in accordance with all standards and processes contained in the Agreement, the Service Levels in **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual.

Service Provider shall integrate and fully cooperate with TxDOT and all other SCPs as required for smooth and efficient operation during the development, implementation, and execution of its service management processes to ensure consistency and integration across all Service Providers. Service Provider shall work together with TxDOT and other SCPs to deliver integrated Services and share Service Level responsibilities as defined in **Exhibit 3.1 Service Level & Deliverables Matrix**.

1.1 Operating Model

Exhibit 2.1.1 Cross Functional SOW contains specific cross functional requirements that all Service Component Providers (SCPs) must meet in order to perform the requested Services and responsibilities defined in **Exhibit 2.0 Service Model**.

TxDOT contracts with multiple SCPs to deliver services to TxDOT Authorized Users. Those services are integrated into a common service delivery model by TxDOT’s ITD Service Governance (ITD SG) function. The ITD SG provides the systems, process leadership and service delivery oversight necessary to ensure consistent, quality service delivery. Figure 1 below depicts the relationships between SCPs and ITD SG, ITD Sourcing Management, and TxDOT ITD Governance.

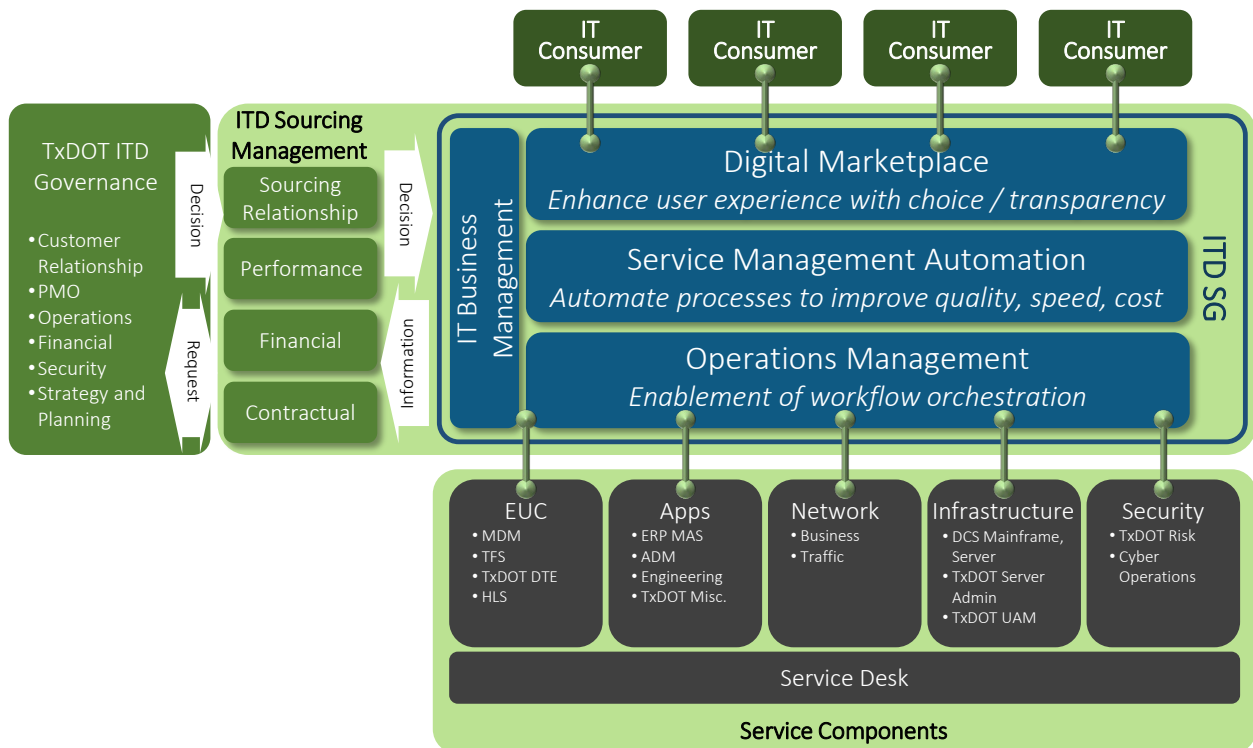


Figure 1 – TxDOT ITD Operating Model

TxDOT ITD Governance and ITD Sourcing Management

As the overall service owner, TxDOT ITD operates overall governance functions that provide customer relationship leadership, PMO, operations, financial, security and planning roles. The ITD Sourcing Management function works closely with the SCPs to ensure the provided services

individually adhere to the required Service Providers requirements, and collectively meet TxDOT's desired outcomes.

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2 Common Services

Common services apply to all sections of this Statement of Work. The Service Provider shall, at a minimum:

1. Adhere to and perform the cross-functional requirements contained in **Exhibit 2.1.1. Cross-Functional Statement of Work** and as defined in the Service Management Manual (SMM).
2. Provide interoperability with industry best practice service desk services and existing and future TxDOT infrastructure
3. Provide ERP Managed Application Services support during business hours or 24x7x365 as required.
4. Respond to and complete requests for TxDOT executives (e.g. VIPs) and their designees per TxDOT approved prioritization procedures as defined in SMM.
5. Ensure confidentiality, integrity, privacy, and authenticity of TxDOT Data and TxDOT Personal Data in accordance with the Agreement.
6. Proactively research and identify industry best practices relevant to TxDOT end-user support, generate reports highlighting improvement recommendations, and enact recommendations as requested by TxDOT.

2.1 Operating Agreements with Other SCPs and TxDOT

TxDOT holds other contracts for additional or related work for the platforms and customer specific projects and services. The Service Provider must fully cooperate with the ITD SG function and all other TxDOT SCPs as may be required for the smooth and efficient operation of all related or additional work arising from this Agreement. All Service Provider Personnel must perform in a manner that supports the efficient operation of all related or additional work arising under the Agreement, and may not act in any way that may unreasonably interfere with the work of any other participant or TxDOT employees.

The Service Provider is required to enter into Operating Agreements (OAs), in the form of **Exhibit 3.4 Operating Agreements**, with the other SCPs including but not limited to Managed Network Services, Service Desk, others, and future SCPs should TxDOT identify them to the Service Provider.

2.2 Service Evolution and Optimization Services

The Service Provider shall support TxDOT in the administration, implementation, optimization, and support of the use of the Service and service elements inclusive of all hardware, products, services, devices, tools, operational processes and emerging standards to support TxDOT's position with respect to high performance, high quality, and high availability (to the extent contained and as applicable to the work in this Exhibit) Service

infrastructure provided by the Service Provider in the performance of the Services and pursuant to **Section 9.10 Technology Evolution** of the Agreement.

2.2.1 Technology Planning and Optimization Roadmap

The Service Provider shall support TxDOT in written annual review of a multi-year Service roadmap inclusive of all projects, optimization and transformation initiatives. This review shall highlight related TxDOT change initiatives and identified opportunities in support of TxDOT.

1. The Technology Plan and Roadmap is an annual Deliverable and will require quarterly updates.
2. The Service Provider shall implement the optimization and technology improvements identified in the plan and approved by TxDOT.

2.2.2 Technology Planning Process

The Service Provider shall adhere to the TxDOT process and ongoing program management for the establishment, currency, tracking, and publishing of a Technology Plan that incorporates input from TxDOT and SCPs and aligns with the governance processes. The content of the plan and frequency of the Deliverable is included in **Exhibit 3.1 Service Level and Deliverables Matrix**.

2.2.3 Technology Adoption and Alignment

The Service Provider shall provide information in the format required by TxDOT to:

1. Develop and structure the plan to coordinate the aggregation of technical planning information from TxDOT and SCPs as directed by TxDOT and include an implementation roadmap, consistent with TxDOT's business roadmap, with estimated timing in alignment with the Technology Plan; and
2. Provide linkage with technology currency requirements that align with technology refresh plans (e.g., software version migrations) and include input from TxDOT to identify candidates and requirements for the deployment of new technology or the automation of tasks associated with the Services and/or TxDOT's business processes.

2.2.4 Technology Standards

The Service Provider shall research and recommend standard products to TxDOT for adoption into the program.

1. Publish and make available the description of services and offerings by Service Provider that are in use on a quarterly basis

2. Publish and make available the description of standard products to Authorized Users as requested by TxDOT;
3. Provide standards for supporting open source software;
4. Make the description of approved services and offerings available on the service portal;
5. Align the approved services and offerings list with TxDOT’s strategic direction, and technical architecture; and
6. Provide mechanisms and processes to capture feedback and business needs from TxDOT to potential changes required in approved services and offerings.

2.2.5 Annual Review of Service Roadmap

In conjunction with regularly scheduled operational meetings with TxDOT and in driving Technology Evolution requirements of the Agreement, the Service Provider, at least annually, shall sponsor a meeting to review recent or anticipated industry trends, emerging technologies, technology advancements, alternative processing approaches, new tools, methodologies or business processes (collectively “best practices”) that, at TxDOT’s choosing, could optimize the cost, efficiency, compute, storage and networking capacity, or otherwise drive efficiencies for both TxDOT and the Service Provider. Throughout the Term, Service Provider shall:

1. Identify and apply best practice techniques, methods, and technologies in the performance of the Services;
2. Train Service Provider Personnel in the use of new techniques, methods, and technologies that are in general use within Service Provider’s organization and the IT and business consulting industries; and
3. Make necessary investments to keep and maintain the Software and other assets used to deliver the Services at the level of currency defined in **Exhibit 4.2 Financial Responsibility Matrix**.

2.3 Key Personnel Positions

In an effort to foster a mutually supportive and collaborative environment in which the Services are provided in an effective manner that drives value to TxDOT, the Parties will jointly review certain Key Service Provider management and TxDOT positions (collectively “Key Personnel”), including the Service Provider Account Director. Key Personnel are listed and maintained in **Exhibit 2.4 Key Personnel** and include the following:

1. Account Director with overall contract, financial and service delivery accountability for the Agreement. This position shall have decision making authority for all aspects of the Agreement. The Account Director shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.
2. Service Delivery Director with overall accountability for delivery of the Service Provider's requirements. The Service Delivery Director shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.
3. Financial Director with overall accountability for all invoicing, billing disputes, pricing, and financial reporting under the Agreement.
4. Transition Director with overall accountability for delivery of the Service Provider's service delivery Transition from the Incumbent Service Provider(s) beginning upon the Effective Date through successful Transition milestone completion and TxDOT Acceptance of all Transition Deliverables.
5. HCM ERP Lead with overall accountability for the Human Capital and Enterprise Learning Management (HCM) ERP Service performance. This role will act as a functional lead and be responsible for working with TxDOT, CAPPS, DCS and OEM vendors. The HCM ERP Lead shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.
6. FSCM ERP Lead with overall accountability for the Financial Supply Chain Management (FSCM) ERP Service performance. This role will act as a functional lead and be responsible for working with TxDOT, CAPPS, DCS and OEM vendors. The FSCM ERP Lead shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.
7. ERP Technical Lead with overall accountability for the ERP Service and technical performance. This role will act as a technical lead and be responsible for working with TxDOT, CAPPS, DCS, Service Provider, and OEM vendors. The ERP Lead shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.

2.4 Evergreen Service Personnel

Based on TxDOT's experience with similar managed services relationships with a variety of leading vendors, TxDOT will regularly review the Service Provider team (as a team and as individuals) regarding several key factors including, but not limited to:

1. Enablement of TxDOT Service-related initiatives.
2. Attainment of high customer satisfaction in TxDOT stakeholder communities and by extension and importantly end-user communities.

3. Creation of a highly integrated, collaborative, and mutually supportive delivery of Services through the formation of an “integrated team” culture.
4. Incorporation of industry-leading and Service Provider best practices in the operation, maintenance and support of the Service while seeking opportunities for continuous refinement and improvement of areas that are directly within the Service Provider’s scope, those areas where the Service Provider has a reliance on TxDOT and third parties, and areas in the common interest of driving Service efficiency, quality and timeliness (e.g., value).

TxDOT and the Service Provider shall meet on a regular basis, no less frequently than annually, to review the Service Provider’s performance (as a team and as individuals) in driving toward these goals. At TxDOT’s request, Service Provider shall make changes to the number, nature, mix, or named Key Personnel as required to improve and enhance attainment of these goals. As a one-time evaluation, the Service Provider and TxDOT shall review the performance of the Service Provider Personnel and implement any changes requested by TxDOT such that the Service is launched with the best possible Service Provider team as possible.

Should, for whatever reason, TxDOT determine based on documented or observed performance that a member (or members) of the Service Provider’s Key Personnel is operating in a manner inconsistent with these goals, TxDOT will request a meeting of the Service Provider Account Director and the TxDOT Designated Representative to address localized or endemic failures to meet these goals. Upon receiving this feedback, the Service Provider shall develop and implement a plan to either realign the performance of the Key Personnel in question or replace them promptly should the situation dictate in accordance with the provisions of this RFO pertaining to replacement of personnel.

Requested Service Provider Personnel changes and replacement is governed in accordance with **Article 8 Service Provider Personnel** of the Agreement.

2.5 Location of Services

The Service Provider may provide Services either Onshore or Offshore. Services shall be performed by Service Provider Personnel at TxDOT Facilities, Service Provider Facilities, or at TxDOT approved remote locations. For Service Provider Personnel providing Services at a TxDOT Facility, TxDOT will provide Service Provider, and Service Provider shall be required to use TxDOT provided endpoint computing devices. Unless approved in writing by TxDOT, Service Provider Personnel that are issued TxDOT provided endpoint computing devices are prohibited from transporting these devices and accessing and using TxDOT systems from outside the United States of America.

For Service Provider Personnel providing Services at a Service Provider Facility or remote locations, Service Provider shall provide endpoint computing devices. Service Provider endpoint computing devices shall conform to Service Provider’s information security standards that are suitable for work performed hereunder and meet the requirements of the

Agreement. Prior to actual use and access to TxDOT systems, Service Provider shall provide TxDOT with written attestation from the Service Provider's Chief Information Security Officer (CISO) that the Service Provider issued and managed endpoint computing devices comply with TxDOT Rules and TxDOT Standards. Service Provider issued and managed endpoint computing devices must utilize the TxDOT provided virtual desktop interface when interacting with TxDOT systems to ensure that TxDOT Data remains at all times within the United States of America.

Unless otherwise approved by TxDOT in writing, TxDOT Data may not be received, stored, processed or disposed in any way via information technology systems located Offshore. Confidential Information and TxDOT Personal Data shall not be viewed outside the United States of America without prior TxDOT written approval and with sufficient data masking and de-identification protections that align with the Agreement.

TxDOT Data and Confidential Information access and protection is identified in the Master Services Agreement and all TxDOT Data must remain at all times within the United States of America, unless approved in writing by TxDOT.

2.6 Service Commencement

Service Commencement includes the set of activities associated with the analysis, planning, and execution of the transfer of all current services, as defined in this Exhibit, from Incumbent to Service Provider. These requirements are intended to ensure a seamless transfer on the Commencement Date that is not disruptive to TxDOT. The Service Provider shall, at a minimum:

1. Assume the ownership, operation, management, and maintenance of all ERP Managed Application Services from Incumbent Service Provider.
2. Support all existing equipment, software, and service configurations currently performed by or contracted with the Incumbent Service Provider.
3. Support all TxDOT Facilities and hours of operation currently supported by Incumbent.
4. Develop, publish or update FAQs, wikis, and other self-help documentation to guide Authorized Users.

3 Transition Requirements

3.1 General

Upon the Effective Date, the Service Provider shall transition existing services provided by the Incumbent Service Providers and provide all Services as defined within this Exhibit. Service Provider shall be responsible for executing an orderly and timely transition.

3.2 Knowledge Transfer

During the period following the Effective Date and prior to the Commencement Date, Service Provider shall use its best efforts to acquire the practical skill, knowledge and expertise from Incumbent Service Provider(s) who are providing the Services prior to the Effective Date. Service Provider shall accomplish such knowledge transfer, as appropriate, by interviewing personnel currently performing the Services as well as reviewing information, records and documents related to the provision of the Services. The information to be reviewed to affect the obligations of such knowledge transfer includes, but is not limited to:

1. Copies of procedures and operations manuals;
2. Relevant system, software, and/or service information;
3. a list of third-party suppliers of goods and services which are to be transferred to TxDOT or Service Provider,
4. key support contact details for third party supplier employees, and
5. Information regarding maintenance tasks, work in progress and associated unresolved Application Requests, incidents and problems.

Service Provider shall promptly (within one (1) Business Day) notify TxDOT of any lack of cooperation or assistance on the part of any Service Component Provider, Contractor or any third party that impedes or hinders Service Provider's efforts to comply with this obligation.

3.3 Transition Management Requirements

During the Transition period, the Service Provider shall plan, prepare for, and conduct the transition of Services. The Service Provider shall:

1. Coordinate with TxDOT to schedule the installation of any required secure connectivity;
2. Implement processes and controls to prevent disruption of TxDOT's business operations, including interfaces between TxDOT and various third parties;
3. Meet with TxDOT and provide updates to the status of the work involved with Transition at a time and frequency as approved by TxDOT in the Transition Project Plan and upon request by TxDOT.
4. Ensure adequate Service Provider personnel are committed to the Transition services across workstreams, including but not limited to one or more dedicated project managers. These personnel must be sufficiently trained on the Service Provider's contractual requirements and the Service Provider's proposed solution prior to commencing Transition activities;
5. Provide sufficient staff, tools and processes to ensure all Services successfully transition from the Incumbent Service Provider(s) without service degradation.
6. Support other Service Component Providers (SCPs) successful transition to Service Provider's services by Commencement without service degradation.

7. Develop a detailed Transition Plan including the Service Provider's approach to transitioning Services from the Incumbent Service Provider(s). The Transition Plan should include, at a minimum, discovery of all systems, processes, data (e.g., Incumbent ITSM data) and reporting that is required to transition from the Incumbent Service Provider.
8. Provide project management over all Service Provider Transition services and SCP integration Transition activities;
9. Provide routine reports and communication on Transition status to TxDOT and SCPs, as directed by TxDOT.
10. Resolve issues collaboratively with TxDOT and SCPs in order to meet Transition schedule.
11. Identify all integration points of the Service Provider's solution that require existing SCPs to make changes and notifying each SCP of the required changes at least ninety (90) days prior to Commencement.
12. Train SCPs as applicable on the Service Provider's Services, systems, and SMM processes, focusing on the changes from the Incumbent Provider.
13. Create a schedule for all SCPs to complete integration changes and ensure the accuracy of those changes.
14. Test the accuracy of all integration points prior to Commencement.

4 Application Development and Support Services

Application development and support services includes maintaining and supporting existing administrative and business applications as well as configuring and integrating Commercial-Off-The-Shelf solutions. The Service Providers responsibilities include break-fix support, enhancements, Upgrades, and continuous improvement of applications. This support is inclusive of all TxDOT ERP applications, as well as any future state applications and systems.

4.1 Application Development Services

The Service Provider shall, at a minimum:

1. Provide application development services following a DevOps Continuous Integration (CI)/Continuous Delivery (CD) pipeline model. This model is an agile methodology best practice, however, based on industry standards and upon TxDOT's written approval, Application Development Services may also be managed by the parties utilizing a waterfall methodology, or a combination of both methodologies as needed.
2. All ERP application changes will be reviewed and approved by TxDOT. TxDOT will prioritize the ERP application changes for implementation and will notify Service Provider to proceed with the ERP application changes if approved by TxDOT.

3. Propose for TxDOT consideration optimization initiatives that may improve processing times, reduce customization and enhancement needs, reduce support costs, gain efficiencies, or conserve processing resources.
4. Be responsible for all testing cycles (e.g., unit, system, integration, interface, regression, load) and testing related activities (e.g., creating test scripts, correcting defects, performance tuning).
 - a. Service Provider shall perform all testing activities prior to coordinating with TxDOT to schedule TxDOT UAT.
 - b. Service Provider shall provide support to TxDOT during UAT and accessibility testing.
 - c. Service Provider shall provide TxDOT all test scripts used in testing all customizations and enhancements and shall provide TxDOT input and suggestions on development of test scenarios to ensure that integration testing with other applications is included in Service Provider's overall test plan.
 - d. Service Provider shall perform load and performance testing when appropriate or upon the request of TxDOT.
5. Provide Services that meet TxDOT Accessibility Standards, including:
 - a. Assist TxDOT in identifying accessibility requirements (i.e., "Accessibility Standards" applicable to the TxDOT approved customizations and enhancements so that the ERP applications are compliant with applicable federal and State of Texas accessibility laws and regulations which include Chapter 2054, Subchapter M of the Texas Government Code and 1 Texas Administrative Code Chapter 213 (Electronic and Information Resources).
 - b. Memorialize the Accessibility Standards established for the TxDOT approved customizations and enhancements. Service Provider and TxDOT shall produce a checklist to identify the Accessibility Standards that will be used as a standard for development and to evaluate testing.
 - c. Assist TxDOT in identifying Accessibility Standards during the test planning for UAT, as well as those that may be discovered in other test cycles.
 - d. Include the Accessibility Standards within the testing scope to make sure that certain scenarios associated with the accessibility requirements are tested.
 - e. The party responsible for correcting aspects of the ERP applications which do not meet the minimum Accessibility Standards (referred to in this Section as "Deviations") is determined by the origin of the software as follows:
 - i. Unmodified Commercial-Off-The-Shelf ("COTS") software. If TxDOT's Service request requires Service Provider to implement COTS software without any modification required by Service

Provider, then Service Provider is not required to modify the COTS software to address Deviations from the Accessibility Standards that are inherent in the COTS software.

- ii. State-modified Software. If TxDOT's Service Request requires Service Provider to implement software that has been previously modified by or on behalf of the State (e.g., ERP software from previous PeopleSoft implementations), then any Deviations from the Accessibility Standards shall be addressed as part of TxDOT's prioritization process related to customizations and enhancements. Service Provider shall assist TxDOT in prioritizing the Deviations based on
 - 1. Severity of the Deviation
 - 2. Estimated time frame to implement the necessary modifications to correct the Deviation
 - 3. Availability of any non-software modification which may address or mitigate the Deviation, and
 - 4. Additional items identified by TxDOT.

Upon TxDOT request, Service Provider shall provide an hour estimate for the correction of each Deviation. TxDOT will notify Service Provider of the Deviation(s) approved by TxDOT that are to be addressed by Service Provider; and

- iii. Software Modifications by Service Provider. If TxDOT's Service request requires Service Provider to make modifications to software as part of the Services, then Service Provider shall modify the software so that it meets the Accessibility Standards.
6. Provide content development and maintenance of a TxDOT-approved ERP application training tool. TxDOT is currently licensed for Oracle's User Productivity Kit (UPK). UPK is a training development, deployment and maintenance platform that provides a vehicle for disseminating critical process knowledge of the various ERP modules. UPK has been used in the past by TxDOT for training and help documentation, however, this product has not been updated since 2017 and Oracle no longer supports UPK. TxDOT intends to convert the existing UPK training documentation to a TxDOT supported training platform, such as Articulate, and to bring the training documentation up to date.
- a. Provide technical support of the training tool, to include patches, Upgrades, and posting training topics.
 - i. For Services provided under this section, Service Provider may propose an alternative training development tool to UPK for TxDOT's consideration and approval.
7. Provide TxDOT with budgetary estimates for planning purposes on conceptual system requests upon request by TxDOT.

- a. Provide approaches for handling the request, and document the approaches to include issues, concerns, or advantages for one approach compared to another approach.
 - b. Provide estimates for legislative bills and management requests according to established timelines.
 - c. Upon request, provide TxDOT information within a one (1) day turnaround depending on the urgency of the request as defined by TxDOT.
8. Implement TxDOT approved customizations and enhancements to ERP applications to support agency requirements. Customizations and enhancements relating to State of Texas and Federal legislative requirements shall be completed on or before the effective date of the applicable legislation.
- a. Provide TxDOT customization and enhancements estimates using a development estimating tool for TxDOT to understand the basis for the customization and enhancements estimate. Appendix Q – ERP Estimating Tool provides an example of the minimum level of granularity TxDOT requires Service Provider to provide for customization estimates.
 - b. As part of TxDOT’s prioritization process related to customizations and enhancements and with TxDOT’s approval, Service Provider shall:
 - i. Proceed with a technical feasibility assessment of the customization or enhancement request and level of effort.
 - ii. Suspend the customization or enhancement request and assessment in conjunction with a future deployment or close the customization request with an explanation of the review, analysis, and determination.
 - iii. Close the customization or enhancement request with an explanation of the review, analysis, and determination.
9. Implement and deploy new TxDOT-selected Oracle/PeopleSoft Financial or HCM module(s) as further described in section 4.12, including migration of data and integration with existing ERP modules.
- a. Once the new module(s) is implemented by Service Provider the new module shall then become part of the supported production environment (e.g., ERP FSCM or ERP HCM).
 - b. Upon the approval of TxDOT, the additional module may be made available for use by any State of Texas Agency having ownership of or access to valid PeopleSoft licenses.
 - c. The current Oracle/PeopleSoft software licensed by TxDOT is provided in Appendix G – ERP Software.

4.2 Application Customizations and Enhancements

The Service Provider shall, at a minimum:

1. Provide work effort estimates to fulfill application enhancement requests.
2. Support TxDOT in triage and prioritization requested enhancements, and implement following TxDOT review and authorization.
3. Recommend and provide methodology for logical release management including:
 - a. Recommending priorities
 - b. Planning and scheduling releases in alignment with user needs
 - c. Monitoring release schedules
 - d. Setting methodology for testing and plan to undergo review by TxDOT Change Advisory Board (“CAB”)
 - e. Attend CAB meetings as necessary in support of submitted change activity
 - f. Defining block releases
 - g. Executing releases
 - h. Reporting all schedule exceptions to TxDOT as required
4. Create specifications, including:
 - a. Reviewing requests
 - b. Functional specifications
 - c. Technical specifications
 - d. Meeting architecture and security standards
5. Configure and build enhancements in accordance with TxDOT-approved functional and technical specifications.
6. Implement enhancements for applications to address and prevent performance issues, including:
 - a. Determining performance requirements
 - b. Building the plan for performance tuning
 - c. Executing the plan for performance enhancement
7. Implement enhancements for applications to address and prevent performance issues, including:
 - a. Determining performance requirements
 - b. Building the plan for performance tuning
 - c. Executing plan for performance enhancement
8. Develop repository of test scripts to support future re-use and move to automated testing.
9. Develop and maintain training materials for critical applications, as defined by TxDOT, in coordination with TxDOT stakeholders and communicate significant changes to training materials to TxDOT users and stakeholders.

10. Participate in UAT as a user base as needed, approve UAT format, and provide the environment.

4.3 Application Break Fix Support

The Service Provider shall, at a minimum:

1. Provide break/fix changes, customizations, enhancements, and Upgrades.
 - a. All ERP application changes will be reviewed and approved by TxDOT.
 - b. TxDOT will prioritize the ERP application changes for implementation and will notify Service Provider to proceed with the ERP application changes if approved by TxDOT.
2. Provide Level 2 Support as the first level of escalation to resolve incidents.
3. Provide Level 3 Support for more major incidents as well as the next level of escalation to proactively and reactively resolve issues.
4. Provide Level 4 Support to interact with other TxDOT Contractors to resolve product level issues.
5. Perform a Root Cause Analysis for all P1 and P2 Incidents upon TxDOT request and for Problem records.
6. As requested by TxDOT, provide error correction across all software where Service provider has support responsibility.
7. Resolve any other Incidents and Problems that may occur associated with an application, including taking actions to reinstate both the application and all services to TxDOT, including re-opening a specific ticket to ensure resolution as requested by TxDOT, and coordinating with TxDOT and other TxDOT Contractors to restart or amend production schedules that are the result of late arrival of critical interfaces or applications, databases, or systems software or equipment or network communications Incidents and Problems.
8. Document and implement identified and prioritized bug fixes and security patches, as approved by TxDOT.
9. Support TxDOT, at its request, in application management under emergency and/or disaster situations.
10. Verify and validate break fix resolution, including approving implementation of corrective actions and requesting Service Provider to re-open any Incidents not resolved appropriately.

4.4 Application Support Services

The Service Provider shall, at a minimum:

1. Provide patches and break/fix support.
2. Change inputs/outputs as requested.

3. Create new and make changes to existing reports and queries.
4. Create, maintain, control, edit, update, delete, and add configurations for all ERP security (e.g., control values, tree values, row level security configurations, security roles, security permission lists, workflow route controls, workflow route control profile, and workflow configurations).
5. Manage and support of all ERP environments.
6. Provide maintenance and technical support for all software products provided by TxDOT that are leveraged by Service Provider, excluding the annual cost of the software maintenance support with the publisher which is the responsibility of TxDOT.
7. Provide technical support and analysis to TxDOT as requested.
8. Provide database administration support for Oracle and other ERP products as defined in Section 5.3 of this Exhibit.
9. Provide 24/7 on-call support.
10. Provide technical application research and support for ERP production issues.
11. Monitor and support batch and online processing.
12. Manage ERP availability and performance.
13. Resolve Incidents in accordance with the SMM, knowledge database documents, and configuration database(s).
14. Manage communications with TxDOT with updating of progress of Incident resolution in accordance with the SMM, knowledge database documents, and work instructions.
15. Maintain support for additional online availability of the application during evenings and weekends as required by TxDOT to support non-typical projects or services.
16. Support and maintain all ERP interfaces.
17. Create and maintain ERP documentation.
18. Support escalated ERP production jobs, tasks, and schedules and support remediation failures.
19. Validate ERP backups complete successfully according to schedule.
20. Create and maintain Statewide CAPPs baseline in the TxDOT environments.
21. Manage and execute Monthly CAPPs (e.g., customer Service Requests) alignment and quarterly CAPPs attestation.
22. Make recommendations for Upgrades to ensure alignment with Statewide CAPPs ERP versions (e.g. PeopleTools, PHIRE, and Oracle Images).
23. Provide maintenance and technical support for ERP environment refreshes.

24. Provide support, analyses, and make suggestions to improve ERP systems with the optimized performance.
25. Analyze and make recommendations for data archival.
26. Maintain and audit up to date application documentation, and maintain current data in CMDB as well as in functional and technical documentation.

4.5 ERP Functional Support Services

The Service Provider shall, at a minimum:

1. Provide functional support for ERP with TxDOT as the primary point of contact for all TxDOT business users.
2. Develop, maintain, and enhance technical, functional configuration, and other activities as described in Appendix U – ERP Functional and Technical Design Document.
3. Provide personnel that have an in-depth functional understanding of Oracle/PeopleSoft modules to translate the functional requirements into technical designs.
4. Bridge requirements, business needs and other relevant information necessary for service delivery operations consistent with this exhibit between Application developers and business users
5. Provide fiscal year end support.
6. Provide tax updates.
7. Make Legislative updates/changes.
8. Make emergency changes to accommodate Federal and State requests.

4.5.1 ERP Report Administration Services

The ERP applications offer a wide range of reporting possibilities to meet the various needs of TxDOT. TxDOT may access PeopleSoft data through existing PeopleSoft reports that were developed using available tools such as PeopleSoft (PS) SQR, Tableau, App Engine, BI Publisher, and nVision reporting tools, as well as through PeopleSoft queries generated through PeopleSoft (PS) Query Manager. TxDOT anticipates that the data lake/data warehouse will directly connect to the ERP reporting database. TxDOT will on occasion directly access the ERP database in ad-hoc mode through tools such as SQL Developer/DBArtisan, etc.

The Service Provider shall, at a minimum:

1. Maintain and enhance all existing and future PeopleSoft reports and queries.

2. For end-user ad-hoc reports, provide technical assistance and analysis to the TxDOT reports team as needed for TxDOT personnel to develop, enhance, or recreate reports as business needs change.
3. For standard delivered PeopleSoft reports, provide report administration services, which include, but are not limited to, the following: report maintenance; analysis, troubleshooting and issue resolution.
 - a. TxDOT will select and approve the software tool to be utilized for ERP reports; however, as part of Service Provider's technical assistance, Service Provider may propose for TxDOT's consideration the software tool best fit to meet the business requirement.
4. Support TxDOT in the development of a reporting solution for ERP FSCM and ERP HCM and ELM that provides a secure connection from the ERP Reporting environment to TxDOT's Data Lake/Data Warehouse.
 - a. At the time of this RFO, TxDOT is using a "Data Lake", a data repository for all TxDOT data, and is in the process of implementing a Data Warehouse as described in Appendix E – ERP Data Lake Architecture.
5. Provide a reporting database in the ERP environments that mirrors the ERP Production data.
 - a. The TxDOT Data Lake/Data Warehouse will directly access data stored in the ERP reporting database to ensure that the data reflects all data inputs into ERP within minutes of the point in which a report is run.
6. Support the existing ERP reporting model and provide services that include, but are not limited to, the following: system account set-up for connectivity; defining specific PeopleSoft tables for access and database access controls; providing custom tables and views; data coordination and analysis; and identifying and providing any changes using Oracle Service for connection configurations.
 - a. TxDOT and Service Provider shall communicate on a regular basis about report development, administration, production support, maintenance, and any database table changes.

4.6 Documentation Requirements and Coding Standards

TxDOT-approved ERP documentation, whether created and maintained by TxDOT or Service Provider, will be located and stored at TxDOT and further considered TxDOT Data. Service Provider may retain convenience copies of the ERP documentation at Service Provider's location for working purposes.

The Service Provider shall, at a minimum:

1. Conform to the established TxDOT documentation requirements for all ERP customizations and enhancements as defined within the SMM. The minimum documentation requirements are as follows:
 - a. ERP Requirements Traceability Matrix (produced and maintained by TxDOT)

- b. ERP Functional and Technical Design Document (FDD/TDD) (produced and maintained by Service Provider). Appendix U – ERP Functional and Technical Design Document provides an example of the template to be utilized for the ERP FDDs/TDDs.
 - c. Test script template (produced and maintained by Service Provider)
 - d. UAT test script template (produced and maintained by TxDOT)
 - e. Agency configuration Run Books (produced and maintained by Service Provider)
 - f. Diagram of ERP infrastructure.
 - g. Diagram of ERP interfaces as described in Appendix T – ERP Data Flow.
2. Create and maintain all FDDs and TDDs that will be reviewed and approved by TxDOT.
 - a. If any FDDs or TDDs are shared with any State of Texas agencies, Service Provider shall create a second redacted version of the FDD and TDD that eliminates any personally identifiable information or confidential information.
 3. Utilize TxDOT's established technical coding standards.
 - a. TxDOT has established technical coding standards that address items such as: naming conventions, the application control environment, documentation requirements, and accessibility. The current ERP technical coding standards are located within Appendix S – ERP Technical Coding Standards.
 - b. Service Provider may propose, for TxDOT's consideration, revisions to enhance the technical coding standards.

4.7 ERP Interface Support Services

Currently, TxDOT heavily utilizes Control M and MuleSoft as tools for ERP Interface Support Services. A diagram of current interfaces is provided in Appendix T – ERP Data Flow.

The Service Provider shall, at a minimum:

1. Provide all Services required to support all ERP interfaces, including but not limited to, the following: file transfers; secure file transfer; HTTPS; simple object access protocol; real-time data exchange; scheduling and monitoring file transfers; ensuring successful file transfers; and ensuring input data for nightly processing is received.
2. File and data transfers may be to and/or from TxDOT (e.g., mainframe systems, data warehouse), and 3rd party institutions. All file and data transfers must be encrypted and conform to TxDOT security requirements and as stated within this SOW.

3. Additional interfaces may be required to be developed and supported by Service Provider because of new development. All data transmission shall utilize a secure, encrypted transmission protocol.

4.8 Windows for Maintenance Services

The Service Provider shall, at a minimum:

1. Perform all maintenance services within the following established windows for ERP maintenance hours:
 - a. Sunday, 8:00 a.m. to 10:00 a.m. CZT (i.e., weekly maintenance)
 - b. Change migrations occur on Tuesdays and Thursdays 6:00 p.m. to 12:00 a.m. CZT (i.e., semi-weekly software migrations), or as directed by TxDOT
 - c. Emergency migrations for P1/P2 tickets occur on an as needed basis
2. Perform a daily refresh of ERP applications at a time specified by TxDOT.
3. Submit its request for additional or extended maintenance periods to TxDOT one (1) week in advance of its need for such additional or extended maintenance periods.
 - a. Service Provider shall provide within its request the justification and the additional or extended maintenance date and timeframe.
 - b. TxDOT will use reasonable efforts to respond to Service Provider's request in a timely manner. Service Provider shall not proceed with additional or extended maintenance periods without TxDOT's approval.

4.9 Release Management Services

The Service Provider shall, at a minimum:

1. Provide release management services, which are the activities needed to protect the live environment using formal procedures.
 - a. A Release consists of the new or revised software and/or hardware required to implement TxDOT approved changes.
 - b. Utilizing the Change Management process, Service Provider shall submit all Releases to TxDOT for review and approval.
 - c. Release Management Services activities include the following:
 - i. Planning the rollout of software.
 - ii. Designing and implementing procedures for the distribution and installation of changes.
 - iii. Communicating and managing expectations during the planning and rollout of new releases.
 - iv. Controlling the distribution and installation.

4.10 System Development Lifecycle

The Service Provider shall, at a minimum:

1. Utilize a Software Development Lifecycle (SDLC) process for the ERP applications that is consistent with industry best practices and that will include review and approval gates for TxDOT.
 - a. Currently ERP adheres to TxDOT's standard SDLC process that may consist of, but is not limited, to the following phases:
 - i. Project Planning, including identification of security and privacy controls
 - ii. Requirements analysis for software and hardware
 - iii. Configuration and prototyping
 - iv. Design for gap solutions
 - v. Code and Unit Test
 - vi. Integration Test
 - vii. System Test
 - viii. Accessibility Test, as applicable
 - ix. User Acceptance Test
 - x. Performance Testing
 - xi. Regression Testing
 - xii. Security Scanning Testing
 - xiii. Update development and training tools
 - xiv. Deployment/release
 - xv. Maintenance.
 - b. Based on industry standards and upon TxDOT's written approval, application development services may be managed by the parties utilizing either an agile methodology, waterfall methodology, or a combination of both methodologies as needed.

4.11 System Software Administration and Support

The Service Provider shall, at a minimum:

1. Provide system software administration and support services which include, but are not limited to, the following: software installation; configuration; system administration; software maintenance and technical support; performance monitoring, tuning; troubleshooting of all ERP environments and third-party tools; and ERP security and workflow administration.
2. Perform tasks which include loading and applying changes to ERP and all related third-party software, providing corrections or any changes as needed.

3. Monitor OEM and ERP software support repository (e.g. My Oracle Support) on TxDOT's behalf and make recommendations to TxDOT for suggested fixes, patches, and new releases that should be applied to the ERP application software.
4. Provide support services for defects discovered in the CPA CAPPS baseline code, including:
 - a. Enter a ticket into CPA's ticketing system notifying CPA of the defect.
 - b. Monitor the progress of the ticket and report back to TxDOT.
 - c. Implement the correction in TxDOT's ERP environment once defect is corrected by CPA.
5. Routinely monitor the components of ERP to identify and correct problems prior to a problem being reported by an ERP user.
 - a. Monitor ERP utilizing PeopleSoft, Oracle, process scheduling, batch processing, scripts, audit logging, database triggers, reports, queries, and automated notifications.
 - b. If a problem is identified, Service Provider shall notify TxDOT and shall proceed with Incident resolution.
 - c. Service Provider shall be responsible for working directly with Oracle and/or third-party vendors as necessary to resolve functional and technical issues.

4.12 Onboarding and Offboarding Modules

4.12.1 Onboarding of New or Additional Modules

TxDOT has the right to select any or all ERP new or additional application modules and may choose to onboard modules at any time. An additional module refers to any Oracle/PeopleSoft module within ERP FSCM and ERP HCM that are not currently deployed by TxDOT. A new module refers to any other ERP software products that may be used within ERP FSCM and ERP HCM.

The Service Provider shall provide the activities necessary for onboarding new or additional modules which include, but are not limited to, the following:

1. Management of Service Provider's personnel.
2. Manage, track, and resolve Service Provider's action items and project issues.
3. Lead and participate in project status meetings.
4. Develop and update the supporting work plan that includes the roles and responsibilities of Service Provider and TxDOT personnel and project milestone delivery dates.
5. Provide status and updates as defined in the TxDOT approved work plan.
6. Provide experienced and knowledgeable personnel for the modules being deployed.
7. Analyze software gaps and develop technical gap solutions that are efficient and cost effective for TxDOT.

8. Create and maintain functional and technical configuration workbooks for each onboarding module.
9. Provide functional prototyping activities, including functional configuration and staging of data for work sessions and agency staff, and other onboarding activities.
10. Collaborate with TxDOT SME resources.
11. Configure ERP modules, based on TxDOT approved configuration workbooks.
12. Develop all applicable FDDs/TDDs to support the project.
13. Create and maintain a test plan that identifies the timeframes and all roles and responsibilities for the project's testing cycles (e.g., unit, module integration, interface integration, system, accessibility, and user acceptance testing).
14. Provide application customizations and enhancements, as applicable, in accordance with Section 4.2 Application Customizations and of this Exhibit.
15. Create, execute, and resolve test scenarios and scripts for Unit, Integration, and System Testing.
16. Develop and test business user reports that are identified by TxDOT.
17. Provide functional and technical support for training activities.
18. Create and execute a data conversion plan.
19. Develop and execute a "go-live" cutover plan that includes a back-out contingency plan if issues arise.
20. Provide steady-state maintenance support upon go-live.

4.12.2 Offboarding or Retiring Modules

TxDOT may determine that an existing ERP FSCM or ERP HCM or ELM Module has become obsolete or will be replaced with a new or additional module.

The Service Provider shall provide the activities necessary for offboarding obsolete modules that include, but are not limited to, the following:

1. Develop a plan to convert data from each ERP module planned to be offboarded to a new or additional module.
2. Make recommendations to TxDOT on whether the retired module should stay in place for historical purposes and for how long.
3. Provide regression testing on the remaining ERP modules to ensure no adverse effects are caused by the retired module.
4. Maintain and modify interfaces with other systems.
5. Develop a communication plan for TxDOT's review and approval to send to end-users.
6. Decrease ongoing recurring costs and steady state day-to-day operations, if any, due to decommissioning any retired modules.

4.13 Asset Management

4.13.1 Use of TxDOT Licensed Software

TxDOT will provide Service Provider access to TxDOT's software licenses for the Oracle/PeopleSoft modules that are contained within ERP Financials and ERP HCM, and other Oracle licenses that may be relevant to the Services requested within this RFO. Appendix G – ERP Software contains a complete list of Oracle software that Service Provider may be able to leverage in providing the Services to TxDOT.

The Service Provider shall, at a minimum:

1. Identify, in the event additional quantities of TxDOT licensed software are needed due to the potential growth of Services, the additional quantities needed of the specific TxDOT Licensed Software in the Technology Refresh Plan as further described in **Exhibit 2.1.1 Cross Functional Statement of Work**.

4.13.2 Software Asset Management

The Service Provider shall, at a minimum:

1. Provide software asset management services, integrating people, processes and technology to allow software licenses and usage to be systematically tracked, evaluated, reported, and managed to reduce risks inherent in owning and managing software assets.
2. Maintain software license compliance and track inventory and software asset usage in TxDOT's CMDB.
3. Provide software asset management services program to manage all software licenses, and any license TxDOT provides Service Provider the right to use.
4. Manage the actual copies installed and ensure compliance with terms and conditions of the specific publisher license agreement and provide, at a minimum, the following:
 - a. Manage compliance of software licenses by monitoring, auditing, and reporting on all software use.
 - b. Proactive monitoring of software uses to maintain strict compliance.
 - c. Immediate notification to TxDOT of all software license compliance issues.
 - d. Remediation of licensing issues to be compliant with third party vendor requirements.
 - e. Track and maintain the applicable licensing and use information.
 - f. Monitor systems for the presence of any unauthorized or non-standard software.
 - g. Manage and track security certificates used to secure confidential sessions (e.g., SSL) for internet and intranet transactions and communications.

4.13.3 Software License Compliance

The Service Provider shall, at a minimum:

1. Comply with all license terms and conditions, including subsequent amendments thereto, associated with any TxDOT licensed software leveraged by Service Provider in providing the Services. Without limiting the foregoing, such license terms include the following:
 - a. Service Provider shall operate the TxDOT Licensed Software on behalf of TxDOT;
 - b. Service Provider assumes all responsibility for the confidentiality of all confidential information and protection of the applicable software publisher's proprietary rights;
 - c. Service Provider shall not copy the TxDOT Licensed Software nor shall TxDOT grant Service Provider a general development use access to TxDOT Licensed Software; and
 - d. Service Provider shall indemnify TxDOT against all costs, loss, liability and expense (including court costs and disbursement) incurred because of (a) any claims or demands brought against the Software Publisher(s) or its directors, employees or agents arising from or relating to any such services provided by Service Provider, or (b) Service Provider's failure to abide by the terms and conditions of the applicable software license.

4.14 Hours of Coverage

Service Provider shall provide Services during TxDOT's regular business hours, which are Monday through Friday, between the hours of 7 a.m. and 6 p.m., Central Time, excluding national holidays as defined by Texas Government Code Section 662.003(a). Service Provider shall provide the following additional services relating to the Services 24 hours a day, 7 days a week, and 365 days per Contract Year: (i) all monitoring services, (ii) support for Priority Level 1 and 2 incidents, production changes, emergencies, and (iii) any other activities necessary to comply with the terms of the Agreement, the Service Levels as defined in **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual. For additional clarity, the Service Provider shall provide Services following the hours of coverage by Service description as defined in Table 1 below:

Table 1 Hours of Coverage

Service Description	Hours of Coverage
Service Support – Monitoring	
Application monitoring	7x24

Supported system integrations with other SCP and TxDOT	7x24
Security services	7x24
Service Support – Management and Administration	
Triage, event management, incident management, problem management, service restoration	7x24
Application Enhancements	M-F 7a – 6p
Application break fix	7x24
Cross functional service integration	7x24
Request for Solution	M-F 7a – 6p
User access management	M-F 7a – 6p
Proactive capacity and performance management	M-F 7a – 6p
Design and engineering Services	M-F 7a – 6p
Service management escalations	7x24
Service Desk	M-F 7a – 6p

4.15 Project Bench

4.15.1 Initial Staffing

- (a) The Service Provider shall provide technical staff resources to both solution (architect) and implement TxDOT requested projects related to the Services, including, but not limited to, enhancement and customization projects, and onboarding and offboarding of ERP modules within the timelines provided in defined Service Levels for responding to Requests for Solution(s). Transition, transformation, operations and refresh projects are not eligible for the project bench.

NOTE: Service Provider should NOT propose project management resources, unless requested to do so by TxDOT.

4.15.2 Work Specification and Authorization Process

- (a) The Service Provider shall provide services upon request as authorized in writing in accordance with the TxDOT defined work estimation, quotation, and approval process. Requests will be

made through TxDOT's Service Catalog, to effectively manage, authorize, and report on demand.

- (b) Proposed resources shall be made available to begin work on a solution request within one (1) business day of receipt of an approved request. Proposed resources shall be made available as necessary to meet the solution implementation date established in the solution proposal and agreed by TxDOT.
- (c) In the event a proposed resource is not available for any reason, Service Provider shall provide a replacement resource of equal or better qualifications.

4.15.3 Demand Management

The Service Provider shall identify project resources by skill type and shall enter staff availability into the approved demand management system. The Service Provider shall assign those resources to the solution requests and project implementations. The Service Provider shall estimate work effort in hours to both solution and implement requests.

4.15.4 Demand Management Forecasting and Reporting

The Service Provider shall use the TxDOT approved estimating tool (e.g. Appendix Q – ERP Estimating Tool) to provide a schedule of project hours expected to be consumed (by TxDOT activity, resource type, and Project) to forecast requested projects. The Service Provider shall use the TxDOT demand management tool to demonstrate accurate estimating and staff allocation to projects such that deadlines are met. Service Provider shall also participate in project staffing and resource assignment meetings as requested.

4.15.4.1 Solution Proposal Delivery

TxDOT will assess the complexity of the solution request and assign an SLA due date, which may be adjusted with sufficient justification from the Service Provider and with approval by TxDOT.

4.15.4.2 Solution Implementation

TxDOT will establish the solution implementation deadline based on the demand management resource planning tool and on the Service Provider's estimated scope and proposed implementation date. This implementation date may be adjusted with sufficient justification from the Service Provider and with approval by TxDOT.

4.15.5 Review of Uses, Adjustment of Project Bench, and Resource Verification

The Service Provider and TxDOT shall meet semi-annually to review the existing minimum bench. In the event TxDOT determines the minimum bench requires adjustment, TxDOT and the Service Provider will work cooperatively to establish forecasted demand trends.

4.16 Disaster Recovery

4.16.1 Disaster Recovery Overview

The Statewide MSI within the DIR DCS program leads, manages and oversees the Disaster Recovery (DR) program within DCS, including planning, and testing activities for ERP infrastructure. The DCS program will maintain responsibility for recovery of ERP Service

infrastructure and the Service Provider will support and be responsible for application-level recovery planning and execution. As defined in the DIR DCS program, the ERP Application within TxDOT is defined within the DCS disaster recovery program as a Class 2 Application and has defined 8-hour RTO and 8-hour RPO. The Service Provider shall support and assist in Disaster Recovery planning, testing and restoration and shall at a minimum:

1. Assist overall DR planning and testing within the DCS program.
2. Participate in DR enhancement / optimization planning activities with TxDOT, the Statewide MSI and DCS provider.
3. Develop overall Disaster Recovery strategy and plan and maintain Disaster Recovery documentation.
4. Develop application-level enhancements, customizations and automations to facilitate continual improvement in Disaster Recovery restoration times to reduce manual procedures and complexity.
5. Adhere to and perform the IT Service Continuity requirements contained in **Exhibit 2.3. IT Service Continuity Management Statement of Work** and as defined in the SMM, TxDOT approved recovery documentation, and Disaster Recovery Plan (DRP).

5 Infrastructure and Operations Services

Service Provider acknowledges and agrees it will deliver services to TxDOT in an environment where there are other Service Providers providing related services. Service Provider acknowledges that its provision of the Services in a multi-supplier environment requires integration, cooperation and coordination of process and procedures with other Service Providers.

5.1 Availability Management Services

The Service Provider shall, at a minimum:

1. Provide availability management services which includes defining, analyzing, planning, measuring, and improving all aspects of the availability of ERP Managed Application Services.
2. Manage the ERP applications and supporting software availability and performance and maintain support for additional online availability of the ERP applications during evenings and weekends as required by TxDOT to support non-typical projects or services.
3. Implement processes that provide for continual review and improvement to discover infrastructure and application optimization opportunities, with the goal to enhance levels of Availability while reducing costs.

5.2 Capacity Management Services

The Service Provider shall, at a minimum:

1. Actively include capacity management services in the change management process to assess all changes for their impact on the capacity of the systems.

2. Provide TxDOT with a capacity management "what if" model for planning purposes when adding or removing ERP modules.
3. Incorporate work schedules, in cooperation with infrastructure services, to seasonal workloads and dependencies between elements of the Services into capacity management services planning.
4. Plan capacity availability schedules with TxDOT and DCS to have capacity in place prior to a critical need.
5. Plan and implement Upgrades prior to SLA targets being breached or performance issues occurring.
6. Plan capacity to meet demand for the Services, including all environments, and recover excess capacity when available.
7. Verify that there is adequate capacity to meet the required SLAs.
8. Use automated thresholds, as applicable, to manage all operational services.
9. Produce and report trends of the current component utilization and estimating the future requirements, using trends and thresholds for planning Upgrades and enhancements for services and individual components within the service.
10. Report to TxDOT any issues and status related to capacity management services in a timely manner.
11. Provide a capacity management plan to TxDOT that will document the levels of resource utilization and Service performance, and forecast future requirements based on TxDOT's business strategies and plans.
12. Provide the following documents, at a minimum, for TxDOT review and approval for the Services described above:
 - a. Capacity management plan
 - b. Updates to the capacity management plan.

5.3 Database Administration Services

All ERP application databases physical database Services are delivered by the Statewide DCS Service Provider. Service Provider shall coordinate with and assist the Statewide DCS Service Provider to perform and provide all database administrative functions.

The Service Provider shall, at a minimum:

1. Provide logical database support.
2. Assist with installation, configuration, upgrade, administration, monitoring, maintenance, and performance tuning of databases to ensure databases are running optimally for all ERP environments.
3. Assist in developing, maintaining, and communicating database start-up and shutdown procedures, database backup and recovery requirements, and database fail-over requirements.

4. Coordinate with Statewide DCS Service Provider to establish and maintain database backup schedules and validate executed backups.
5. Troubleshoot problems with the database management system and its interaction with the ERP application software, equipment, and system software and make resolution recommendations to the Statewide DCS Service Provider.
6. Provide database access controls and protection.
7. Establish and maintain database management system security configuration parameters.
8. Analyze database management system and database workload and performance data.
9. Tune database parameters to optimize performance, such maintenance includes reorganizations and index rebuilds.
10. Identify system performance trends and, where appropriate, make recommendations to Statewide DCS Service Provider to implement corrective actions to the database management system and databases.

5.4 Middleware Support and Management Services

The Service Provider shall, at a minimum:

Provide all middleware support and management services for all ERP Managed Services Applications including, but not limited to, the following activities: installation, configuration, tuning, patching, administration, monitoring, upgrading, and event resolution.

5.5 Network Operations Services

The current ERP applications are hosted at DIR's Statewide Data Centers, located within the Austin, Texas area, and at a backup Data Center located in San Angelo, Texas.

The Service Provider shall, at a minimum:

1. Implement network performance monitoring services at the ERP applications level.
2. Provide network troubleshooting assistance with TxDOT's network service provider.
3. Support TxDOT and other SCP with performance tuning of the ERP applications in the Department of Information Resources (DIR) Statewide Data Center.
4. Monitor all sub-production environments' network performance before releasing any Upgrades into Production to ensure minimal latency effects and SLAs are met.

5.6 Patch Management Services

The Service Provider shall, at a minimum:

1. Perform patch management services for ERP application software which include the activities needed for identifying, acquiring, installing, and verifying patches for products to fix security vulnerabilities and other bugs. Deliver Services consistent with business requirements as defined in SMM.

2. Deliver Services consistent with defined business requirements as defined in SMM (e.g. patches approved by CAB within 30 days of OEM release, etc.)

5.7 Production Control and Scheduling Services

ERP application jobs are currently scheduled using a set of custom batch scripts using Control M and PeopleSoft Scheduler. The DCS Service Provider is responsible for operating the Production control systems, however the Service Provider shall maintain coding of scripts and submit these to DCS Service Component Provider (SCP) via defined process for Production control operations. The Service Provider shall, at a minimum:

1. Support DCS SCP with Production control and scheduling services for batch process monitoring for ERP Managed Application Services.
2. Develop and maintain scripts for ERP batch and production control jobs.
3. Respond to escalations via ticketing system, email or phone to assist DCS SCP in remediation of Production control and scheduling services incidents and problems, including but not limited to:
 - a. Verification that batch jobs start as scheduled.
 - b. Verification that batch jobs have the appropriate inputs to start.
 - c. Monitoring of "in progress" production batch jobs.
 - d. Coordinating the restart of failed batch jobs.
 - e. Resolution of batch scheduling conflicts.
4. Document scheduler related incidents and develop and implement action plans to resolve scheduler associated incidents.
5. Create and maintain run books that contain processes and step-by-step procedures to support day-to-day operations and to respond to emergency situations for all production jobs and schedules.
6. Coordinate expedited unscheduled batch requests received from TxDOT.
7. Support all jobs related to ERP FSCM and ERP HCM and ELM.
 - a. The quantity of jobs Service Provider shall be responsible for supporting may increase if additional modules are onboarded.
 - b. Service Provider is also responsible for coordinating ad hoc batch jobs as requested by TxDOT.

5.8 Security Management Services

The Service Provider shall, at a minimum:

1. Provide security management services for all ERP applications. Security management services is not a stand-alone function but is an integral part of all other IT disciplines. Service Provider shall be responsible for the following security management services activities, at a minimum, for the ERP applications in coordination with TxDOT Information Security:

- a. Implement TxDOT security controls based on the ERP applications security categorization, moderate baseline with applicable overlays.
- b. Develop and maintain the ERP applications system security plan.
- c. Security testing to include static and dynamic code analysis.
- d. Security Incident support.
- e. Security and privacy assessments in accordance with TxDOT requirements.
- f. ERP query/report security.
- g. Interface security.
- h. Verify TxDOT Data is stored, processed, transmitted, or maintained in a location approved by TxDOT.
- i. Integration with Managed Security Services SCP, including sending of alerts and working collaboratively in remediation of security events.

5.9 Storage and Backup/Recovery Management Services

The Service Provider shall, at a minimum:

Support TxDOT's Service Provider in providing storage and backup/recovery management services as defined in SMM.

5.10 System Monitoring Services

The Service Provider shall, at a minimum:

1. Provide system monitoring services, including the proactive use of manual checks and automated monitoring tools to maintain awareness and provide metrics of the health, security, and performance of the ERP infrastructure and application components from end user point of interface. (including but not limited to long running queries and memory leaks.)
2. Utilize the TxDOT approved system monitoring tools for ERP system monitoring services or propose an alternative tool for TxDOT's consideration and approval.
3. Support the ongoing configuration of any system monitoring tool for the ERP system.
4. Assist TxDOT in developing reporting dashboards.

5.11 System Management and Administration Services

The Service Provider shall, at a minimum:

1. Coordinate with and support the server operations function by providing multi-tier support for problems through resolution on a 24x7 basis.
2. Perform ERP application performance tuning.
3. Monitor the performance of ERP applications and take appropriate action by escalating a problem as appropriate.
4. Support with infrastructure Upgrades.

5. Make recommendations to manage load balancing capabilities.
6. Assist in the installation and management of ERP application software as needed.
7. Notify, via defined procedures, TxDOT and any applicable third parties regarding any environmental events, changes, outages, or any other incident or event that may impact an infrastructure asset.
8. Assist with system administration and operational support of high availability.
9. Assist with the functionality and necessary software to allow detection, monitoring, and removal of malicious code and/or unauthorized code from all servers at a level addressing all common platforms generally susceptible to malicious code.

5.12 Service Desk Services

TxDOT currently uses TxDOTNow, an instance of the ServiceNow Service Delivery tool. Service Provider shall be responsible for providing Level 2 Support and Level 3 Support Service Desk Services using TxDOT's ServiceNow tool (TxDOTNow). TxDOT ERP support staff will perform the following functions: take ownership for each ticket submitted by the ERP end users; provide Level 1 Support; re-categorize tickets; then open a Level 2 or Level 2 Support ticket with Service Provider in TxDOTNow. Exhibit 3.0 Performance Model defines Service Desk Priority Level Incidents and provides illustrative examples used by the Service Desk Service Component Provider. The Service Provider shall, at a minimum:

1. Provide a staffed Service Desk with online support coverage. Service Provider shall allow access to Service Provider's Service Desk personnel to receive calls and tickets regarding ERP related tickets from TxDOT designated staff.
2. Make recommendations for improvements to TxDOTNow service delivery, including but not limited to:
 - a. analyzing incidents and making suggestions to avoid their evolving into problems
 - b. gathering requirements and documenting any service improvements for the TxDOTNow Service Provider to utilize

6 Technology Refresh and Technical Currency Services

Technology refresh and technical currency services are the activities that ensure software Upgrades and replacements occur as required to meet agency business needs, prevent technological obsolescence or failure, accommodate volume changes, increase efficiency, lower costs, and/or the need to maintain the required third-party vendor support.

6.1 CAPPs Code Updates

The Service Provider shall, at a minimum:

1. In accordance with the use agreement for agencies for the Centralized Accounting and Payroll/Personnel System (CAPPS) Statewide Baseline between the Texas Comptroller's Public Accounts (CPA) and TxDOT, CPA will provide Upgrades, updates, bug fixes, and enhancements to the Statewide CAPPS Software in the form of Release Packs.
2. TxDOT is required to submit a validation report within sixty (60) days after release to CPA indicating the CAPPS Statewide mandatory code that TxDOT has implemented in TxDOT's ERP Production instance or indicate a planned implementation date for CPA's consideration.
 - a. Service Provider will support the CAPPS Statewide Baseline Refresh activities and develop a validation report for TxDOT's review, in a TxDOT agreed format and agreed time for TxDOT to use in its submission to CAPPS.
 - i. Service Provider will include in the Refresh validation report, a status of all CAPPS mandatory and discretionary code updates.
 - b. The Service Provider shall support TxDOT to ensure that technology refreshes are done as required and scheduled and technical currency is maintained in the Services, including refresh planning and execution.

6.2 Refresh Planning

The Service Provider shall, at a minimum:

The Service Provider will work with TxDOT to ensure refresh planning is consistently done and in compliance with processes outlined in the SMM for all Service Provider supported applications, systems, and supporting equipment. Service Provider's responsibilities include:

1. Develop a Refresh Plan for all applications and systems, and support TxDOT on refresh plans for supporting equipment (also referred to as assets in this section), including:
 - a. Within one-hundred and twenty (120) days prior to TxDOT's annual planning process meetings, develop and submit to TxDOT for approval, a rolling Refresh Plan based on the asset inventory of Applications and Systems including CAPPS Statewide Baseline requirements, historical trends, lifecycle standards, and industry best practices.
 - b. Provide multiple service component refresh options (e.g., Three-year, Four-Year), which may vary by Applications and Systems and as defined by SMM.
 - c. As allowed within the CAPPS Statewide Baseline structure, include plans for software upgrades and replacements as required to meet agency business needs, prevent technological obsolescence or failure, accommodate volume changes, increase efficiency, lower costs, and/or the need to maintain the required third-party vendor support.
 - d. Provide meaningful capacity input to the refresh plan to ensure refresh and technical currency is maintained that includes, but is not limited to:
 - a. A table that identifies the current version and end-of-life of the current version, if known, of all products that are supporting the Services.

- b. PeopleSoft release schedules for the upcoming year and recommendations for any Upgrades that should be considered for the upcoming year.
 - c. Any recommendations for planned equipment Upgrades, replacements, or new technologies.
 - e. Service Provider and TxDOT will consider the usability of the Applications, Systems, and Equipment and review alternatives to replace, re-lease, consolidate, or retain the assets. Based on the results of this review, Service Provider will deliver the initial recommendations regarding such assets to TxDOT within thirty (30) days after the review.
 - f. For Service Provider-owned assets, Service Provider and TxDOT will mutually determine whether Service Provider will replace an asset and the appropriate replacement date.
 - g. If Applications or Software Changes are required due to replacement of assets, Service Provider, in consultation with TxDOT, will review alternatives for making changes to such Applications or Software.
 - h. Where the Service Provider is financially responsible for Applications, Systems, and Equipment used, such replacement of the assets will be at Service Provider's expense if the replacement is required to facilitate achievement of the agreed upon Service Levels or because the asset is obsolete (i.e., replacement parts cannot be acquired, or the asset has become unserviceable).
 - i. For TxDOT owned and leased assets, based on the planning process outcome and direction established by TxDOT, Service Provider will provide a proposal for refresh of those assets (replacement at TxDOT's expense) to TxDOT.
2. Develop recommendations for innovation and improvement of Applications, Systems, and Equipment in the environment, generate periodic reports on improvement opportunities, and implement improvement opportunities as requested by TxDOT.

6.3 Refresh Execution

1. Perform software Upgrades and replacements as required to meet CAPPs requirements, agency business needs, prevent technological obsolescence or failure, accommodate volume changes, increase efficiency, lower costs, and/or the need to maintain the required third-party vendor support.
2. Maintain the ERP applications, and all related components, to ensure they remain on supported software and database versions according to OEM (e.g., Oracle's PeopleSoft and PeopleTools) support policy and the Agreement with CPA.
3. Regardless of technology ownership, Service Provider responsibilities include:
 - a. Provide personnel who are adequately trained in the use of equipment and Software to be deployed as part of the Refresh.
 - b. Perform refresh and technical currency activities with minimal disruption to TxDOT business operations.
 - c. Perform all Changes in accordance with Change Management procedures.

- d. Use best practices and effective automation tools during refresh execution.
- 4. Perform resource planning, scheduling, and staffing to accomplish Upgrades for supported versions.
- 5. Provide application Upgrade services for an image upgrade (e.g., Oracle Peoplesoft 9.2 Image 24 to 9.2 Image 30) of ERP Software.
- 6. Keep Enterprise Learning Management (ELM), a component of PeopleSoft HCM, on the Image version required by Oracle.
 - a. ELM may be on a different Image than the rest of the PeopleSoft HCM modules.

7 Security Requirements

7.1 Information Resource and Security Requirements

7.1.1 Data Isolation

The Service Provider shall, at a minimum:

- 10. Isolate ERP software, data, and applications so that other Service Provider's data center customers that share physical or virtual space with TxDOT physical or virtual space cannot access TxDOT ERP data.

7.1.2 Information Resources Technology

The Service Provider shall, at a minimum:

- 1. Receive approval by the ITD Architectural Review Board ("ARB") prior to any development or design of any proposed information resources technology that will be installed on any TxDOT owned equipment or that will access any TxDOT network.
- 2. Receive approval from TxDOT ITD for all procurements of:
 - a. Information Resources Technology that will be owned by TxDOT.
 - b. IT services for any environment that provides processing, storage, networking, management and the distribution of data to ensure alignment with GAC, Chapter 2054, Subchapter L.

7.1.3 Access Management Services

TxDOT will be responsible for providing access management services. Access management services are the activities that allow ERP users to make use of IT services, data or other assets, but excludes security permissions for all ERP users in all ERP user facing environments. Access management services activities assist in the protection of the confidentiality, integrity and availability of ERP by ensuring that only authorized ERP users can access or modify the ERP applications. The Service Provider shall, at a minimum:

1. Coordinate with TxDOT to provide role defined end user access to the ERP applications.

7.2 Data Requirements

7.2.1 Data, Data Dictionaries, and Data Flow Diagrams

The Service Provider shall, at a minimum:

Utilize TxDOT taxonomy for all TxDOT Data that is generated, manipulated, transmitted, or stored, including documented data dictionaries, and data flow diagrams (including security protocols).

7.2.2 Data Sharing

The Service Provider shall, at a minimum:

Receive approval in writing by the TxDOT Information Custodian or an assigned representative that is expressly approved in writing by TxDOT before the sharing of any TxDOT data with or between any systems, applications, or storage locations.

7.2.3 Data Transfer

The Service Provider shall, at a minimum:

1. At the completion of a Deliverable, transfer all TxDOT Data generated and stored for that Deliverable to the State in a manner and format acceptable to the State and approved by the TxDOT.
 - a. All metadata associated with the TxDOT Data transferred must remain attached to that data.
2. Maintain the appropriate level of data security throughout the transfer of the TxDOT data.

7.2.4 Encryption

The Service Provider shall, at a minimum:

Refer to TxDOT defined standards and policies regarding Data classification, and deliver Services consistent with these defined standards and policies.

8 Optional Features, Products, or Services

Optional features, products, or services, may include but is not limited to optional services as described below, training, additional maintenance, increased service levels, etc. In its Response, Service Provider must describe with specificity any proposed optional features, products, or services. For pricing associated with optional items that exceed the minimum requirements, Service Provider must include the line item cost associated with each proposed optional feature, product, or service in the “Optional Services” pricing portion within **Exhibit 4 (Business Model)**.

TxDOT has identified the following services for Service Provider's consideration as optional services:

8.1 Data Masking

TxDOT is considering the use of data masking technology for non-production environments. If Service Provider proposes data masking in its Response, Service Provider shall describe its current capabilities, techniques used and experience with this technology; including describing any TxDOT roles and responsibilities related to supporting data masking, and provide all costs for data masking.

8.2 Data Archiving

TxDOT is not currently performing any data archiving related to ERP FSCM or ERP HCM and ELM; however, data archiving may become necessary in the future. Service Provider may propose implementing a data retention process that considers key fields/tables in the ERP database while staying compliant with TxDOT data retention policies and litigation hold requirements. If Service Provider proposes data archiving in its Response, Service Provider shall describe its data archiving strategy and capabilities; including describing any TxDOT roles and responsibilities related to supporting data archiving. If Service Provider proposes data archiving in its Response, Service Provider shall provide all costs for data archiving.

9 Transformation Projects

TxDOT seeks Service Provider to include details relevant to the scope, design, cost, timing, resources utilized, partners leveraged and sequencing of projects contained in this **Article 9**. TxDOT has identified some initial transformational projects to be performed, at TxDOT's option, over the duration of any agreement arising from this Agreement. TxDOT may add transformational projects at any time.

The scope of these projects may require active participation by TxDOT and other SCPs as to affect desired outcomes. Respondents must include a complete solution inclusive of all applicable solution execution elements (e.g. hardware, software, etc.), project timing, target implementation dates, sequencing of projects, articulate required resources and subcontractor involvement as well as representative project plans.

9.1.1 Transformation Principles

This Service Provider shall be focused on the continuous service improvement efforts to identify opportunities to make processes and services better, execute against those opportunities and objectively measure the effects of said efforts over time.

The transformational principles are designed to drive transformational projects that are aligned with TxDOT's technological direction to enable an overall better service environment for TxDOT. At a minimum, these principles include:

9.1.2 Standardization and Consolidation Principles

- 9.1.2.1 Drive to a single set of TxDOT operating systems and fewer versions (the N: standard or N-1: acceptable tolerance) to significantly simplify the patch management and vulnerability profile of the TxDOT environment as decided by TxDOT governance and decision-making processes.
- 9.1.2.2 Drive higher levels of consolidation and standardization to reduce the complexity of managing the monitoring, vulnerability, and patching processes as to minimize manual labor and risk management in the TxDOT environment.
- 9.1.2.3 Drive higher levels of consolidation and standardization to reduce operational complexity of monitoring and troubleshooting a variety of OEM fit for purpose hardware platforms.
- 9.1.2.4 Eliminate shadow systems in the TxDOT environment to reduce unmanaged applications, data storage devices, and user processes that can result in loss of information or create vulnerabilities in the TxDOT environment.

9.1.3 Customer Engagement and Agility Principles

- 9.1.3.1 Evolve TxDOT to a solution orientation and a driver of positive business outcomes as measured through the eyes of TxDOT.
- 9.1.3.2 Participate in TxDOT's migration efforts that are embarking on consolidation or legacy modernization roadmaps with flexible configuration and deployment of TxDOT infrastructure.
- 9.1.3.3 Work with TxDOT and other SCPs to help design and specify new systems that leverage standardized TxDOT infrastructure and services to drive quality projects and rapid adoption of TxDOT services.
- 9.1.3.4 Create an integrated, solution-oriented TxDOT capability that streamlines onboarding, service request, and service management processes that is expedient, transparent, and simple.
- 9.1.3.5 Streamline and simplify all elements of TxDOT that include overly manual and personal knowledge intensive processes and are information/intervention-intensive and replace them with customer self-service and customer experience enabling processes, tools, and platforms.

9.1.4 Service Management Principles

- 9.1.4.1 All TxDOT services shall be designed and operated to provide a single view of the enterprise, including production/non-production environments. From a TxDOT experience perspective, simplify operations and maintenance, and more importantly, improve cybersecurity posture and risk management processes.
- 9.1.4.2 The Service Provider shall include capabilities to ensure that all software and hardware – whether production, development, operating or security – is current, licensed, patched and supported regardless of where it is deployed.
- 9.1.4.3 The Service Provider shall recommend to TxDOT to modernize legacy and outdated infrastructure and processes so that state-of-the-art technology deployment can occur.

9.1.4.4 The Service Provider shall be focused on the continuous service improvement efforts to identify opportunities to make processes and services better, execute against those opportunities and objectively measure the effects of said efforts over time.

9.2 Transformation Projects

TxDOT has identified initial project opportunities to be performed, at TxDOT's option, over the term of the Contract. TxDOT may add additional transformation projects at any time. The scope of these projects may require active participation by TxDOT and other SCPs as to affect the required outcomes.

Service Provider must include a complete solution inclusive of all solution execution elements (e.g., hardware, software, services etc.), project timing, target implementation date, and sequencing as well as representative project plans and financial impacts. These plans must convey the sequencing, dependencies, and involvement of TxDOT, as well as other elements deemed required by the Service Provider to drive successful outcomes and high-performance results within the TxDOT environment. Service Provider may sequence or repackage these projects (into smaller initiatives or larger programs) as they see fit as to drive the highest value for TxDOT and as to illustrate their capabilities in performing the work.

9.2.1 Transformation Projects: Methodology

The Service Provider, in addition to transformation project-specific milestones, and their own project execution methodologies, shall incorporate all TxDOT minimum project standards and milestones.

9.2.1.1 Transformation projects: Minimum standards and requirements

9.2.1.1.1 Service Provider shall notify TxDOT of any emergency maintenance activities that must be performed on internal or external components. A mutually approved procedure must be established by TxDOT and Service Provider.

9.2.1.1.2 The Service Provider shall comply with project management and change management processes and requirements and must include written TxDOT approval for any change to any element that could adversely impact users of the service (public, State, or otherwise), or render a TxDOT system that utilizes the service unavailable to the system's user community (public, State or otherwise).

9.2.1.1.3 All identified or future transformation projects or major project initiatives must adhere to the project management delivery requirements unless otherwise agreed in writing with TxDOT.

9.2.1.2 Requirements confirmation and analysis requirements

- 9.2.1.2.1 Any transformation project requires the Service Provider to thoroughly document the business, functional, technical, operating and security requirements and recommend changes that will improve the business processes and requirements. In general, due to their size and involvement requirements of TxDOT stakeholders, TxDOT and potentially other SCPs, these projects may involve a level of documentation and rigor that lend themselves to a multi-phase type of approach.

9.3 Project 1: Identity Management Process Improvement

TxDOT currently has a 3rd party integration that performs identity management processes such as creating users accounts, updating user accounts, deprovisioning user accounts, rehiring users, and password synchronization. This integration is a custom interface that must be maintained and requires many 3rd party software dependencies. TxDOT would like Service Provider to propose incorporating these custom 3rd party processes into PeopleSoft and Active Directory directly. The goal is to provide capabilities from the PeopleSoft platform and Active Directory service that can perform these functions with limited custom coding and replace or augment as needed. If Service Provider proposes identify management process improvements in its Response, Service Provider shall provide all costs for identity management process improvements.

9.4 Project 2: Transition ERP Environments to Oracle OCI

As mentioned previously in this SOW, TxDOT may transition ERP Infrastructure (Infrastructure Transition Project), currently located in DIR's Statewide Data Center, to Oracle Cloud Infrastructure (OCI) to more closely align to CPA's CAPPs Statewide ERP system. TxDOT's current ERP infrastructure equipment will be reaching end of life within a year of this RFO's release. The new infrastructure must be restructured with more advanced technology that considers continued On-boarding of new ERP modules as outlined in [Section 4.12 Onboarding and Offboarding Modules](#) of this Exhibit, improved system performance, and lower infrastructure costs. Under this optional service, Service Provider may be requested to transition the ERP Applications, and associated tools as applicable, to this new infrastructure. If Service Provider proposes Transition ERP environments to Oracle OCI Services in its Response, Service Provider shall provide all costs for Transition Services.

The Service Provider shall, at a minimum:

1. Provide all necessary personnel with the skill-set required to accomplish the activities and deliverables identified for the Infrastructure Transition Project.
2. Oversee and manage all Service Provider activities.
3. Be responsible for all key project management activities identified as Service Provider's responsibilities, as well as collaborating with TxDOT's project manager for those activities TxDOT is responsible for.

4. Deliver a phased transition utilizing an approach and methodology designed to facilitate the following objectives:
 - a. Joint focus and collaboration
 - b. Transition program management
 - c. Standardized methodologies
 - d. Effective communication
 - e. Reduced risk and disruption
5. Port the current ERP infrastructure platform over to the new OCI platform that shall meet or exceed the current performance response times, high availability, load-balancing, and security of the existing ERP environments.
 - a. TxDOT has identified a standardized technology platform running on an Oracle Cloud Infrastructure (OCI) utilizing Oracle's Platform-as-a-Service (PaaS) model. This platform includes x86 servers running Oracle Enterprise Linux and Windows Server operating system, storage, networking and the Oracle ExaData database platform.
 - b. Size the new OCI platform to meet the Service Levels stated in **Exhibit 3.1 Service Level and Deliverables Matrix**.
6. Build out the new OCI platform and port the ERP applications into OCI availability domains that are located within the continental United States as part of the Infrastructure Transition Project activities.
7. Load copies of the ERP production data to the non-production servers located in the designated OCI availability domain(s) using Service Provider's standard backup and replication technology.
 - a. This backup and replication process will test Service Provider's processes for future backup and replication of TxDOT's data and provide a test bed of data for the non-production environment builds.
 - b. Section 1.2 of this Exhibit identifies the minimum ERP environments that Service Provider is required to port over to the new OCI infrastructure platform.
8. Provide the following written deliverables, at a minimum, to support the Infrastructure Transition Project:
 - a. Service Provider work plan in the form of a Gantt chart.

- b. Status reports provided weekly (may be combined with other Service Provider status reports).
 - c. Issues and risk log provided weekly.
 - d. Technical "go-live" cutover plan, that includes a back-out contingency plan and identifies the priority order and time for certain environments to become available again.
 - e. Cutover checklist.
9. The following are the minimum steady-state written deliverables to be revised during the Infrastructure Transition Project:
- a. ERP System Security Plan
 - b. Business Continuity Plan
 - c. Disaster Recovery Plan
 - d. OCI Technical Design Architecture

If Service Provider proposes Transition ERP Environments to Oracle OCI Services in its Response, Service Provider shall describe their past experience in OCI migrations, and provide all costs for OCI Transition Services.

9.5 Project 3: Migrate ERP Training Documentation from UPK to a new training development tool

UPK, is no longer supported by Oracle, as an optional service, Service Provider may propose services to migrate the existing training documentation to a new TxDOT approved training tool. Service Provider may propose an ERP recommended training tool for TxDOT's consideration. If Service Provider proposes migrating ERP training documentation from UPK to a new training development tool in its Response, Service Provider shall provide all costs for migrating the ERP training documentation into a new training tool.

9.6 Project 4: Update ERP Training Documentation from 2017 to present

As an optional service, Service Provider may propose services to update the existing training documentation from 2017 to present in a new training tool approved by TxDOT. Service Provider may propose an ERP recommended training tool for TxDOT's consideration. If Service Provider proposes updating ERP Training Documentation in its Response, Service Provider shall provide all costs for updating ERP Training Documentation.



Texas Department of Transportation

ERP Managed Application Services

Exhibit 2.1.3

Solution Document

Version 1.0

Solicitation No. 601440000032007

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1 Service Provider Guidelines

Service Provider will submit this document as part of its Request for Offer (RFO) response submission.

This **Exhibit 2.1.3 ERP Managed Application Services Solution Document** supplies specific information for the Service Provider's use when responding to the RFO. This Exhibit is intended to be updated in stages throughout the procurement process. This Exhibit contains an outline of key topic areas that the Service Provider is required to address as part of its response. The response will include a thorough description of Service Provider proposed organizational structure, services solution, technical solution proposed to meet the requirements defined in **Exhibit 2.1.1 Cross Functional Services SOW**, and overall approach to implementing the Services and successfully transitioning responsibility from the Incumbent Service Provider. Detailed Transition response will be completed in **RFO Attachment 5: Transition Plan Response** per the instructions provided in the RFO.

1.1 Service Provider Instructions

1. Service Provider will modify the electronic version of this Exhibit (as provided with the RFO) to respond to the requirements herein by completing all sections while refraining from modifying section titles or removing sections.
2. Throughout the Solution response, Service Provider shall ensure compliance with **Exhibit 2.1.1 Cross Functional Services SOW** as well as interoperability, interfaces and relationships they will establish with other Service Providers and the Service Integrator to ensure a seamless delivery to TxDOT.
 - a. Service Provider need not demonstrate its understanding of ITIL functional areas, but instead shall focus on how Service Provider will perform the Services and integrate transparently in the operating model.
3. Although some sections are related, the Service Provider should minimize repeated responses (copy/paste) in subsequent sections, ensuring the response for each section is specific to the requirements therein.
4. Service Provider may remove the TxDOT-provided guidance (i.e. the italicized text) within each section.
5. Service Provider should not restate the requirements, volumetrics or solution assumptions from **Exhibit 2.1.2 ERP Managed Application Services SOW**. Rather, Service Provider should articulate how its unique solution will deliver the required services. Assumptions must be documented as instructed in the RFO Instructions Section 3.7 within the defined structure of Exhibit 4.1 Pricing Structure.

6. The Service Provider will refrain from providing “marketing materials” and background information already provided to TxDOT or otherwise available in the public domain.
7. The Service Provider will return the completed file as part of its overall response to the RFO package, in accordance with the RFO Response Instructions Section 3.7.

2 ERP Managed Application Services Proposed Organization Overview

*This section should begin with an overall view of the proposed organizational chart for the service relationship. The Service Provider will provide a narrative description of the benefits their proposed organization brings to TxDOT and describe lines of authority, escalation and accountability. Additionally, the Service Provider shall complete **Table 1** below to provide a list of subcontractors who will provide goods or services under the Agreement specifically accounting for lines of authority, escalation and accountability in this distributed organization model.*

Service Provider shall describe its experience, if any, with integrating with a common services delivery model in a multi-sourcing services environment such as TxDOT’s and identify how it will integrate with the TxDOT services ecosystem.

Service Provider will describe its proposed organization overview in the space below.

Table 1: Subcontractors

Name of Subcontractor (Company/Individual)	Subcontractor Scope of Work	Location where Subcontractor will Perform Work	Anticipated Duration of Subcontracting Engagement

3 ERP Managed Application Services Solution Overview

*The functional areas below reference sections of **Exhibit 2.1.2 ERP Managed Application Services Statement of Work**. The Service Provider should review the SOW requirements prior to responding to each functional area section below. Capitalized terms in this document may refer to section headings in the Statement of Work.*

3.1 Solution Overview

The first section of the document will be a solution overview. In this space below, the Service Provider will describe the overall view of the solution, including solution components that drive improved efficiencies, and operational approach to meeting the

*overall objectives of and requirements contained in **Exhibit 2.1.2 ERP Managed Application Services Statement of Work**. The Service Provider will articulate how it will perform the services, with specific attention drawn to the focus areas of each section.*

Describe your solution in detail, including:

- Relevant experience and expertise
- Included scope
- Operational approach
- Partnering and governance overview
- Included tools and how these tools will be used within Service delivery
- Methods and process for gathering and reporting on SLA Performance data
- Additional information pertinent to this section

3.2 Service Level Compliance

*In the space below, Service Provider will describe how its solution, approach and methodology for providing Performance Management will meet the requirements in **Exhibit 3.0 Performance Model**.*

Describe your solution in detail, including:

- Acknowledgement of compliance with the Service Levels as defined in **Exhibit 3.1 Service Level Deliverable Matrix** and **Exhibit 3.2 Service Level Definitions**.
- Detail which tools you have included, or will be leveraged from TxDOT and how these will be used to gather, store, and report on Service Levels
- Additional information pertinent to this section

3.3 Operating Agreements

In the space below, Service Provider will describe how its solution, approach and methodology for providing Common Services will meet the requirements in Section 2.1.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Experience operating in a multi-supplier model
- Additional information pertinent to this section

3.4 Service Evolution and Optimization Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing Common Services will meet the requirements in Section 2.2.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Relevant experiences and ways in which your solution provides value to TxDOT in Product lifecycle and Engineering activities
- Additional information pertinent to this section

3.5 Key Personnel

*Service provider will complete Exhibit 2.4 Key Personnel per the instructions provided in the RFO and aligned with roles defined in Section 2.3 of **Exhibit 2.1.2 ERP Managed Application Services Statement of Work**.*

3.6 Evergreen Service Personnel

In the space below, Service Provider will describe how its solution, approach and methodology for providing Common Services will meet the requirements in Section 2.4.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Relevant experiences that emphasize a Customer-centric approach to delivery of Services
- How will TxDOT specific technology be incorporated into staffing, hiring, and education development
- How this program is measured and managed to ensure continual improvements and proper alignment of customer focus, technical skills and industry experience
- Relevant experiences, defined programs and industry recognition for education learning management, ongoing development of skills and how this is incorporated in the solution to ensure TxDOT achieves value and customer satisfaction
- Additional information pertinent to this section

3.7 Work Location

In the space below, Service Provider will describe how its solution, approach and methodology for providing the Application Development Services will meet the requirements in Section 2.5.

Describe your solution and location of services in detail, provide specific details and technical solution to articulate how requirement of this section have been met, including:

- Work locations
- Connectivity solution design and architecture
- Procedures that will be implemented to ensure protection of TxDOT assets and data
- Relevant experiences with similar solutions
- If TxDOT were to decide that Services need to be transitioned to the continental United States, provide:
 - Details how Services would be transitioned
 - Specific details on ways in which risk to TxDOT services would be mitigated in this scenario
 - Examples where Service Provider performed this before and how this experience will benefit TxDOT
- Additional information pertinent to this section

3.8 Transition

*Service provider will complete detailed Transition response in **RFO Attachment 5: Transition Plan Response** per the instructions provided in the RFO and consistent with Article 3 of **Exhibit 2.1.2 ERP Managed Application Services Statement of Work**.*

3.9 Application Development Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing Application Development Services will meet the requirements in Sections 4.1-4.3 (Application Development Services, Customizations and Enhancements, and Break Fix support).

Describe your solution in detail, including:

- Relevant service experience
- How these experiences have shaped your overall approach and solution
- Staffing plan and approach
- Approach to management of service quality and consistency

- Experiences and proven methodologies that cover a variety of approaches (e.g. waterfall, agile, hybrid)
- Expertise in DevOps and how your approach will assist Customers to achieve greater value leveraging industry best practices
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Specific solution details related to Customizations and Enhancements and Break Fix
- Additional information pertinent to this section

3.10 Application Support Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing Application Support Services will meet the requirements in Section 4.4.

Describe your solution in detail, including:

- Relevant ERP expertise and industry recognition
- Staffing plan and approach
- Approach to management of service quality and consistency
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Additional information pertinent to this section

3.11 ERP Functional Support Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing ERP Functional Support Services will meet the requirements in Section 4.5.

Describe your solution in detail, including:

- Relevant experiences that emphasize a Customer-centric approach to delivery of Services
- Staffing plan and approach
- Understanding of the usage of Technical and Functional Design Documents, including Service Management Manuals and approach for developing, enhancing and maintaining required documentation

- Expertise in Reporting services, including expertise in current deployed tools as well as other relevant industry available tools
- Expertise and commitment to evolution of reporting services and model to ensure TxDOT achieves business value leveraging evolving data repositories
- Additional information pertinent to this section

3.12 Documentation Requirements

In the space below, Service Provider will describe how its solution, approach and methodology for providing Documentation Requirements and Coding Standards will meet the requirements in Section 4.6.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Understanding of the usage of Technical and Functional Design Documents, including Service Management Manuals and approach for developing, enhancing and maintaining required documentation
- Understanding and familiarity with defined Technical coding standards
- Service Provider may propose for TxDOT's consideration
 1. any concerns it may have related to where documentation will be stored
 2. options for documentation storage that allows TxDOT and Service Provider access to all ERP documentation within a single location.
- Furthermore, Service Provider is encouraged
 3. to describe any additional industry best practices and added value processes and work products that it will provide to TxDOT
 4. to provide enhancements to the current technical coding standards
- Additional information pertinent to this section

3.13 ERP Interfaces

In the space below, Service Provider will describe how its solution, approach and methodology for providing ERP Interface Support Services will meet the requirements in Section 4.7.

Describe your solution in detail, including:

- Expertise in defined interface tooling, including expertise in current deployed tools as well as other relevant industry available tools
- Expertise and commitment to evolution of defined interfaces to ensure TxDOT achieves business value leveraging evolving capabilities
- Staffing plan and approach
- Additional information pertinent to this section

3.14 Maintenance Windows

In the space below, Service Provider will describe how its solution, approach and methodology for providing Windows for Maintenance Services will meet the requirements in Section 4.8.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Additional information pertinent to this section

3.15 Release Management

In the space below, Service Provider will describe how its solution, approach and methodology for providing Release Management Services will meet the requirements in Section 4.9.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Relevant experiences that emphasize a Customer-centric approach to delivery of Services
- Staffing plan and approach
- Additional information pertinent to this section

3.16 Software Development Lifecycle

In the space below, Service Provider will describe how its solution, approach and methodology for providing Software Development Lifecycle Services will meet the requirements in Section 4.10.

Describe your solution in detail, including:

- Relevant service experience
- Approach to management of service quality and consistency
- Relevant SDLC programs and services experience and how these experiences have shaped your overall approach and solution
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Additional information pertinent to this section

3.17 System Software Administration and Support

In the space below, Service Provider will describe how its solution, approach and methodology for providing System Software Administration and Support will meet the requirements in Section 4.11.

Describe your solution in detail, including:

- Approach to management of service quality and consistency
- Relevant experience and how these experiences have shaped your overall approach and solution
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Staffing plan and approach
- Additional information pertinent to this section

3.18 Onboarding and Offboarding of Modules

In the space below, Service Provider will describe how its solution, approach and methodology for providing System Software Administration and Support will meet the requirements in Section 4.12.

Describe your solution in detail, including:

- Approach for determining complexity criteria for new or additional modules
- Approach to management of service quality and consistency
- Relevant experience and how these experiences have shaped your overall approach and solution
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work

- Staffing plan and approach
- Additional information pertinent to this section

3.19 Asset Management

In the space below, Service Provider will describe how its solution, approach and methodology for providing Asset Management will meet the requirements in Section 4.13.

Describe your solution in detail, including:

- Approach to management of service quality and consistency
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of usage of TxDOT defined tooling
- Additional information pertinent to this section

3.20 Hours of Coverage

In the space below, Service Provider will describe how its solution, approach and methodology for Hours of Coverage will meet the requirements in Section 4.14.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Additional information pertinent to this section

3.21 Project Bench

In the space below, Service Provider will describe how its solution, approach and methodology for providing a Project Bench will meet the requirements in Section 4.15.

Describe your solution in detail, including:

- Relevant staffing and services experience
- Partnership approach and subcontracting relationships leveraged
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section

- Delivery locations
- Approach to management of service and staffing quality
- How your solution is particularly enabled to quickly staff requests
- Define minimum project bench by skill set and describe its solution for meeting TxDOT demand with prequalified, background checked staff and for staffing up and down as the TxDOT project work fluctuates
- Provide a project bench staffing plan that includes resumes for proposed resources as part of its proposal response to this RFO
- Additional information pertinent to this section

3.22 Disaster Recovery

In the space below, Service Provider will describe how its solution, approach and methodology for Disaster Recovery will meet the requirements in Section 4.16.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for DR planning, testing and documentation
- Additional information pertinent to this section

3.23 Infrastructure and Operations Services

In the space below, Service Provider will describe how its solution, approach and methodology for Infrastructure and Operations Services will meet the requirements in Article 5.

Describe your solution in detail, including:

- Staffing plan and approach
- Defined operational model to ensure alignment with TxDOT, and other Service Component Providers in the delivery of ERP services, specifically:
 1. Interactions with L1 Service Desk
 2. Physical DBMS and Middleware services
 3. Production control services
 4. Configuration management

5. Staffed Service Desk

- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for Infrastructure planning, testing and documentation
- Additional information pertinent to this section

3.24 Technology Refresh and Technical Currency Services

In the space below, Service Provider will describe how its solution, approach and methodology for Technology refresh and Technical Currency will meet the requirements in Article 6.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for Technical currency alignment
- Understanding of CPA CAPPs services model and the role the Service Provider will play between alignment to CAPPs and OEM defined image and version standards
- Additional information pertinent to this section

3.25 Security Requirements

In the space below, Service Provider will describe how its solution, approach and methodology for Security Requirements will meet the requirements in Article 6.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for Security
 1. Security Incident Support Services
 2. Security Incident Response management
 3. Escalation Process
 4. TxDOT Notification

- Additional information pertinent to this section

3.26 Optional Services

In the space below, Service Provider will describe how its solution, approach and methodology for Optional Services will meet the requirements in Article 8.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Approach to management of service quality and consistency
- Relevant experience and how these experiences have shaped your overall approach and solution
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Additional information pertinent to this section

3.27 Transformation Project – Identity Management

In the space below, Service Provider will describe how its solution, approach and methodology for Transformation Project – Identity Management will meet the requirements in Section 9.3.

Describe your solution, including:

- Solution summary
- Relevant services experience and industry recognition
- Partnership approach and subcontracting relationships leveraged
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Delivery locations
- Approach to management of service and staffing quality
- How your solution is particularly enabled to quickly staff requests
- Recommended deliverables with dates
- Key dependencies and identified risks
- Risk mitigation strategy

- TxDOT required work efforts defined
- Earliest start date
- Solution Assumptions
- Solution components, including
 1. Hardware
 - a. Make / model / configuration
 2. Software
 - a. Name / manufacturer
 - b. Version and Release
 - c. Commercial / Open Source
 3. Services

3.28 Transformation Project – ERP to Oracle Cloud Infrastructure (OCI)

In the space below, Service Provider will describe how its solution, approach and methodology for Transformation Project – ERP to OCI will meet the requirements in Section 9.4.

Describe your solution, including:

- Solution summary
- Relevant services experience and industry recognition
- Partnership approach and subcontracting relationships leveraged
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Delivery locations
- Approach to management of service and staffing quality
- How your solution is particularly enabled to quickly staff requests
- Recommended deliverables with dates
- Key dependencies and identified risks
- Risk mitigation strategy
- TxDOT required work efforts defined
- Earliest start date
- Solution Assumptions

- Solution components, including
 1. Hardware
 - a. Make / model / configuration
 2. Software
 - a. Name / manufacturer
 - b. Version and Release
 - c. Commercial / Open Source
 3. Services

3.29 Transformation Project – ERP Training Documentation from UPK to new tool

In the space below, Service Provider will describe how its solution, approach and methodology for Transformation Project – ERP Training Documentation from UPK to new tool will meet the requirements in Section 9.5.

Describe your solution, including:

- Solution summary
- Relevant services experience and industry recognition
- Partnership approach and subcontracting relationships leveraged
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Delivery locations
- Approach to management of service and staffing quality
- How your solution is particularly enabled to quickly staff requests
- Recommended deliverables with dates
- Key dependencies and identified risks
- Risk mitigation strategy
- TxDOT required work efforts defined
- Earliest start date
- Solution Assumptions
- Solution components, including
 1. Hardware
 - a. Make / model / configuration

2. Software
 - a. Name / manufacturer
 - b. Version and Release
 - c. Commercial / Open Source
3. Services

3.30 Transformation Project – ERP Training Documentation from 2017 to present

In the space below, Service Provider will describe how its solution, approach and methodology for Transformation Project – ERP Training Documentation from 2017 to present will meet the requirements in Section 9.6.

Describe your solution, including:

- Solution summary
- Relevant services experience and industry recognition
- Partnership approach and subcontracting relationships leveraged
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Delivery locations
- Approach to management of service and staffing quality
- How your solution is particularly enabled to quickly staff requests
- Recommended deliverables with dates
- Key dependencies and identified risks
- Risk mitigation strategy
- TxDOT required work efforts defined
- Earliest start date
- Solution Assumptions
- Solution components, including
 1. Hardware
 - a. Make / model / configuration
 2. Software
 - a. Name / manufacturer
 - b. Version and Release

c. Commercial / Open Source

3. Services



Texas Department of Transportation

Application Development and Maintenance (ADM) Services

Exhibit 2.1.4

Statement of Work

Version 1.0

Solicitation No. 60144000032007

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1 Introduction

This **Exhibit 2.1.4 ADM Managed Application Services Statement of Work** sets forth the Services that Service Provider shall provide as of the Commencement Date unless otherwise specified. Further, this **Exhibit 2.1.4 ADM Managed Application Services Statement of Work** sets forth the processes and systems that the Service Provider shall provide and, in conjunction with **Exhibit 2.1.1 Cross-Functional Statement of Work**, describes the Service Provider's obligations to work with other TxDOT Service Providers to deliver integrated end-to-end Services. The Service Provider shall work in coordination with TxDOT, TxDOT Service Component Providers (SCP), and TxDOT Contractors to effectively provide the Services.

The Service Provider confirms that unless otherwise explicitly stated, it will provide a solution that supports all of the business processes described in this **Exhibit 2.1.4 ADM Managed Application Services Statement of Work** and its Exhibits and that all Services are included within the Charges described in **Exhibit 4.0 Business Model**. Accordingly, the Service Provider also confirms that TxDOT will not incur any other charges for the requirements described in this **Exhibit 2.1.4 ADM Managed Application Services Statement of Work**.

The Service Provider shall deliver the Services in the best interests of TxDOT. Service Provider shall be responsive to the current and future requirements of TxDOT by proactively anticipating needs and adjusting Services accordingly within the Charges.

Additionally, the Service Provider shall:

- a. Integrate with TxDOT in an automated service delivery environment.
- b. Provide Services for transition, steady state, and service evolution consistent with **Exhibit 4.2 Financial Responsibilities Matrix**.
- c. Assume in scope services responsibility for existing services provided by all Incumbent Service Providers as defined in this exhibit in Articles 4-8.
- d. Document the Services environment and resolve or mitigate identified issues and risks.
- e. Implement and maintain TxDOT information security standards and practices as defined in the Service Management Manual (SMM).
- f. Evolve the current environment to improve performance and efficiencies and take advantage of next-generation technologies to decrease costs to TxDOT.

The Service Provider shall be responsible for all activities necessary to ensure Services are performed in accordance with all standards and processes contained in the Agreement, the Service Levels in **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual.

Service Provider shall integrate and fully cooperate with TxDOT and all other SCPs as required for smooth and efficient operation during the development, implementation, and execution of its service management processes to ensure consistency and integration across all Service Providers. Service Provider shall work together with TxDOT and other SCPs to deliver integrated Services and share Service Level responsibilities as defined in **Exhibit 3.1 Service Level & Deliverables Matrix**.

1.1 Operating Model

Exhibit 2.1.1 Cross Functional SOW contains specific cross functional requirements that all Service Component Providers (SCPs) must meet in order to perform the requested Services and responsibilities defined in **Exhibit 2.0 Service Model**.

TxDOT contracts with multiple SCPs to deliver services to TxDOT Authorized Users. Those services are integrated into a common service delivery model by TxDOT’s ITD Service Governance (ITD SG) function. The ITD SG provides the systems, process leadership and service delivery oversight necessary to ensure consistent, quality service delivery. Figure 1 below depicts the relationships between SCPs and ITD SG, ITD Sourcing Management, and TxDOT ITD Governance.

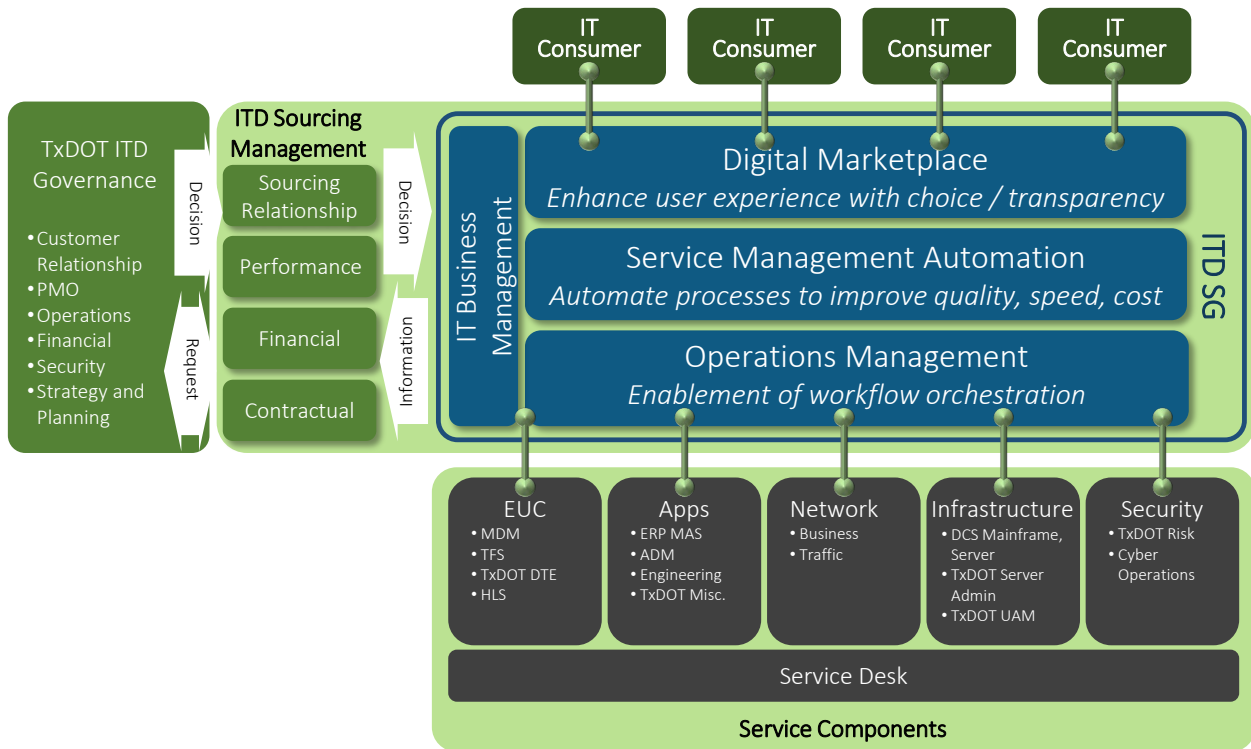


Figure 1 – TxDOT ITD Operating Model

TxDOT ITD Governance and ITD Sourcing Management

As the overall service owner, TxDOT ITD operates overall governance functions that provide customer relationship leadership, PMO, operations, financial, security and

planning roles. The ITD Sourcing Management function works closely with the SCPs to ensure the provided services individually adhere to the required Service Providers requirements, and collectively meet TxDOT's desired outcomes.

2 Common Services

Common services apply to all sections of this Statement of Work. The Service Provider shall, at a minimum:

1. Adhere to and perform the cross-functional requirements contained in **Exhibit 2.1.1. Cross-Functional Statement of Work** and as defined in the Service Management Manual (SMM).
2. Provide interoperability with industry best practice service desk services and existing and future TxDOT infrastructure
3. Provide Managed Application Services support during business hours or 24x7x365 as required.
4. Respond to and complete requests for TxDOT executives (e.g. VIPs) and their designees per TxDOT approved prioritization procedures as defined in SMM.
5. Ensure confidentiality, integrity, privacy, and authenticity of TxDOT Data and TxDOT Personal Data in accordance with the Agreement.
6. Proactively research and identify industry best practices relevant to TxDOT end-user support, generate reports highlighting improvement recommendations, and enact recommendations as requested by TxDOT.

2.1 Operating Agreements with Other SCPs and TxDOT

TxDOT holds other contracts for additional or related work for the platforms and customer specific projects and services. The Service Provider must fully cooperate with the ITD SG function and all other TxDOT SCPs as may be required for the smooth and efficient operation of all related or additional work arising from this Agreement. All Service Provider Personnel must perform in a manner that supports the efficient operation of all related or additional work arising under the Agreement, and may not act in any way that may unreasonably interfere with the work of any other participant or TxDOT employees.

The Service Provider is required to enter into Operating Agreements (OAs), in the form of **Exhibit 3.4 Operating Agreements**, with the other SCPs including but not limited to Managed Network Services, Service Desk, others, and future SCPs should TxDOT identify them to the Service Provider.

2.2 Service Evolution and Optimization Services

The Service Provider shall support TxDOT in the administration, implementation, optimization, and support of the use of the Service and service elements inclusive of all hardware, products, services, devices, tools, operational processes and emerging standards to support TxDOT's position with respect to high performance, high quality, and high availability (to the extent contained and as applicable to the work in this Exhibit) Service infrastructure provided by the Service Provider in the performance of the Services and pursuant to **Section 9.10 Technology Evolution** of the Agreement.

2.2.1 Technology Planning and Optimization Roadmap

The Service Provider shall support TxDOT in written annual review of a multi-year Service roadmap inclusive of all projects, optimization and transformation initiatives. This review shall highlight related TxDOT change initiatives and identified opportunities in support of TxDOT.

1. The Technology Plan and Roadmap is an annual Deliverable and will require quarterly updates.
2. The Service Provider shall implement the optimization and technology improvements identified in the plan and approved by TxDOT.

2.2.2 Technology Planning Process

The Service Provider shall adhere to the TxDOT process and ongoing program management for the establishment, currency, tracking, and publishing of a Technology Plan that incorporates input from TxDOT and SCPs and aligns with the governance processes. The content of the plan and frequency of the Deliverable is included in **Exhibit 3.1 Service Level and Deliverables Matrix**.

2.2.3 Technology Adoption and Alignment

The Service Provider shall provide information in the format required by TxDOT to:

1. Develop and structure the plan to coordinate the aggregation of technical planning information from TxDOT and SCPs as directed by TxDOT and include an implementation roadmap, consistent with TxDOT's business roadmap, with estimated timing in alignment with the Technology Plan; and
2. Provide linkage with technology currency requirements that align with technology refresh plans (e.g., software version migrations) and include input from TxDOT to identify candidates and requirements for the deployment of new technology or the automation of tasks associated with the Services and/or TxDOT's business processes.

2.2.4 Technology Standards

The Service Provider shall research and recommend standard products to TxDOT for adoption into the program.

1. Publish and make available the description of services and offerings by Service Provider that are in use on a quarterly basis
2. Publish and make available the description of standard products to Authorized Users as requested by TxDOT;
3. Provide standards for supporting open source software;

4. Make the description of approved services and offerings available on the service portal;
5. Align the approved services and offerings list with TxDOT's strategic direction, and technical architecture; and
6. Provide mechanisms and processes to capture feedback and business needs from TxDOT to potential changes required in approved services and offerings.

2.2.5 Annual Review of Service Roadmap

In conjunction with regularly scheduled operational meetings with TxDOT and in driving Technology Evolution requirements of the Agreement, the Service Provider, at least annually, shall sponsor a meeting to review recent or anticipated industry trends, emerging technologies, technology advancements, alternative processing approaches, new tools, methodologies or business processes (collectively "best practices") that, at TxDOT's choosing, could optimize the cost, efficiency, compute, storage and networking capacity, or otherwise drive efficiencies for both TxDOT and the Service Provider. Throughout the Term, Service Provider shall:

1. Identify and apply best practice techniques, methods, and technologies in the performance of the Services;
2. Train Service Provider Personnel in the use of new techniques, methods, and technologies that are in general use within Service Provider's organization and the IT and business consulting industries; and
3. Make necessary investments to keep and maintain the Software and other assets used to deliver the Services at the level of currency defined in **Exhibit 4.2 Financial Responsibility Matrix**.

2.3 Key Personnel Positions

In an effort to foster a mutually supportive and collaborative environment in which the Services are provided in an effective manner that drives value to TxDOT, the Parties will jointly review certain Key Service Provider management and TxDOT positions (collectively "Key Personnel"), including the Service Provider Account Director. Key Personnel are listed and maintained in **Exhibit 2.4 Key Personnel** and include the following:

1. Account Director with overall contract, financial and service delivery accountability for the Agreement. This position shall have decision making authority for all aspects of the Agreement. The Account Director shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.

2. Service Delivery Director with overall accountability for delivery of the Service Provider's requirements. The Service Delivery Director shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.
3. Financial Director with overall accountability for all invoicing, billing disputes, pricing, and financial reporting under the Agreement.
4. Transition Director with overall accountability for delivery of the Service Provider's service delivery Transition from the Incumbent Service Provider(s) beginning upon the Effective Date through successful Transition milestone completion and TxDOT Acceptance of all Transition Deliverables.
5. Technical Lead with overall accountability for the Service and technical performance. This role will act as a technical lead and be responsible for working with TxDOT, DCS, Service Provider, and OEM vendors. The Technical Lead shall be dedicated full time to the TxDOT account and shall not be leveraged to other accounts.
6. Other, as the Service Provider deems key to the fulfillment of its contract obligations.

2.4 Evergreen Service Personnel

Based on TxDOT's experience with similar managed services relationships with a variety of leading vendors, TxDOT will regularly review the Service Provider team (as a team and as individuals) regarding several key factors including, but not limited to:

1. Enablement of TxDOT Service-related initiatives.
2. Attainment of high customer satisfaction in TxDOT stakeholder communities and by extension and importantly end-user communities.
3. Creation of a highly integrated, collaborative, and mutually supportive delivery of Services through the formation of an "integrated team" culture.
4. Incorporation of industry-leading and Service Provider best practices in the operation, maintenance and support of the Service while seeking opportunities for continuous refinement and improvement of areas that are directly within the Service Provider's scope, those areas where the Service Provider has a reliance on TxDOT and third parties, and areas in the common interest of driving Service efficiency, quality and timeliness (e.g., value).

TxDOT and the Service Provider shall meet on a regular basis, no less frequently than annually, to review the Service Provider's performance (as a team and as individuals) in driving toward these goals. At TxDOT's request, Service Provider shall make changes to the number, nature, mix, or named Key Personnel as required to improve and enhance attainment of these goals. As a one-time evaluation, the Service Provider and TxDOT shall review the performance of the Service Provider Personnel and implement any changes

requested by TxDOT such that the Service is launched with the best possible Service Provider team as possible.

Should, for whatever reason, TxDOT determine based on documented or observed performance that a member (or members) of the Service Provider's Key Personnel is operating in a manner inconsistent with these goals, TxDOT will request a meeting of the Service Provider Account Director and the TxDOT Designated Representative to address localized or endemic failures to meet these goals. Upon receiving this feedback, the Service Provider shall develop and implement a plan to either realign the performance of the Key Personnel in question or replace them promptly should the situation dictate in accordance with the provisions of this RFO pertaining to replacement of personnel.

Requested Service Provider Personnel changes and replacement is governed in accordance with **Article 8 Service Provider Personnel** of the Agreement.

2.5 Location of Services

The Service Provider may provide Services either Onshore or Offshore. Services shall be performed by Service Provider Personnel at TxDOT Facilities, Service Provider Facilities, or at TxDOT approved remote locations. For Service Provider Personnel providing Services at a TxDOT Facility, TxDOT will provide Service Provider, and Service Provider shall be required to use TxDOT provided endpoint computing devices. Unless approved in writing by TxDOT, Service Provider Personnel that are issued TxDOT provided endpoint computing devices are prohibited from transporting these devices and accessing and using TxDOT systems from outside the United States of America.

For Service Provider Personnel providing Services at a Service Provider Facility or remote locations, Service Provider shall provide endpoint computing devices. Service Provider endpoint computing devices shall conform to Service Provider's information security standards that are suitable for work performed hereunder and meet the requirements of the Agreement. Prior to actual use and access to TxDOT systems, Service Provider shall provide TxDOT with written attestation from the Service Provider's Chief Information Security Officer (CISO) that the Service Provider issued and managed endpoint computing devices comply with TxDOT Rules and TxDOT Standards. Service Provider issued and managed endpoint computing devices must utilize the TxDOT provided virtual desktop interface when interacting with TxDOT systems to ensure that TxDOT Data remains at all times within the United States of America.

Unless otherwise approved by TxDOT in writing, TxDOT Data may not be received, stored, processed or disposed in any way via information technology systems located Offshore. Confidential Information and TxDOT Personal Data shall not be viewed outside the United States of America without prior TxDOT written approval and with sufficient data masking and de-identification protections that align with the Agreement.

TxDOT Data and Confidential Information access and protection is identified in the Master Services Agreement and all TxDOT Data must remain at all times within the United States of America, unless approved in writing by TxDOT.

2.6 Service Commencement

Service Commencement includes the set of activities associated with the analysis, planning, and execution of the transfer of all current services, as defined in this Exhibit, from Incumbent to Service Provider. These requirements are intended to ensure a seamless transfer on the Commencement Date that is not disruptive to TxDOT. The Service Provider shall, at a minimum:

1. Assume the ownership, operation, management, and maintenance of all Managed Application Services from Incumbent Service Provider.
2. Support all existing equipment, software, and service configurations currently performed by or contracted with the Incumbent Service Provider.
3. Support all TxDOT Facilities and hours of operation currently supported by Incumbent.
4. Develop, publish or update FAQs, wikis, and other self-help documentation to guide Authorized Users.

3 Transition Requirements

3.1 General

Upon the Effective Date, the Service Provider shall transition existing services provided by the Incumbent Service Providers and provide all Services as defined within this Exhibit. Service Provider shall be responsible for executing an orderly and timely transition.

3.2 Knowledge Transfer

During the period following the Effective Date and prior to the Commencement Date, Service Provider shall use its best efforts to acquire the practical skill, knowledge and expertise from Incumbent Service Provider(s) who are providing the Services prior to the Effective Date. Service Provider shall accomplish such knowledge transfer, as appropriate, by interviewing personnel currently performing the Services as well as reviewing information, records and documents related to the provision of the Services. The information to be reviewed to affect the obligations of such knowledge transfer includes, but is not limited to:

1. Copies of procedures and operations manuals;
2. Relevant system, software, and/or service information;
3. a list of third-party suppliers of goods and services which are to be transferred to TxDOT or Service Provider,
4. key support contact details for third party supplier employees, and
5. Information regarding maintenance tasks, work in progress and associated unresolved Application Requests, incidents and problems.

Service Provider shall promptly (within one (1) Business Day) notify TxDOT of any lack of cooperation or assistance on the part of any Service Component Provider, Contractor or any third party that impedes or hinders Service Provider's efforts to comply with this obligation.

3.3 Transition Management Requirements

During the Transition period, the Service Provider shall plan, prepare for, and conduct the transition of Services. The Service Provider shall:

1. Coordinate with TxDOT to schedule the installation of any required secure connectivity;
2. Implement processes and controls to prevent disruption of TxDOT's business operations, including interfaces between TxDOT and various third parties;
3. Meet with TxDOT and provide updates to the status of the work involved with Transition at a time and frequency as approved by TxDOT in the Transition Project Plan and upon request by TxDOT.
4. Ensure adequate Service Provider personnel are committed to the Transition services across workstreams, including but not limited to one or more dedicated project managers. These personnel must be sufficiently trained on the Service Provider's contractual requirements and the Service Provider's proposed solution prior to commencing Transition activities;
5. Provide sufficient staff, tools and processes to ensure all Services successfully transition from the Incumbent Service Provider(s) without service degradation.
6. Support other Service Component Providers (SCPs) successful transition to Service Provider's services by Commencement without service degradation.
7. Develop a detailed Transition Plan including the Service Provider's approach to transitioning Services from the Incumbent Service Provider(s). The Transition Plan should include, at a minimum, discovery of all systems, processes, data (e.g., Incumbent ITSM data) and reporting that is required to transition from the Incumbent Service Provider.
8. Provide project management over all Service Provider Transition services and SCP integration Transition activities;
9. Provide routine reports and communication on Transition status to TxDOT and SCPs, as directed by TxDOT.
10. Resolve issues collaboratively with TxDOT and SCPs in order to meet Transition schedule.
11. Identify all integration points of the Service Provider's solution that require existing SCPs to make changes and notifying each SCP of the required changes at least ninety (90) days prior to Commencement.
12. Train SCPs as applicable on the Service Provider's Services, systems, and SMM processes, focusing on the changes from the Incumbent Provider.

13. Create a schedule for all SCPs to complete integration changes and ensure the accuracy of those changes.
14. Test the accuracy of all integration points prior to Commencement.

4 Application Development and Support Services

Application Development and Support Services includes Development of new applications, maintaining and supporting existing administrative and business applications as well as configuring and integrating Commercial-Off-The-Shelf solutions. The Service Providers responsibilities include application development, enhancements and customizations, break-fix support, patching, upgrades, and continuous improvement of applications. This support is inclusive of in-scope TxDOT applications, as well as any future state applications and systems.

4.1 Application Development Services

The Service Provider shall, at a minimum:

1. Upon receipt of Development requests, prepare a proposal, according to the Service Management Manual and TxDOT defined procedures.
2. Track all project activity in the TxDOT provided tools and systems.
3. Support Application Development and Maintenance activities by participating in Application Review Boards (ARB)
4. Submit Project Change Requests (PCR) as documented by TxDOT, and follow defined PCR procedures, policies, and processes as documented in the SMM.
5. Use established methodologies throughout the Service Providers organization to plan, monitor, and control Projects throughout the Development Lifecycle in compliance with TxDOT defined standards.
 - a. Where these standards do not exist, Service Provider will create methods, processes and procedures and maintain these standards as required by the SMM and with TxDOT approval.
6. Perform regular status reporting as defined by TxDOT approved standards.
7. Provide Application Development Services following a DevOps Continuous Integration (CI)/Continuous Delivery (CD) pipeline model. This model is an Agile methodology best practice, however, based on industry standards and upon TxDOT's written approval, Application Development Services may also be managed by the parties utilizing a Waterfall Methodology, or a combination of both methodologies as needed.
8. Propose for TxDOT consideration optimization initiatives that may improve processing times, reduce customization and enhancement needs, reduce support costs, gain efficiencies, or conserve processing resources.
9. Be responsible for all testing cycles (e.g., unit, integration, interface, smoke, functional, regression, load) and testing related activities (e.g., creating test scripts, correcting defects, performance tuning).

- a. Service Provider shall perform all testing activities prior to coordinating with TxDOT to schedule TxDOT UAT.
 - b. Service Provider shall provide support to TxDOT during UAT and accessibility testing.
 - c. Service Provider shall provide TxDOT all test scripts used in testing all development and shall provide TxDOT input and suggestions on development of test scenarios to ensure that integration testing with other applications is included in Service Provider's overall test plan.
 - d. Service provider shall develop, maintain and execute automated and manual testing procedures.
 - e. Service Provider shall perform load and performance testing when appropriate or upon the request of TxDOT.
10. Provide Services that meet TxDOT Accessibility Standards, including:
- a. Assist TxDOT in prioritizing, and identifying accessibility requirements (i.e., "Accessibility Standards" applicable to the TxDOT approved development so that the ADM applications are compliant with applicable federal and State of Texas accessibility laws and regulations which include Chapter 2054, Subchapter M of the Texas Government Code and 1 Texas Administrative Code Chapter 213 (Electronic and Information Resources).
 - b. Memorialize the Accessibility Standards established for the TxDOT approved customizations and enhancements. Service Provider and TxDOT shall produce a checklist to identify the Accessibility Standards that will be used as a standard for development and to evaluate testing.
 - c. Assist TxDOT in identifying Accessibility Standards during the test planning for UAT, as well as those that may be discovered in other test cycles.
 - d. Include the Accessibility Standards within the testing scope to make sure that certain scenarios associated with the accessibility requirements are tested.
 - e. Support all in use Accessibility tools deployed within TxDOT managed Applications.
 - f. The party responsible for correcting aspects of the ADM applications which do not meet the minimum Accessibility Standards (referred to in this Section as "Deviations") is determined by the origin of the software as follows:
 - i. Unmodified Commercial-Off-The-Shelf ("COTS") software. If TxDOT's Service request requires Service Provider to implement COTS software without any modification required by Service Provider, then Service Provider is not required to modify the COTS software to address Deviations from the Accessibility Standards that are inherent in the COTS software.

- ii. State-Modified Software. If TxDOT's Service Request requires Service Provider to implement software that has been previously modified by or on behalf of the State, then any Deviations from the Accessibility Standards shall be addressed as part of TxDOT's prioritization process related to customizations and enhancements. Service Provider shall assist TxDOT in prioritizing the Deviations based on
 - 1. Severity of the Deviation
 - 2. Estimated time frame to implement the necessary modifications to correct the Deviation
 - 3. Availability of any non-software modification which may address or mitigate the Deviation, and
 - 4. Additional items identified by TxDOT.

Upon TxDOT request, Service Provider shall provide an hour estimate for the correction of each Deviation with remediation prioritized based on business risk. TxDOT will notify Service Provider of the Deviation(s) approved by TxDOT that are to be addressed by Service Provider; and

- iii. Software Modifications by Service Provider. If TxDOT's Service request requires Service Provider to make modifications to software as part of the Services, then Service Provider shall modify the software so that it meets the Accessibility Standards.
11. Actively participate in defined Change Approval Board (CAB) as an Application subject matter expert.
 12. Develop and maintain on call schedule and support planned and unplanned outages for areas that impact applications. This includes scheduling resources that can test and verify applications.
 13. Provide TxDOT with budgetary estimates for planning purposes on conceptual system requests upon request by TxDOT.
 - a. Provide approaches for handling the request, and document the approaches to include issues, concerns, or advantages for one approach compared to another approach.
 - b. Provide estimates for legislative bills and management requests according to established timelines.
 - c. Upon request, provide TxDOT information within a one (1) day turnaround depending on the urgency of the request as defined by TxDOT.
 14. Implement TxDOT approved customizations and enhancements to applications to support agency requirements. Customizations and enhancements relating to State of Texas and Federal legislative requirements shall be completed on or before the effective date of the applicable legislation.

15. Provide TxDOT requested development estimates using a development estimating tool for TxDOT to understand the basis for the estimate.
16. Support the integration of existing and new Applications with Service Provider, TxDOT or other Third Party-provided Applications as required.
 - a. Integrate new or modified Applications in testing procedures.
 - b. Resolve compatibility issues.
 - c. Track compatibility issues resolution.
 - d. Make and track local modifications to tables and reference data for integration into the local Environment.
 - e. Customize and configure Application Software as required to conform to requirements as needed.
17. Document all interfaces to new and existing Systems, including:
 - a. Third Party Software packages;
 - b. Authorized User Computing Systems;
 - c. Temporary or transitional interfaces between Systems; and
 - d. Data conversions as necessary to provide homogeneous Systems.
 - e. Provide and document interfaces to Third Party Software.
 - f. Provide and document interfaces to developed Software.
 - g. Provide data conversions as necessary.
18. As part of TxDOT's prioritization process related to application development and with TxDOT's approval, Service Provider shall:
 - a. Proceed with a technical feasibility assessment of request and level of effort.
 - b. Suspend the request and assessment in conjunction with a future deployment or close the request with an explanation of the review, analysis, and determination.
 - c. Close the request with an explanation of the review, analysis, and determination.

4.2 Application Development

4.2.1 Application Architecture

The Service Provider shall, at a minimum:

1. Comply and collaborate with TxDOT to develop enterprise architecture standards and guidelines.
2. Develop and maintain, with TxDOT direction and approval, Applications architecture. Such architecture will be in accordance with the Technology Plan.

3. Assist TxDOT in the development, distribution, communication, and verification of compliance with TxDOT architecture and design principles.
4. Provide guidance to TxDOT and apply appropriate Application architecture design.

4.2.2 Application Planning

The Service Provider shall, at a minimum:

1. Analyze the objectives for both the overall Applications portfolio and individual Applications and assess the current and planned technical environment and recommend strategy and/or changes.
2. Identify and/or refine Application requirements by engaging and working with TxDOT and Application stakeholders.
3. Develop and/or refine functional specifications for a proposed Application and/or functionality Changes to an existing Application, with prior approval from TxDOT, where applicable.
4. Perform initial technical analysis activities for Application development.
5. Define and/or refine high-level data requirements for an Application under development, adhering to TxDOT and State Data standards and methodologies.
6. Develop and/or refine initial integration requirements for Application Software, including legacy environments.
7. Work with TxDOT and the appropriate SCPs to ensure the necessary Infrastructure will be in place to support the Application Software requirements.
8. Participate in the procurement process, including submitting the request for service into the TxDOT ITSM Tool, participating in the requirements gathering sessions, and validating the acquisition proposals received.
9. Document initial functional and technical Application requirements in the TxDOT format, which may evolve over time.
10. Perform or, where TxDOT leads the analysis, assist with a build-versus-reuse-versus-buy analysis for the Services.
11. Develop an initial plan for the Services that is sufficiently matured to satisfy the build phase exit criteria using TxDOT approved tools and techniques.
12. Perform and document a project risk analysis for the build and run phases for TxDOT review and acceptance.
13. Develop initial training requirements for the Application being developed, for Successful Respondent Personnel providing the Services, and for Authorized Users.
14. Integrate quality management, improved productivity and operations, and service operations management into the Application development plan.
15. Select and implement the environment and tools based on TxDOT standards and methodologies.

16. Conduct planning, analysis, and progress reviews with TxDOT personnel, this includes participating in planning review sessions, benefit analysis discussions, estimating effort and providing this planning detail to TxDOT to approve before moving to design build.

4.2.3 Application Design and Build

The Service Provider shall, at a minimum:

1. To the extent possible, reduce the number of interfaces; increase the number of reusable objects; enable Application portability and scalability;
2. Adhere to approved application Software development methodologies and programming standards.
3. Resolve conflicting resource priorities.
4. Monitor development resource priorities.
5. Monitor, track, and, at specified intervals, report status.
6. Acquire documented approval of Project Milestones based on previously agreed to acceptance criteria in accordance with the SMM.
7. Develop and document work and resource plans.
8. Compile issues lists with appropriate action plans for review and approval. Reviews and approvals of these will be performed at specified intervals as per the SMM.
9. Create Application designs in compliance with TxDOT standards and methodologies and requirements.
10. Propose design alternatives including benefit analysis.
11. Provide, make, build, and reuse analyses.
12. Provide application installation, support, configuration and tuning.
13. Modify application configuration settings to support TxDOT business requirements
14. Create Application technical designs in compliance with TxDOT standards and methodology.
15. Develop and/or refine technical specifications for a proposed Application and/or functionality Changes to an existing Application, with prior approval from TxDOT.
16. Develop, document and demonstrate System prototypes for TxDOT and/or Third-party vendors approval.
17. Provide application configuration instructions that support the prototype, including removal of prototypes from TxDOT systems.
18. Perform all necessary technical design, programming, development, unit and string testing, scripting, configuring or customizing of application modules as required to develop and implement the design plans and specifications
19. Construct Software (including user interfaces, conversion, and data interface Software) and databases in compliance with TxDOT standards and methodology.

20. Perform Applications development Change Management in compliance with TxDOT standards and methodology.
21. Revise initial Application project plans, Quality Assurance plans, test plans, implementation plans, and operations and support plans, as needed.
22. Develop and gain approval for Application acceptance test cases as defined in the SMM.
23. Test all Successful Respondent developed or modified Applications based on agreed to acceptance criteria.
24. Coordinate implementation and Application acceptance as defined in the SMM.
25. Perform Quality Assurance reviews on Applications developed, implemented, or maintained by Successful Respondent.
26. Perform and document participants in peer reviews and code walkthroughs for all Successful Respondent developed and / or modified modules and programs.
27. Perform peer reviews and code walkthroughs at the specified intervals per the TxDOT programming standards and development methodologies.
28. Develop and conduct required Authorized User training.
29. As required in the SMM, notify and solicit confirmation from TxDOT and other SCP(s) of any potential impact due to Changes in the Application portfolio and review the results for approval and prioritization.
30. Prepare monthly reports detailing Application Design and Build work efforts with sufficient detail to identify the hours and activities directly performed for TxDOT.
31. Provide application development solution to align with TxDOT's Disaster Recovery requirements to meet the application's RTO/RPO.
32. Develop Infrastructure as Code for new deployments/environments, as requested or as permitted, using standard tools to support orchestration, provisioning and deployments of infrastructure and services.
33. Support other SCPs in development of the Disaster Recovery solutions.

4.3 Application Customization and Enhancements

The Service Provider shall, at a minimum:

1. Provide work effort estimates to fulfill application enhancement requests.
2. Support TxDOT in Triage and prioritization requested enhancements, and implement following TxDOT review and authorization.
3. Recommend and provide methodology for logical release management including:
 - a. Recommending priorities
 - b. Planning and scheduling releases in alignment with user needs
 - c. Monitoring release schedules

- d. Setting methodology for testing and plan to undergo review by TxDOT Change Advisory Board (“CAB”)
 - e. Actively participate in CAB approvals
 - f. Attend CAB meetings as necessary in support of submitted change activity
 - g. Defining block releases
 - h. Executing releases
 - i. Reporting all schedule exceptions to TxDOT as required
4. Create specifications, including:
 - j. Reviewing requests
 - k. Functional specifications
 - l. Technical specifications
 - m. Meeting architecture and security standards
 5. Configure and build enhancements in accordance with TxDOT-approved functional and technical specifications.
 6. Implement enhancements for applications to address and prevent performance issues, including:
 - n. Determining performance requirements
 - o. Building the plan for performance tuning
 - p. Executing the plan for performance enhancement
 7. Implement enhancements for applications to address and prevent performance issues, including:
 - q. Determining performance requirements
 - r. Building the plan for performance tuning
 - s. Executing plan for performance enhancement
 8. Develop repository of test scripts to support future re-use and move to automated testing.
 9. Develop and maintain documentation and training materials for applications, in coordination with TxDOT stakeholders and communicate significant changes to SMM, work instructions, and training materials to TxDOT users and stakeholders.
 10. Participate in UAT as a user base as needed, approve UAT format, and provide the environment.

4.4 Application Break Fix Support

The Service Provider shall, at a minimum:

1. Provide break/fix changes, customizations, enhancements, and upgrades following TxDOT defined standards and SMM.

- a. All application changes will be reviewed and approved by TxDOT, apart from emergency break/fix changes.
 - b. TxDOT will prioritize the application changes for implementation and will notify Service Provider to proceed with the application changes if approved by TxDOT.
2. Provide Level 2 Support as the first level of escalation to resolve Incidents, including enabling capability to receive escalated phone calls from customer.
 3. Provide Level 3 Support for more major incidents as well as the next level of escalation to proactively and reactively resolve issues.
 4. Provide Level 4 Support to interact with other TxDOT Contractors to resolve product level issues.
 5. Perform a Root Cause Analysis for all P1 Incidents and, upon request, for P2 Incidents, and upon request for other identified issues
 6. Perform a RCA for Problem records consistent with TxDOT defined Problem Management standards as defined in **Exhibit 3.0 Performance Model**.
 7. As requested by TxDOT, provide error correction across all software where Service provider has support responsibility, including dependent third-party Software.
 8. Resolve any other Incidents and Problems that may occur associated with an application, including taking actions to reinstate both the application and all services to TxDOT, including re-opening a specific ticket to ensure resolution as requested by TxDOT, and coordinating with TxDOT and other TxDOT Contractors to restart or amend production schedules that are the result of late arrival of critical interfaces or applications, databases, or systems software or equipment or network communications Incidents and Problems.
 9. Document and implement identified and prioritized bug fixes and security patches, as approved by TxDOT, in coordination with the Managed Security Services Component Provider.
 10. Support TxDOT, at its request, in application management under emergency and/or disaster situations.
 11. Verify and validate break fix resolution, including approving implementation of corrective actions and requesting Service Provider to re-open any Incidents not resolved appropriately.

4.5 Application Support Services

The Service Provider shall, at a minimum:

1. Provide patches and break/fix support.
2. Change inputs/outputs as requested.
3. Create new and make changes to existing reports and queries
4. Make changes to reports and queries.

5. Create, maintain, control, edit, update, delete, and add configurations for all in scope Application Security (e.g., control values, tree values, row level security configurations, security roles, security permission lists, workflow route controls, workflow route control profile, and workflow configurations).
6. Manage and support of all ADM environments consistent with TxDOT standards, including:
 - a. Isolation of environments (e.g. Dev / Prod / Staging / Test).
 - b. Removal of code promotion and library management complexities
 - c. Applications should be run on appropriately configured environments to meet defined service levels
 - d. Manage synchronization of environments to ensure quality control of development lifecycle activities
7. Provide maintenance and technical support for all software products provided by TxDOT that are leveraged by Service Provider, excluding the annual cost of the software maintenance support with the publisher which is the responsibility of TxDOT.
8. Provide technical support and analysis to TxDOT as requested.
9. Provide 24/7 on-call support.
10. Provide technical application research and support for ADM production issues.
11. Monitor and support batch and online processing.
12. Manage ADM availability and performance.
13. Resolve Incidents in accordance with the SMM, knowledge database documents, and configuration database(s).
14. Manage communications with TxDOT and other SCPs with updating of progress of Incident resolution in accordance with the SMM, knowledge database documents, and work instructions. Maintain support for additional online availability of the application during evenings and weekends as required by TxDOT to support non-typical projects or services.
15. Support and maintain all defined interfaces.
16. Create and maintain Application documentation using TxDOT approved repositories.
17. Validate backups complete successfully according to schedule.
18. Provide maintenance and technical support for environment refreshes.
19. Provide support, analyses, and make suggestions to improve systems with the optimized performance.
20. Analyze and make recommendations for data archival.

21. Maintain and audit up to date application documentation, and maintain current data in CMDB as well as in SMM, KnowledgeBase, and Functional and Technical documentation.
22. Bridge requirements, business needs and other relevant information necessary for service delivery operations consistent with this exhibit between Application developers and business users
23. Provide functional support for Applications with TxDOT as the primary point of contact for all TxDOT business users.

4.6 Application Testing

4.6.1 General Application Testing

TxDOT desires to continue to develop and enhance application testing using automation and orchestration to reduce complexity and improve overall service quality. The Service Provider shall, at a minimum perform the following for testing including accessibility, functional, usability, integration, regression, security, performance, stress and user acceptance testing using automated methods for Applications developed and / or maintained by Service Provider:

1. Perform test services for Applications developed, configured, or modified by Service Provider.
2. Provide, support, maintain and operate testing resources, including people, process, templates and tools for testing.
3. Perform all testing on browser-based and mobile platforms per requirements, including all supported browser and mobile devices as documented in the SMM.
4. Manage Applications testing configurations, including coordinating with SCPs, TxDOT, and other stakeholders, in regards to Equipment, System Software, other Software, network, capacity, and other requirements needed for Application testing.
5. Manage Application testing, including coordinating all testing activities with SCP's and TxDOT so the activity is managed in an end-to-end manner.
6. Develop, maintain, reuse, and refresh Application testing test data, test scripts and expected results.
7. Treat production data with extreme care and confidentiality and in accordance with the requirements of the Agreement, and do not impact production data during testing or allow test data to propagate into production.
8. Develop, maintain and manage required Application testing strategies, plans and schedules, with TxDOT approval.
9. Ensure compliance with TxDOT functional, integration and end-to-end testing specifications and requirements including required regulatory requirements.

10. Complete, maintain and manage the required Application testing documentation, for TxDOT review and approval, (e.g., test cases, scripts and expected test results).
11. Perform appropriate pre-execution reviews for the test strategy, plan, schedule, test cases, and any other relevant test information with interested stakeholders and obtain TxDOT approval.
12. Design for, and implement, automated testing as agreed by TxDOT.
13. Execute the required Application test cases specified in the test plans and record the results in Successful Respondent's test management tool.
14. Perform Application testing for all Services and data access methods used or called by the Application.
15. Record and report Application test results (e.g., number of test cases executed, passed and failed; number of defects found, fixed and closed) and testing status.
16. Manage impact analysis, defect resolution and retesting activities associated with defects found in Application testing.
17. Conduct walkthroughs SCPs and TxDOT, as defined in the SMM, of Application test results as defined in the test plans.
18. Communicate, document, and resolve defects.
19. Provide status and progress reports TxDOT using the approved tool(s) as per the SMM.
20. Correct defects identified in the Application tests and document such defects and corrections as per the SMM.
21. Review changes, defect fixes and enhancements with TxDOT, and obtain approval of Application testing results from SCPs and TxDOT as required.
22. Complete required Application testing documentation.
23. Review and obtain approval of Application testing results from SCPs and TxDOT as required.
24. Document the final test report including all appropriate test metrics.
25. Monitor, analyze, and review production defects and report out to improve Application test models over time.
26. Design, implement, and track continuous improvement activities.
27. Build, implement, and continually improve automated testing procedures for all Applications.
28. Perform Configuration Management and Change Management activities related to integration and testing in alignment with established procedures as documented in the SMM.
29. Perform Accessibility testing consistent with TxDOT standards defined within [Section 4.10 Software Development Lifecycle](#) of this Exhibit

4.6.2 Functional, Usability, Integration and Regression Testing

The Service Provider shall, at a minimum shall be responsible for functional, integration and end-to-end testing relating to the Applications. Service Provider's responsibilities with respect to functional, usability, integration and regression testing shall include functional, usability, integration and regression testing in accordance with the following characteristics:

1. Execute according to the requirements and design specifications in a Release that may be weekly, monthly, or quarterly, or in a Project that may span months or longer and involve several Applications.
2. Perform accurate testing of Application and related interfacing applications.
3. Ensure re-usability of test plans, cases, data and expected results.
4. Maintain compatibility with TxDOT policies, including technology standards and testing standards.
5. Maintain compliance with the TxDOT Change Management process and Release Management process as specified in the SMM.

4.6.3 Security Testing

The Service Provider shall, at a minimum be responsible for explicit security testing relating to the Applications. Successful Respondent's responsibilities with respect to security testing shall, at a minimum, include the following:

1. Conduct security testing in accordance with the following characteristics:
 - a. Thorough and complete testing of Applications to ensure users can perform only those tasks that they are authorized to perform.
 - b. Complete penetration testing based on TxDOT defined standards and policies for all application production releases.
 - c. Identify and remediate vulnerabilities in the Application prior to production implementation.
 - d. Continue to improve and evolve the testing to keep pace with new vulnerabilities.
 - e. Adhere to and contribute to the TxDOT policies, including security and technology standards and testing standards.
 - f. Compliance with the Information Security Management, Change Management and Release Management requirements as specified in the SMM.
2. Incorporate application level security rigor into the application design
3. Include security test strategies, test scripts, and automated code scans as required to secure the Applications from unauthorized use which must include, but is not limited to, testing for vulnerabilities associated with:
 - a. URL manipulation.

- b. SQL injection.
 - c. Cross Site Scripting (XSS).
 - d. Cross-site tracing (XST).
 - e. Password cracking.
 - f. Cookie stealing.
 - g. Sending sensitive information over unencrypted channels.
 - h. Authorization and access control.
 - i. Session management.
 - j. Data and input validation.
 - k. Command injection flaws.
 - l. Buffer overflows.
 - m. Error handling.
 - n. Logging.
 - o. Remote Administration.
 - p. Old or unreferenced files containing sensitive information.
4. Manage Applications security testing configurations, including coordinating with SCPs, and other stakeholders, in regard to Equipment, System Software, other Software, network, capacity, and other requirements needed for security testing.

4.6.4 Performance Testing

The Service Provider shall, at a minimum:

- 1. Test the Applications ability to perform while under defined loads.
- 2. Capture and maintain expected normal and peak workloads by Application in terms of concurrent users.
- 3. Capture and maintain acceptable response times by Application.
- 4. Test the Applications ability to achieve the desired response time under normal and peak workloads.
- 5. Log all response times and compare to baseline times to determine the deviation from the historical baseline performance.

4.6.5 Stress Testing

The Service Provider shall, at a minimum:

- 1. Test the Applications ability to perform under increasing workloads to determine the point of unacceptable performance degradation and determine weak points in the overall architecture.

2. Identify the conditions when the Applications will fail to perform according to the requirements.
3. Log all workloads and response times and compare to baselines to determine the deviation from the historical baseline performance.
4. Deploy tools as required to measure and inspect for bottlenecks throughout the Application architecture including but not limited to the application and database levels.
5. Coordinate with the SCPs to measure and inspect for bottlenecks at the operating system level, data center network level, and server level as applicable.

4.6.6 User Acceptance Testing

The Service Provider shall, at a minimum:

1. Conduct user acceptance testing for Applications.
2. Manage user acceptance testing, including coordinating all testing activities with SCPs, TxDOT, and TxDOT Third Party Contractors, so that user acceptance testing is managed in an end-to-end manner.
3. Support all user acceptance testing activities for Successful Respondent developed or modified Applications and TxDOT Third Party developed or modified Applications.
4. Lead user acceptance testing status review meetings and provide status reports on open defects.
5. Develop user acceptance test plans and provide testing tools and methodologies for managing and executing user acceptance testing activities. Support testing strategies for all development methodologies, including Agile.
6. Share test plans with TxDOT and SCPs.
7. Develop recommended acceptance criteria for review and approval by TxDOT.
8. Implement a matrix of the business requirements to test cycles, test scripts and expected results.
9. Train and assist Authorized Users in the execution of user acceptance testing for Applications developed or modified by Successful Respondent or Third Parties.
10. Assist test users in the review and execution of user acceptance testing for Applications developed or modified by Successful Respondent. Assistance includes providing access, test environment conditioning (e.g. data preparation, network set up, environment preparation), executing batch jobs, troubleshooting issues, and providing guidance in completing test transactions and reviewing the associated outputs.
11. Validate compliance with Quality Assurance procedures, with SCPs and TxDOT as required, and confirm the Application is ready to implement into production.

4.7 Documentation Requirements and Coding Standards

TxDOT-approved documentation, whether created and maintained by TxDOT or Service Provider, will be located and stored at TxDOT. Service Provider may retain convenience copies of the documentation at Service Provider's location for working purposes but must be removed from Service Provider location at end of Agreement, or by request of TxDOT. Service provider must provide proof of removal from systems, including from backup.

The Service Provider shall, at a minimum:

1. Conform to the established TxDOT documentation requirements for all customizations and enhancements as defined within the SMM. The minimum documentation requirements are as follows:
 - a. Requirements Traceability Matrix (produced and maintained by TxDOT)
 - b. Functional and Technical Design Document (FDD/TDD) (produced and maintained by Service Provider). Appendix U Functional and Technical Design Document provides an example of the template to be utilized for the FDDs/TDDs.
 - c. Test script Template (produced and maintained by Service Provider)
 - d. UAT test script Template (produced and maintained by TxDOT)
 - e. Agency Configuration Run Books (produced and maintained by Service Provider)
 - f. Diagram of Infrastructure.
 - g. Diagram of Interfaces.
2. Create and maintain all FDDs and TDDs that will be reviewed and approved by TxDOT.
 - a. If any FDDs or TDDs are shared with any State of Texas agencies or other approved entity, Service Provider shall create a second redacted version of the FDD and TDD that eliminates any personally identifiable information or confidential information.
3. Utilize TxDOT's established technical coding standards.
 - a. TxDOT has established technical coding standards that address items such as: naming conventions, the application control environment, documentation requirements, and accessibility.
 - b. Service Provider may propose, for TxDOT's consideration, revisions to enhance the technical coding standards.

4.8 Windows for Maintenance Services

The Service Provider shall, at a minimum:

1. Perform all Maintenance Services within the agreed upon windows for Maintenance hours as defined by Application:
 - a. Date and time to be agreed upon by Application with TxDOT approval
 - b. Emergency maintenance for P1/P2 tickets occur on an as needed basis

2. Submit its request for additional or extended maintenance periods to TxDOT one (1) week in advance of its need for such additional or extended maintenance periods.
 - a. Service Provider shall provide within its request the justification and the additional or extended maintenance date and timeframe.
 - b. TxDOT will use reasonable efforts to respond to Service Provider's request in a timely manner. Service Provider shall not proceed with additional or extended maintenance periods without TxDOT's approval.

4.9 Release Management Services

The Service Provider shall, at a minimum:

1. Provide Release Management Services, which are the activities needed to protect the live environment using formal procedures.
 - a. A Release consists of the new or revised software and/or hardware required to implement TxDOT approved changes.
 - b. Utilizing the Change Management process, Service Provider shall submit all Releases to TxDOT for review and approval.
 - c. Actively participate and represent Application changes in CAB approvals
 - d. Release Management Services activities include the following:
 - i. Planning the rollout of software.
 - ii. Designing and implementing procedures for the distribution and installation of changes.
 - iii. Communicating and managing expectations during the planning and rollout of new releases.
 - iv. Controlling the distribution and installation.
2. Develop Implementation Plans for all Releases, including Third party vendors, according to the processes as defined in the SMM.
3. Implement all Applications developed or modified by Service Provider in a manner that minimizes disruption to TxDOT.
4. Resolve resource conflicts.
5. Identify and document potential implementation conflicts and coordinate resolution with appropriate parties.
6. Coordinate implementation activities with SCPs and TxDOT.
7. Develop implementation and transition strategies and plans in compliance with TxDOT standards and methodology for approval.
8. Develop data migration strategies and plans in compliance with TxDOT standards and methodology for TxDOT and approval.

9. Develop and document a contingency plan for each implementation that will include, where appropriate, potential failure impacts, back-out procedures, notification and escalation lists, work-around plans, affected resources, and risk assessments for TxDOT approval.
10. Develop, document, and report business risk and impact analyses.
11. Develop, document and report technical risk and impact analyses.
12. For all Successful Respondent-developed or modified Application Software moved into production, comply with TxDOT Architecture standards and strategy.
13. Inform TxDOT in writing and obtain TxDOT agreement when any Third-Party developed Application Software does not comply with Architecture standards and strategy.
14. Plan, document, coordinate and monitor installation activities.
15. Prepare and participate in pre-implementation readiness reviews in accordance with TxDOT policies and procedures.
16. Coordinate the installation of Equipment and System Software per implementation plan as agreed to by TxDOT.
17. Schedule and obtain TxDOT approval for implementation times and dates.
18. Define and control production schedules.
19. Perform installation testing using agreed to testing methodology and test cases.
20. Summarize, document and report test participants and results.
21. Prepare documentation and orientation training for Infrastructure personnel, Service Desk personnel, and any other pertinent Successful Respondent Personnel delivering Services to the Authorized User.
22. Conduct Authorized User orientation, notification, and training activities relating to Application Software implementation.
23. Provide support for the implementation of Application Software as outlined in the agreed to implementation plan (e.g., planning, testing, data migration, monitoring Incident and Problem resolution).
24. Coordinate implementation and promotion (moving from test to production) of Application Software with Authorized Users, data center production control, and scheduling organizations.
25. Promote application to production
26. Plan and document the migration of Application data.
27. Conduct and document post implementation analysis to assess Application Software effectiveness, cost, usability, and Authorized User satisfaction.
28. Conduct and document post-implementation technical analysis, documenting lessons learned and providing recommendations for implementing continuous improvement.

29. Define and document the data backup and restoration requirements for the Business Continuity Plan for all implementations.

4.10 Software Development Lifecycle

The Service Provider shall, at a minimum:

1. Utilize a Software Development Lifecycle (SDLC) process for the applications that is consistent with industry best practices and that will include review and approval gates for TxDOT.
 - a. Currently ADM adheres to TxDOT's standard SDLC process that may consist of, but is not limited, to the following phases:
 - i. Project Planning, including identification of security and privacy controls
 - ii. Requirements analysis for software and hardware
 - iii. Configuration and Prototyping
 - iv. Design for gap solutions
 - v. Code and Unit Test
 - vi. Integration Test
 - vii. System Test
 - viii. Accessibility Test, as applicable
 - ix. User Acceptance Test
 - x. Performance Testing
 - xi. Regression Testing
 - xii. Security Scanning Testing
 - xiii. Update Development and Training tools
 - xiv. Deployment/Release
 - xv. Maintenance.
 - b. Based on industry standards and upon TxDOT's written approval, Application Development Services may be managed by the parties utilizing either an Agile Methodology, Waterfall Methodology, or a combination of both methodologies as needed.

4.11 System Software Administration and Support

The Service Provider shall, at a minimum:

1. Support DCS SCP to deliver system software administration and support services which include, but are not limited to, the following: software installation; configuration; system administration; software maintenance and technical support; performance monitoring, tuning; troubleshooting of all environments and third-party tools; and security and workflow administration.

2. Perform tasks which include loading and applying changes to all related third-party software, providing corrections or any changes as needed.
3. Provide support services for defects discovered, including:
 - a. Enter a ticket into TxDOT and, where applicable, Third-party ticketing system notifying TxDOT of the defect.
 - b. Monitor the progress of the ticket and report back to TxDOT.
 - c. Implement the correction in TxDOT's environment once defect is corrected.
4. Routinely monitor the components to identify and correct problems prior to a problem being reported by a user.
 - a. If a problem is identified, Service Provider shall notify TxDOT and shall proceed with Incident resolution.
 - b. Service Provider shall be responsible for working as necessary to resolve functional and technical issues.

4.12 Asset Management

4.12.1 Use of TxDOT Licensed Software

TxDOT will provide Service Provider access to TxDOT's software licenses for the Software that are contained within ADM Applications, and other licenses that may be relevant to the Services requested within this RFO. Exhibit 4.1 Pricing Structure (Software) contains a complete list of software that Service Provider may be able to leverage in providing the Services to TxDOT.

The Service Provider shall, at a minimum:

1. Identify, in the event quantity changes of TxDOT Licensed Software are needed due to the potential reduction or growth of Services, the additional quantities needed or to be removed of the specific TxDOT Licensed Software in the Technology Refresh Plan as further described in [Article 6 Technology Refresh and Technical Currency Services](#) of this Exhibit.

4.12.2 Software Asset Management

The Service Provider shall, at a minimum:

1. Provide Software Asset Management Services, integrating people, processes and technology to allow software licenses and usage to be systematically tracked, evaluated, reported, and managed to reduce risks inherent in owning and managing software assets.
2. Maintain software license compliance and track inventory and software asset usage in TxDOT's CMDB, including recommending changes to license quantities.
3. Provide Software Asset Management Services program to manage all software licenses, and any license TxDOT provides Service Provider the right to use.

4. Manage the actual copies installed and ensure compliance with terms and conditions of the specific publisher license agreement and provide, at a minimum, the following:
 - a. Manage compliance of software licenses by monitoring, auditing, and reporting on all software use.
 - b. Proactive monitoring of software uses to maintain strict compliance.
 - c. Immediate notification to TxDOT of all software license compliance issues.
 - d. Remediation of licensing issues to be compliant with third party vendor requirements.
 - e. Track and maintain the applicable licensing and use information.
 - f. Monitor systems for the presence of any unauthorized or non-standard software.
 - g. Manage and track security certificates used to secure confidential sessions (e.g., SSL) for Internet and Intranet transactions and communications.

4.12.3 Software License Compliance

The Service Provider shall, at a minimum:

1. Comply with all license terms and conditions, including subsequent amendments thereto, associated with any TxDOT Licensed Software leveraged by Service Provider in providing the Services. Without limiting the foregoing, such license terms include the following:
 - a. Service Provider shall operate the TxDOT Licensed Software on behalf of TxDOT;
 - b. Service Provider assumes all responsibility for the confidentiality of all confidential information and protection of the applicable Software Publisher's proprietary rights;
 - c. Service Provider shall not copy the TxDOT Licensed Software nor shall TxDOT grant Service Provider a general development use access to TxDOT Licensed Software; and
 - d. Service Provider shall indemnify TxDOT against all costs, loss, liability and expense (including court costs and disbursement) incurred because of (a) any claims or demands brought against the Software Publisher(s) or its directors, employees or agents arising from or relating to any such services provided by Service Provider, or (b) Service Provider's failure to abide by the terms and conditions of the applicable software license.

4.13 Hours of Coverage

Service Provider shall provide Services during TxDOT's regular business hours, which are Monday through Friday, between the hours of 7 a.m. and 6 p.m., Central Time, excluding national holidays as defined by Texas Government Code Section 662.003(a). Service Provider shall provide the following additional services relating to the Services 24 hours a day, 7 days a week, and 365 days per Contract Year: (i) all monitoring services, (ii) support for Priority Level 1 and 2 incidents, production changes, State defined emergencies, and (iii) any other activities necessary to comply with the terms of the Agreement, the Service Levels as defined in **Exhibit 3.1 Service Level & Deliverables Matrix**, and the Service Management Manual. For additional clarity, the Service Provider shall provide Services following the hours of coverage by Service description as defined in Table 1 below:

Table 1 Hours of Coverage

Service Description	Hours of Coverage
Service Support - Monitoring	
Application monitoring	7x24
Supported system integrations with other SCP and TxDOT	7x24
Security services	7x24
Service Support – Management and Administration	
Triage, event management, Incident Management, Problem Management, service restoration	7x24
Application Enhancements	M-F 7a – 7p
Application break fix	7x24
Cross functional service integration	7x24
Request for Solution	M-F 7a – 7p
User access management	M-F 7a – 7p
Proactive capacity and performance management	M-F 7a – 7p
Design and engineering services	M-F 7a – 7p
State defined emergencies	7x24

Service management escalations

7x24

4.14 Project Bench

4.14.1 Initial Staffing

- (a) The Service Provider shall provide technical staff resources to both solution (architect) and implement TxDOT requested projects related to the Services, including, but not limited to, Application Development, Application enhancement and customization projects within the timelines provided in defined Service Levels for responding to Requests for Solution(s). Transition, Transformation, Operations and Refresh projects are not eligible for the project bench.
- (b) Respondent shall define its minimum project bench by skill set and shall describe its solution for meeting TxDOT demand with prequalified, background checked staff and for staffing up and down as the TxDOT project work fluctuates.

NOTE: Service Provider should NOT propose project management resources, unless requested to do so by TxDOT Representative.

4.14.2 Work Specification and Authorization Process

- (a) The Service Provider will provide services on request as authorized in writing in accordance with the TxDOT defined work estimation, quotation, and approval process. Requests will be made through the Service Catalog, to effectively manage, authorize, and report on demand.
- (b) The Service Provider will provide a project bench staffing plan that includes resumes for proposed resources as part of its proposal response to this RFO. Proposed resources will be made available to begin work on a solution request within one (1) business day of receipt. Proposed resources will be made available as necessary to meet the solution implementation date established in the solution proposal and agreed by TxDOT.
- (c) In the event a proposed resource is not available for any reason, Service Provider will provide a replacement resource of equal or better qualifications.

4.14.3 Demand Management

The Service Provider will identify project resources by skill type and will enter staff availability into the demand management system. The Service Provider will assign those resources to the solution requests and project implementations. The staff will estimate work effort in hours to both solution and implement requests and will track these estimates in the demand management system.

4.14.4 Demand Management Forecasting and Reporting

- (a) The Service Provider will use the demand management resource planning tool to provide a schedule of project hours consumed (by TxDOT activity, resource type, and Project) to forecast requested projects. The Service Provider will use the approved tool to demonstrate accurate estimating and staff allocation to projects such that deadlines are met. Service Provider will also participate in project staffing and resource assignment meetings as requested.
- (b) Two (2) SLAs will report Service Provider timeliness and quality of project delivery:

4.14.4.1 Solution Proposal Delivery

TxDOT will assess the complexity of the solution request and assign an SLA due date, which may be adjusted with sufficient justification by agreement of the Service Provider and TxDOT.

4.14.4.2 Solution Implementation

TxDOT will establish the solution implementation deadline based on the demand management resource planning tool and on the Service Provider's estimated scope and proposed implementation date. This implementation date may be adjusted with sufficient justification by agreement of the Service Provider and TxDOT.

4.14.5 Review of Uses, Adjustment of Project Bench, and Resource Verification

The Service Provider and TxDOT will meet semi-annually to review the existing minimum bench and adjust as required. In the event TxDOT determines the minimum bench requires adjustment, TxDOT and the Service Provider will work to establish a monthly number of hours and base staffing level for each year of the agreement.

4.15 Disaster Recovery

4.15.1 Disaster Recovery Overview

The Statewide MSI within the DIR DCS program leads, manages and oversees the Disaster Recovery (DR) program within DCS, including planning, and testing activities for DCS-provided infrastructure. The DCS program will maintain responsibility for recovery Service infrastructure and the Service Provider will support and be responsible for application-level recovery planning and execution. As defined in the DIR DCS program, the Service Provider supported Applications are designated with a DCS disaster recovery program Classification defining the recovery objectives for the Application. The Service Provider shall support and assist in Disaster Recovery planning, testing and restoration and shall at a minimum:

1. Assist overall DR planning and testing within the DCS program.
2. Participate in DR enhancement / optimization planning activities with the Statewide MSI and DCS provider.
3. Develop overall Disaster Recovery strategy and plan and maintain Disaster Recovery documentation.
4. Develop application-level enhancements, customizations and automations to facility continual improvement in Disaster Recovery restoration times to reduce manual procedures and complexity.
5. Adhere to and perform the IT Service Continuity requirements contained in **Exhibit 2.3. IT Service Continuity Management** and as defined in the SMM, Technical Recovery Guide (TRG), Application Recovery Guide (ARG) and Disaster Recovery Plan (DRP).

4.16 End User Training

The Service Provider shall, at a minimum:

1. Provide End User training using approved TxDOT systems, tools and education program.

2. All training must be maintained in a TxDOT approved learning management Systems and be updated annually.
3. Create, publish, schedule, provide, and maintain training courses to educate TxDOT on the tools, applications, 3rd party products in use, and required integrations.
4. Create, publish, schedule, provide, and maintain training courses to educate TxDOT and SCP as necessary
5. Provide training to new Authorized Users and ongoing training to existing Authorized Users, and conduct group trainings, where possible, as well as individual trainings where necessary.
6. Provide electronic and online training including webinar-type training as appropriate with, at a minimum, the ability to be accessed through Personal Computer (PC) or mobile devices.
7. Provide interactive Question and Answer (Q&A) sessions.
8. Continually investigate and analyze Authorized User training needs. Such analysis will be performed with the objectives of increasing customer satisfaction, improving quality of service, and increasing Application knowledge.
9. Customize course content so that it is specific to the Application for Authorized Users.
10. Deliver training material meets the minimum requirements for preparing Service provider personnel to support the delivery of Services.
11. Track and managed Service Provider resources and validate that all personnel have completed required trainings.

4.17 Low Complexity Service Matrix

Service Provider acknowledges and agrees it will deliver services to TxDOT in an environment with varying degrees of Application complexities. There is smaller volume of lower complexity Applications that fall into the low application type category. The low application complexity category does not require the same level of service breadth, depth or involvement for ongoing operational support. These are typically, but not exclusively, SaaS Applications and typically fall into a configuration management set of services in tightly controlled model. These Applications do not require application enhancements, application break fix support or disaster recovery planning or testing. Low complexity Applications do require the Service Provider to perform configuration management, security and vulnerability management within the context of the TxDOT defined operating model, as well as escalations of service disruption to the software provider on behalf of TxDOT. The following table summarizes the required tier structure, and general scope of Services for the application complexity and the responsibility of Service Provider according to the eligible service category. The Service Provider shall deliver these differing services as defined for each service category below identified as SCP responsibility as described in the technical response and detailed in the SMM. The Service Provider shall provide Services as defined in this Exhibit and this Section shall be considered instructive and as a defined eligibility table for Services contained within this SOW and includes but is not limited to the business and support hours as defined in Section 4.13 Hours of Coverage.

Service Tier	Standard Complexity Applications	Low Complexity Applications
Strategy Management		
Market Expertise	Yes	Yes
Enterprise Roadmaps	Yes	Yes
Product and Service Evaluation	Yes	Yes
Service Catalog Management	Yes	Yes
Request for Solution	Yes	n/a
Technology Planning	Yes	n/a
Monitoring & Administration		
Infrastructure Support	Yes	n/a
DR Planning	Yes	n/a
DR Testing & Execution	Yes	n/a
Security	Yes	Yes
Public Cloud Service Mgt & Escalations	Yes	Yes
Configuration Management		
Physical Network	n/a	n/a
Virtual Network	Yes	n/a
Storage	Yes	n/a
Virtualization	Yes	n/a
OS	Yes	n/a
Middleware	Yes	n/a
DBMS	Yes	n/a
Backup	Yes	n/a
Disaster Recovery	Yes	n/a
Applications	Yes	Yes
Security	Yes	Yes
Application Development		
Application Development	Yes	n/a
Application Customization	Yes	Yes
Application Enhancements	Yes	n/a
Application Break Fix	Yes	n/a
Application Testing	Yes	Yes
Release Management	Yes	Yes
Service Management		
Availability Measurement	Platform	Varies based on Service capability
Documentation (TDD, FDD, SMM)	Yes	SMM

5 Infrastructure and Operations Services

Service Provider acknowledges and agrees it will deliver services to TxDOT in an environment where there are other Service Providers providing related services. Service Provider acknowledges that its provision of the Services in a multi-supplier environment requires integration, cooperation and coordination of process and procedures with other Service Providers.

5.1 Availability Management Services

The Service Provider shall, at a minimum:

1. Provide Availability Management Services which includes defining, analyzing, planning, measuring, and improving all aspects of the availability of Managed Application Services.
2. Manage the applications and supporting software availability and performance and maintain support for additional online availability of the applications during evenings and weekends as required by TxDOT to support non-typical projects or services.
3. Implement processes that provide for continual review and improvement to discover infrastructure and application optimization opportunities, with the goal to enhance levels of Availability while reducing costs.

5.2 Capacity Management Services

The Service Provider shall, at a minimum:

1. Actively include Capacity Management Services in the change management process to assess all changes for their impact on the capacity of the systems.
2. Incorporate work schedules, in cooperation with Infrastructure Services, to seasonal workloads and dependencies between elements of the Services into Capacity Management Services planning.
3. Plan capacity availability schedules with TxDOT and DCS to have capacity in place prior to a critical need.
4. Plan and implement upgrades prior to SLA and SLO targets being breached or performance issues occurring.
5. Plan capacity to meet demand for the Services, including all environments, and recover excess capacity when available.
6. Verify that there is adequate capacity to meet the required SLAs.
7. Use automated thresholds, as applicable, to manage all operational services.
8. Produce and report trends of the current component utilization and estimating the future requirements, using trends and thresholds for planning upgrades and enhancements for services and individual components within the service.
9. Report to TxDOT any issues and status related to Capacity Management Services in a timely manner.
10. Provide a Capacity Management Plan to TxDOT that will document the levels of resource utilization and Service performance, and forecast future requirements based on TxDOT's business strategies and plans.
11. Provide the following documents, at a minimum, for TxDOT review and approval for the Services described above:
 - a. Capacity Management Plan
 - b. Updates to the Capacity Management Plan.

5.3 Database Administration Services

Service Provider shall coordinate with and assist the Statewide DCS and Cloud Service Providers to perform and provide all database administrative functions.

The Service Provider shall, at a minimum:

1. Provide logical database support.
2. Assist with installation, configuration, upgrade, administration, monitoring, maintenance, and performance tuning of databases to ensure databases are running optimally for all environments.
3. Assist in developing, maintaining, and communicating database start-up and shutdown procedures, database backup and recovery requirements, and database fail-over requirements.
4. Coordinate with Statewide DCS Service Provider to establish and maintain database backup schedules and validate executed backups.
5. Troubleshoot problems with the database management system and its interaction with the application software, equipment, and system software and make resolution recommendations to the Statewide DCS Service Provider.
6. Provide database access controls and protection.
7. Establish and maintain database management system security configuration parameters.
8. Monitor the resource utilization, processing workloads, and performance of the database management system on a 24x7 basis.
9. Analyze database management system and database workload and performance data.
10. Tune database parameters to optimize performance, such maintenance includes reorganizations and index rebuilds.
11. Identify system performance trends and, where appropriate, make recommendations to Statewide DCS Service Provider to implement corrective actions to the database management system and databases.

5.4 Middleware Support and Management Services

The Service Provider shall, at a minimum:

1. Provide all Middleware Support and Management Services for all Managed Services Applications including, but not limited to, the following activities: installation, configuration, tuning, patching, administration, monitoring, upgrading, and event resolution.

5.5 Network Operations Services

The Service Provider shall, at a minimum:

1. Implement network performance monitoring services at the Applications level.
2. Provide network troubleshooting assistance with TxDOT's network service provider.

3. Support TxDOT and other SCP with performance tuning of the applications in the Department of Information Resources (DIR) State Data Center.
4. Monitor all sub-production environments' network performance before releasing any upgrades into Production to ensure minimal latency effects and SLAs are met.

5.6 Patch Management Services

The Service Provider shall, at a minimum:

1. Perform Patch Management Services for application software which include the activities needed for identifying, reviewing risk reports and outputs from security scans, acquiring, installing, and verifying patches for products to fix security vulnerabilities and other bugs.
2. Deliver Services consistent with defined business requirements as defined in SMM (e.g. patches approved by CAB within 30 days of OEM release, etc.)

5.7 Production Control and Scheduling Services

Service Provider will maintain coding of scripts and submitting these to DCS provider via defined process for Production Control operations. The Service Provider shall, at a minimum:

1. Support DCS SCP with Production Control and Scheduling Services for batch process monitoring for Application Services.
2. Develop and maintain scripts for batch and production control jobs.
3. Respond to escalations via ticketing system, email or phone to assist DCS SCP in remediation of Production Control and Scheduling services incidents and problems, including but not limited to:
 - a. Verification that batch jobs start as scheduled.
 - b. Verification that batch jobs have the appropriate inputs to start.
 - c. Monitoring of "in progress" production batch jobs.
 - d. Coordinating the restart of failed batch jobs.
 - e. Resolution of batch scheduling conflicts.
4. Document scheduler related incidents and develop and implement action plans to resolve scheduler associated incidents.
5. Create and maintain run books that contain processes and step-by-step procedures to support day-to-day operations and to respond to emergency situations for all production jobs and schedules.
6. Coordinate expedited unscheduled batch requests received from TxDOT in addition to scheduled batch jobs.
7. Service Provider is also responsible for coordinating ad hoc batch jobs as requested by TxDOT.

5.8 Security Management Services

The Service Provider shall, at a minimum:

1. Provide Security Management Services for all Applications. Security Management Services is not a stand-alone function but is an integral part of all other IT disciplines. Service Provider shall be responsible for the following Security Management Services activities, at a minimum, for the Applications in coordination with TxDOT Information Security:
 - a. Implement TxDOT security controls based on the applications security categorization, moderate baseline with applicable overlays.
 - b. Develop and maintain the applications system security plan.
 - c. Security testing to include static and dynamic code analysis.
 - d. Security Incident support.
 - e. Security and Privacy assessments in accordance with TxDOT requirements.
 - f. Query/Report Security.
 - g. Interface Security.
 - h. Verify TxDOT data is stored, processed, transmitted, or maintained in a location approved by TxDOT.
 - i. Integration with Managed Security Services SCP, including sending of alerts and working collaboratively in remediation of security events.

5.9 Storage and Backup/Recovery Management Services

The Service Provider shall, at a minimum:

1. Support TxDOT's Service Provider(s) in providing Storage and Backup/Recovery Management Services as defined in SMM.

5.10 System Monitoring Services

The Service Provider shall, at a minimum:

1. Provide System Monitoring Services, including the proactive use of manual checks and automated monitoring tools to maintain awareness and provide metrics of the health, security, and performance of the infrastructure and application components from end user point of interface. (include.g. long running queries and memory leaks, etc..)
2. Utilize the TxDOT approved system monitoring tools for system monitoring services or propose an alternative tool for TxDOT's consideration and approval.
3. Support the ongoing configuration of any system monitoring tool for the system.
4. Assist TxDOT in developing reporting dashboards.

5.11 System Management and Administration Services

The Service Provider shall, at a minimum:

1. Coordinate with and support the server operations function by providing multi-tier support for problems through resolution on a 24x7 basis.
2. Perform Application performance tuning.
3. Monitor the performance of servers and take appropriate action by escalating a problem as appropriate.
4. Support with Infrastructure upgrades.
5. Make recommendations to manage load balancing capabilities.
6. Assist in the installation and management of Application Software as needed.
7. Notify, via defined procedures, TxDOT and any applicable third parties regarding any environmental events, changes, outages, or any other incident or event that may impact an infrastructure asset.
8. Assist with system administration and operational support of high availability.
9. Assist with the functionality and necessary software to allow detection, monitoring, and removal of malicious code and/or unauthorized code from all servers at a level addressing all common platforms generally susceptible to malicious code.

5.12 Service Desk Services

The Service Desk SCP is responsible for Level 1 Service Desk Services. Unresolved tickets will be placed into the appropriate work queue for resolution by Service Provider, TxDOT currently uses TxDOTNow, an instance of the ServiceNow Service Delivery tool. There are situations in which the customer requests and the Incident warrants a real-time transfer to a Level 2 resource. Service Provider shall be responsible for providing escalated telephone support upon TxDOT request. **Exhibit 3.0 Performance Model** defines Service Desk Priority Level Incidents and provides illustrative examples used by the Service Desk Service Provider. The Service Provider shall, at a minimum:

1. Develop, document and maintain a listing of resources by Application or skill set and provide to Service Desk SCP.
2. Develop, document and cooperatively maintain work instructions and knowledgebase articles to assist the Level 1 Service Desk to resolve Service Desk calls related to Applications.
3. Provide an available pool of resources M-F 7a – 6p, who can accept escalated Service Desk calls from Service Desk SCP upon customer request.
 - a. Service Provider will provide Primary and Secondary contact information for all Priority 1 and Priority 2 applications for regular business hours as well as after hours coverage.
4. Make recommendations for improvements to TxDOTNow service delivery, including but not limited to:
 - a. analyzing incidents and making suggestions to avoid their evolving into problems

- b. gathering requirements and documenting any service improvements for the TxDOTNow Service Provider to utilize

6 Technology Refresh and Technical Currency Services

The Service Provider shall work with TxDOT and other SCPs to maintain application currency and to ensure service components that support Service Provider Services are in alignment with TxDOT defined configurations.

The Service Provider shall, at a minimum:

6.1.1.1 Refresh Planning

The Service Provider will work with TxDOT to ensure refresh planning is consistently done and in compliance with processes outlined in the SMM for all Service Provider supported applications, systems, and supporting equipment. Service Provider's responsibilities include:

1. Develop a Refresh Plan for all applications, systems, and supporting equipment (also referred to as assets in this section), including:
 - a. Within one-hundred and twenty (120) days prior to TxDOT's annual planning process meetings, develop and submit to TxDOT for approval, a rolling Refresh Plan based on the asset inventory of applications, systems, and equipment including historical trends, lifecycle standards, and industry best practices.
 - b. Provide multiple service component refresh options (e.g., Three-year, Four-Year), which may vary by applications, systems, and equipment and as defined by SMM.
 - c. Provide TxDOT a recommended refresh approach based on the desire of TxDOT to move to a rolling refresh strategy (e.g., 20% annually).
 - d. Include plans for software upgrades and replacements as required to meet agency business needs, prevent technological obsolescence or failure, accommodate volume changes, increase efficiency, lower costs, and/or the need to maintain the required third-party vendor support.
 - e. Maintain the applications, and all related components, to ensure they remain on supported software and database versions.
 - f. Service Provider and TxDOT will consider the usability of the Applications, Systems, and Equipment and review alternatives to replace, re-lease, consolidate, or retain the assets. Based on the results of this review, Service Provider will deliver the initial recommendations regarding such assets to TxDOT within thirty (30) days after the review.
 - g. For Service Provider-owned assets, Service Provider and TxDOT will mutually determine whether Service Provider will replace an asset and the appropriate replacement date.
 - h. If Applications or Software Changes are required due to replacement of assets, Service Provider, in consultation with TxDOT, will review alternatives for making changes to such Applications or Software.

- i. Where the Service Provider is financially responsible for Applications, Systems, and Equipment used, such replacement of the assets will be at Service Provider's expense if the replacement is required to facilitate achievement of the agreed upon Service Levels or because the asset is obsolete (i.e., replacement parts cannot be acquired, or the asset has become unserviceable).
 - j. For TxDOT owned and leased assets, based on the planning process outcome and direction established by TxDOT, Service Provider will provide a proposal for refresh of those assets (replacement at TxDOT's expense) to TxDOT.
2. Develop recommendations for innovation and improvement of Applications, Systems, and Equipment in the environment, generate periodic reports on improvement opportunities, and implement improvement opportunities as requested by TxDOT.

6.1.1.2 Refresh Execution

1. Perform management, support, and refresh for all in scope Applications, Systems, and Equipment per the TxDOT-approved Refresh Plan.
2. Perform on-demand out of cycle Applications, Systems, and Equipment refreshes as requested and approved by TxDOT.
3. Adhere to the TxDOT-approved Refresh Plan, and execute that plan utilizing established procurement processes, to initiate refresh and retirement activities as required.
 - a. Provide monthly reports 180 days prior to lease expiration date showing assets to be refreshed with latest data.
 - b. Notify TxDOT monthly of all open agreements related to assets that are retired or will retire within 180 days of the report date.
 - c. Track and report on the completion progress of asset Refresh Plan.
 - d. Update and archive asset records after retirement.
4. Regardless of technology ownership, Service Provider responsibilities include:
 - a. Provide personnel who are adequately trained in the use of equipment and Software to be deployed as part of the Refresh.
 - b. Perform Refresh and Technical currency activities with minimal disruption to TxDOT business operations.
 - c. Perform all Changes in accordance with Change Management procedures.
 - d. Use best practices and effective automation tools during Refresh execution.
 - e. Perform resource planning, scheduling, and staffing to accomplish upgrades for supported versions.
5. When performing Applications, Systems, and Equipment refreshes, migrate all data, configurations, and software to leave the new Applications, Systems, and Equipment in an equal or better state than the old Applications, Systems, and Equipment.
6. Transfer associated licenses to new assets except where (1) TxDOT has procured licenses for a more recent version to remain N/N-1 or in support or (2) an audit shows that the application/software is not in use by the user per TxDOT policy.

7. Develop and execute procedures that ensure that no asset is outside of OEM support, except as approved by TxDOT.
8. Perform, and if possible and/or requested, remotely perform all tasks required to prepare any leased assets located within a TxDOT location for return to the leasing company, and completing any documentation required for the asset return.
9. Refresh assets to maximize the benefit for TxDOT (the oldest assets and those with the highest business impact shall have refresh priority) while minimizing the business disruption caused by the refresh.
10. Dispose of retired assets, including those with a destruction validation certification, in accordance with TxDOT's decommissioning policies.
11. Within the term of the refresh cycle, repair or replace failed, damaged, or failing components.
12. Replace assets proactively at the end of its lifecycle as defined by TxDOT.
13. Service Provider shall maintain required asset management data in TxDOT CMDB, including performing an annual inventory.

7 Security Requirements

7.1 Data Requirements

7.1.1 Data, Data Dictionaries, and Data Flow Diagrams

The Service Provider shall, at a minimum:

1. utilize TxDOT taxonomy for all TxDOT Data that is generated, manipulated, transmitted, or stored, , including documented data dictionaries, and data flow diagrams (including security protocols).

7.1.2 Data Sharing

The Service Provider shall, at a minimum:

1. Receive approval in writing by the TxDOT Information Owner or an assigned representative that is expressly approved in writing by TxDOT before the sharing of any TxDOT data with or between any systems, applications, or storage locations.

7.1.3 Data Transfer

The Service Provider shall, at a minimum:

1. At the completion of a deliverable, transfer all TxDOT Data generated and stored for that deliverable to the State in a manner and format acceptable to the State and approved by the TxDOT Information Technology Division ("ITD").
 - a. All metadata associated with the TxDOT Data transferred must remain attached to that data.

2. Maintain the appropriate level of data security throughout the transfer of the TxDOT data.



Texas Department of Transportation

ADM Managed Application Services

Exhibit 2.1.5

Solution Document

Version 1.0

Solicitation No. 601440000032007

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1 Service Provider Guidelines

Service Provider will submit this document as part of its Request for Offer (RFO) response submission.

This **Exhibit 2.1.5 ADM Managed Application Services Solution Document** supplies specific information for the Service Provider's use when responding to the RFO. This Exhibit is intended to be updated in stages throughout the procurement process. This Exhibit contains an outline of key topic areas that the Service Provider is required to address as part of its response. The response will include a thorough description of Service Provider proposed organizational structure, services solution, technical solution proposed to meet the requirements defined in **Exhibit 2.1.1 Cross Functional Services SOW**, and overall approach to implementing the Services and successfully transitioning responsibility from the Incumbent Service Provider. Detailed Transition response will be completed in **RFO Attachment 5: Transition Plan Response** per the instructions provided in the RFO.

1.1 Service Provider Instructions

1. Service Provider will modify the electronic version of this Exhibit (as provided with the RFO) to respond to the requirements herein by completing all sections while refraining from modifying section titles or removing sections.
2. Throughout the Solution response, Service Provider shall ensure compliance with **Exhibit 2.1.1 Cross Functional Services SOW** as well as interoperability, interfaces and relationships they will establish with other Service Providers and the Service Integrator to ensure a seamless delivery to TxDOT.
 - a. Service Provider need not demonstrate its understanding of ITIL functional areas, but instead shall focus on how Service Provider will perform the Services and integrate transparently in the operating model.
3. Although some sections are related, the Service Provider should minimize repeated responses (copy/paste) in subsequent sections, ensuring the response for each section is specific to the requirements therein.
4. Service Provider may remove the TxDOT-provided guidance (i.e. the italicized text) within each section.
5. Service Provider should not restate the requirements, volumetrics or solution assumptions from **Exhibit 2.1.4 ADM Managed Application Services SOW**. Rather, Service Provider should articulate how its unique solution will deliver the required services. Assumptions must be documented as instructed in the RFO Instructions Section 3.7 within the defined structure of Exhibit 4.1 Pricing Structure.

6. The Service Provider will refrain from providing “marketing materials” and background information already provided to TxDOT or otherwise available in the public domain.
7. The Service Provider will return the completed file as part of its overall response to the RFO package, in accordance with the RFO Response Instructions Section 3.7.

2 ADM Managed Application Services Proposed Organization Overview

*This section should begin with an overall view of the proposed organizational chart for the service relationship. The Service Provider will provide a narrative description of the benefits their proposed organization brings to TxDOT and describe lines of authority, escalation and accountability. Additionally, the Service Provider shall complete **Table 1** below to provide a list of subcontractors who will provide goods or services under the Agreement specifically accounting for lines of authority, escalation and accountability in this distributed organization model.*

Service Provider shall describe its experience, if any, with integrating with a common services delivery model in a multi-sourcing services environment such as TxDOT’s and identify how it will integrate with the TxDOT services ecosystem.

Service Provider will describe its proposed organization overview in the space below.

Table 1: Subcontractors

Name of Subcontractor (Company/Individual)	Subcontractor Scope of Work	Location where Subcontractor will Perform Work	Anticipated Duration of Subcontracting Engagement

3 ADM Managed Application Services Solution Overview

*The functional areas below reference sections of **Exhibit 2.1.4 ADM Managed Application Services Statement of Work**. The Service Provider should review the SOW requirements prior to responding to each functional area section below. Capitalized terms in this document may refer to section headings in the Statement of Work.*

3.1 Solution Overview

*The first section of the document will be a solution overview. In this space below, the Service Provider will describe the overall view of the solution, including solution components that drive improved efficiencies, and operational approach to meeting the overall objectives of and requirements contained in **Exhibit 2.1.4 ADM Managed Application Services Statement of Work**. The Service Provider will articulate how it will perform the services, with specific attention drawn to the focus areas of each section.*

Describe your solution in detail, including:

- Relevant experience and expertise
- Included scope
- Operational approach
- Partnering and governance overview
- Included tools and how these tools will be used within Service delivery
- Methods and process for gathering and reporting on SLA Performance data
- Additional information pertinent to this section

3.2 Service Level Compliance

*In the space below, Service Provider will describe how its solution, approach and methodology for providing Performance Management will meet the requirements in **Exhibit 3.0 Performance Model**.*

Describe your solution in detail, including:

- Acknowledgement of compliance with the Service Levels as defined in **Exhibit 3.1 Service Level Deliverable Matrix** and **Exhibit 3.2 Service Level Definitions**
- Detail which tools you have included, or will be leveraged from TxDOT and how these will be used to gather, store, and report on Service Levels
- Additional information pertinent to this section

3.3 Operating Agreements

In the space below, Service Provider will describe how its solution, approach and methodology for providing Common Services will meet the requirements in Section 2.1.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Experience operating in a multi-supplier model

- Additional information pertinent to this section

3.4 Service Evolution and Optimization Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing Common Services will meet the requirements in Section 2.2.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Relevant experiences and ways in which your solution provides value to TxDOT in Product lifecycle and Engineering activities
- Additional information pertinent to this section

3.5 Key Personnel

*Service provider will complete Exhibit 2.4 Key Personnel per the instructions provided in the RFO and aligned with roles defined in Section 2.3 of **Exhibit 2.1.4 ADM Managed Application Services Statement of Work**.*

3.6 Evergreen Service Personnel

In the space below, Service Provider will describe how its solution, approach and methodology for providing Common Services will meet the requirements in Section 2.4.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Relevant experiences that emphasize a Customer-centric approach to delivery of Services
- How will TxDOT specific technology be incorporated into staffing, hiring, and education development
- How this program is measured and managed to ensure continual improvements and proper alignment of customer focus, technical skills and industry experience
- Relevant experiences, defined programs and industry recognition for education learning management, ongoing development of skills and how this is incorporated in the solution to ensure TxDOT achieves value and customer satisfaction
- Additional information pertinent to this section

3.7 Work Location

In the space below, Service Provider will describe how its solution, approach and methodology for providing the Application Development Services will meet the requirements in Section 2.5.

Describe your solution and location of services in detail, provide specific details and technical solution to articulate how requirement of this section have been met, including:

- Work locations
- Connectivity solution design and architecture
- Procedures that will be implemented to ensure protection of TxDOT assets and data
- Relevant experiences with similar solutions
- If TxDOT were to decide that Services need to be transitioned to the continental United States, provide:
 - Details how Services would be transitioned
 - Specific details on ways in which risk to TxDOT services would be mitigated in this scenario
 - Examples where Service Provider performed this before and how this experience will benefit TxDOT
- Additional information pertinent to this section

3.8 Transition

*Service provider will complete detailed Transition response in **RFO Attachment 5: Transition Plan Response** per the instructions provided in the RFO and consistent with Article 3 of **Exhibit 2.1.4 ADM Managed Application Services Statement of Work**.*

3.9 Application Development and Support Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing Application Development Services will meet the requirements in Sections 4.1-4.4 (Application Development Services, Application Development, Customizations and Enhancements, and Break Fix support).

Describe your solution in detail, including:

- Relevant service experience
- How these experiences have shaped your overall approach and solution
- Staffing plan and approach

- Approach to management of service quality and consistency
- Experiences and proven methodologies that cover a variety of approaches (e.g. waterfall, agile, hybrid)
- Expertise in DevOps and how your approach will assist Customers to achieve greater value leveraging industry best practices
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Specific solution details related to Application Development
- Specific solution details related to Customizations and Enhancements and Break Fix
- Additional information pertinent to this section

3.10 Application Support Services

In the space below, Service Provider will describe how its solution, approach and methodology for providing Application Support Services will meet the requirements in Section 4.5.

Describe your solution in detail, including:

- Relevant expertise and industry recognition
- Staffing plan and approach
- Approach to management of service quality and consistency
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Additional information pertinent to this section

3.11 Application Testing

In the space below, Service Provider will describe how its solution, approach and methodology for providing Application Testing will meet the requirements in Section 4.6.

Describe your solution in detail, including:

- Testing methodology and best practices utilized and incorporated in solution
- Relevant expertise and industry recognition
- Staffing plan and approach

- Approach to management of service quality and consistency
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Additional information pertinent to this section

3.12 Documentation Requirements

In the space below, Service Provider will describe how its solution, approach and methodology for providing Documentation Requirements and Coding Standards will meet the requirements in Section 4.7.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Understanding of the usage of Technical and Functional Design Documents, including Service Management Manuals and approach for developing, enhancing and maintaining required documentation
- Understanding and familiarity with defined Technical coding standards
- Service Provider may propose for TxDOT's consideration
 1. any concerns it may have related to where documentation will be stored
 2. options for documentation storage that allows TxDOT and Service Provider access to all documentation within a single location.
- Furthermore, Service Provider is encouraged
 3. to describe any additional industry best practices and added value processes and work products that it will provide to TxDOT
 4. to provide enhancements to the current technical coding standards
- Additional information pertinent to this section

3.13 Maintenance Windows

In the space below, Service Provider will describe how its solution, approach and methodology for providing Windows for Maintenance Services will meet the requirements in Section 4.8.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section

- Additional information pertinent to this section

3.14 Release Management

In the space below, Service Provider will describe how its solution, approach and methodology for providing Release Management Services will meet the requirements in Section 4.9.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section
- Relevant experiences that emphasize a Customer-centric approach to delivery of Services
- Staffing plan and approach
- Additional information pertinent to this section

3.15 Software Development Lifecycle

In the space below, Service Provider will describe how its solution, approach and methodology for providing Software Development Lifecycle Services will meet the requirements in Section 4.10.

Describe your solution in detail, including:

- Relevant service experience
- Approach to management of service quality and consistency
- Relevant SDLC programs and services experience and how these experiences have shaped your overall approach and solution
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Additional information pertinent to this section

3.16 System Software Administration and Support

In the space below, Service Provider will describe how its solution, approach and methodology for providing System Software Administration and Support will meet the requirements in Section 4.11.

Describe your solution in detail, including:

- Approach to management of service quality and consistency
- Relevant experience and how these experiences have shaped your overall approach and solution
- Commitment to continual improvement and evolution and how TxDOT will achieve the benefits of this ongoing work
- Staffing plan and approach
- Additional information pertinent to this section

3.17 Asset Management

In the space below, Service Provider will describe how its solution, approach and methodology for providing Asset Management will meet the requirements in Section 4.13.

Describe your solution in detail, including:

- Approach to management of service quality and consistency
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of usage of TxDOT defined tooling
- Additional information pertinent to this section

3.18 Hours of Coverage

In the space below, Service Provider will describe how its solution, approach and methodology for Hours of Coverage will meet the requirements in Section 4.14.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Additional information pertinent to this section

3.19 Project Bench

In the space below, Service Provider will describe how its solution, approach and methodology for providing a Project Bench will meet the requirements in Section 4.15.

Describe your solution in detail, including:

- Relevant staffing and services experience
- Partnership approach and subcontracting relationships leveraged
- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Delivery locations
- Approach to management of service and staffing quality
- How your solution is particularly enabled to quickly staff requests
- Additional information pertinent to this section

3.20 Disaster Recovery

In the space below, Service Provider will describe how its solution, approach and methodology for Disaster Recovery will meet the requirements in Section 4.16.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for DR planning, testing and documentation
- Additional information pertinent to this section

3.21 Infrastructure and Operations Services

In the space below, Service Provider will describe how its solution, approach and methodology for Infrastructure and Operations Services will meet the requirements in Article 5.

Describe your solution in detail, including:

- Staffing plan and approach
- Defined operational model to ensure alignment with TxDOT, and other Service Component Providers in the delivery of services, specifically:

1. Interactions with L1 Service Desk
 2. Physical DBMS and Middleware services
 3. Production control services
 4. Configuration management
- Acknowledgement of compliance with the Services as defined in this section
 - Understanding of multi-supplier nature and requirements to interact across multiple suppliers for Infrastructure planning, testing and documentation
 - Additional information pertinent to this section

3.22 Technology Refresh and Technical Currency Services

In the space below, Service Provider will describe how its solution, approach and methodology for Technology refresh and Technical Currency will meet the requirements in Article 6.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for Technical currency alignment
- Additional information pertinent to this section

3.23 Security Requirements

In the space below, Service Provider will describe how its solution, approach and methodology for Security Requirements will meet the requirements in Article 6.

Describe your solution in detail, including:

- Staffing plan and approach
- Acknowledgement of compliance with the Services as defined in this section
- Understanding of multi-supplier nature and requirements to interact across multiple suppliers for Security
 1. Security Incident Support Services
 2. Security Incident Response management
 3. Escalation Process

4. TxDOT Notification

- Additional information pertinent to this section

3.24 Low Complexity Application Services

In the space below, Service Provider will describe how its solution, approach and methodology for Requirements will meet the requirements in Section 4.17.

Describe your solution in detail, including:

- Acknowledgement of compliance with the Services as defined in this section



Texas Department of Transportation

Application Services

Exhibit 2.2

Termination Assistance Services

Version 1.0

Solicitation No. 601440000032007

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1 GENERAL

Upon TxDOT's request, the Service Provider shall perform the Termination Assistance Services set forth in this Exhibit, as well as those set forth in **Section 4.3 Termination of Assistance** of the Master Services Agreement ("MSA" or "Agreement").

2 RISK IDENTIFICATION

The Service Provider shall notify TxDOT of significant risk factors relating to the Termination Assistance Services and, at TxDOT's request, shall design plans and contingencies to mitigate such risk.

3 SPECIFIC TERMINATION ASSISTANCE SERVICES

3.1 Knowledge Transfer

As requested by TxDOT, the Service Provider shall provide for a transfer of knowledge regarding the Services, TxDOT requirements and related topics so as to facilitate the provision of the Services by TxDOT or their designee(s).

3.1.1 The Service Provider shall, at a minimum:

- 3.1.1.1 Provide reasonable training (in a manner mutually agreed to by the Parties) to personnel designated by TxDOT; training shall include the performance of the Services that are to be transferred.
- 3.1.1.2 Provide to TxDOT and/or their designee(s) information regarding the Services as reasonably necessary to implement the termination assistance plan developed by Service Provider pursuant to **Section 4.3** of the Agreement.
- 3.1.1.3 Provide to TxDOT and/or their designee(s) information regarding the Services as reasonably necessary for TxDOT or their designee(s) to assume responsibility for continued performance of Services in an orderly manner so as to minimize disruption in the operations of TxDOT, including (i) relevant documentation, and (ii) key support contacts (names, business phone numbers, email addresses and business postal addresses) of Service Provider Personnel during the transition from the Service Provider to TxDOT or their designee(s).
- 3.1.1.4 Supply information concerning Systems, Equipment, Software, types and skills of Service Provider Personnel and other resources used by Service Provider to provide Services under the Agreement, as reasonably necessary for TxDOT or their designee(s) to assume responsibility for the Services.
- 3.1.1.5 Supply information, code, and configurations required to compile all transferrable Software and Applications, including (i) Application source code, (ii) Application build parameters, (iii) Application source code control library specifications, (iv) Application source code build processes and steps, and (v) Application executables.

- 3.1.1.6 Explain the processes and procedures (e.g., Incident Management, Change Management, etc.), in the Service Management Manual (SMM), Reports, and other standards and procedures to the operations staff of TxDOT or their designee(s).
- 3.1.1.7 Provide reasonable access, including in person and by telephone, to Service Provider Personnel during and following the period for performance of Termination Assistance Services.
- 3.1.1.8 Explain the extent and nature of the impact of legal and regulatory requirements compliance, if any, on the Services.
- 3.1.1.9 Provide TxDOT or their designee(s) reasonable access to Systems, Equipment, Software, and other resources used by Service Provider to provide the Services, and provide TxDOT or their designee(s) information concerning such items, all as reasonably necessary for transition of the Services to TxDOT or their designee(s).

3.2 Transfer of Resources

The Service Provider shall provide all reasonable assistance required for the transfer to TxDOT or their designee(s) of the Systems, Equipment, Software and other resources that are implicated by the relevant Assistance Event.

3.2.1 The Service Provider shall, at a minimum:

- 3.2.1.1 Identify any third-party services that are required by TxDOT or their designee(s) to perform the Services, and to which TxDOT or their designee(s) are entitled under **Section 4.4 Use of Third Parties** of the Agreement.
- 3.2.1.2 Provide asset listings for Systems, Equipment, and Software owned or licensed by Service Provider, its Subcontractors, TxDOT including those which are required by TxDOT or their designee(s) to perform the Services and to which TxDOT or their designee(s) are entitled under **Section 4.4** of the Agreement.
- 3.2.1.3 Work with TxDOT or their designee(s) to minimize or eliminate any potential transfer, re-licensing or termination charges, taxes and other costs or expenses that might be incurred by TxDOT or their designee(s) as a result of any transfers.
- 3.2.1.4 Perform administrative functions required to enable the assignment of Systems, Equipment, Software, and Third Party Contracts that are required by TxDOT or their designee(s) to perform the Services, and to which TxDOT or their designee(s) are entitled under **Section 4.4** of the Agreement, including executing legal documents and performing other necessary functions.

3.3 Operational Transfer

The Service Provider shall perform all activities requested by TxDOT pursuant to **Section 4.3 Termination of Assistance** of the Agreement to enable a smooth transfer of operational responsibility for the Services to TxDOT or their designee(s).

3.3.1 This shall include:

- 3.3.1.1 Identifying, recording and providing release levels for TxDOT Software and updating such records of release levels prior to and during transition of the Services.
- 3.3.1.2 If and to the extent requested by TxDOT, halting any enhancements to, development or testing of any Software.
- 3.3.1.3 Providing any Systems configurations and data extracts in appropriate electronic formats (e.g., Excel, databases) as necessary for TxDOT or their designee(s) to assume responsibility for the Services.
- 3.3.1.4 Providing machine readable and printed listings and associated documentation for source code for Software owned by TxDOT and source code to which TxDOT is entitled under the Agreement, including all Software details required to compile all transferrable Software including (i) Software source code and (ii) Software build parameters and (iii) Software source code control library specifications and (iii) Software source code build processes and steps and (iv) Software executables.
- 3.3.1.5 To the extent required by TxDOT and applicable to the Services implicated by the relevant Assistance Event, delivering support profiles, enhancement logs, problem tracking, resolution documentation, and status reports associated with the Services.
- 3.3.1.6 Providing any trouble logs that TxDOT does not already have, reporting at least twelve (12) months prior to the effective date of the relevant Assistance Event, and returning any other Authorized User information collected or maintained as part of the Services implicated by the relevant Assistance Event.
- 3.3.1.7 Providing for the orderly hand-off of ongoing Requests, Work Orders or Projects, including a listing of current and planned Requests, Work Orders or Projects, as well as all Systems, Software, and Equipment ordered or in process. With respect to each Request, Work Order or Project, document the status, ensure the activity is stabilized for continuity during transfer, and provide reasonable training to achieve transfer of responsibility without loss of momentum.
- 3.3.1.8 Ensure that all documentation used by Service Provider to provide the Services, including but not limited to technical, operations procedures, program management procedures and report documentation, is stored in the Service Management Manual (SMM) and provided in electronic media.
- 3.3.1.9 Documenting and delivering databases and all application data specific to the Services as well as TxDOT Data.
- 3.3.1.10 Transferring physical and logical security processes and tools (to the extent required under the Agreement), including cataloging and tendering all badges and keys for TxDOT Facilities, documenting ownership and access levels for all passwords, and instructing TxDOT or their designee(s) in the use and operation of security controls.

- 3.3.1.11 Providing and coordinating assistance to TxDOT or their designee(s) in notifying relevant third parties of the procedures to be followed prior to, during, and after the transition.
- 3.3.1.12 Returning to TxDOT or their designee(s) any remaining property of TxDOT in Service Provider's possession or under Service Provider's control, including any remaining Reports, TxDOT Data, TxDOT Owned Materials, Third Party Materials and TxDOT Confidential Information.
- 3.3.1.13 Cooperating with TxDOT or their designee(s), test plans, back out procedures, and contingency plans as part of the transition of Services to TxDOT or their designee(s).
- 3.3.1.14 In conjunction with TxDOT or their designee(s), conducting rehearsals of the transition prior to cutover, as requested by TxDOT.
- 3.3.1.15 After the transition, providing additional assistance as reasonably requested by TxDOT to assure continuity of operations.
- 3.3.1.16 Freezing all system changes unless otherwise requested by TxDOT, except maintenance necessary to continue performing the Services.
- 3.3.1.17 Providing interim copies of TxDOT Data, as reasonably requested by TxDOT.
- 3.3.1.18 Unloading all TxDOT Data and TxDOT Confidential Information from Service Provider Owned Materials and Third Party Materials and returning all TxDOT Data and TxDOT Confidential Information in accordance with **Article 13 TxDOT Data and Other Confidential Information** of the Agreement.
- 3.3.1.19 Transferring responsibility for off-site storage of tape, backups and documents.
- 3.3.1.20 Making available data files and other TxDOT Data and TxDOT Confidential Information stored on Systems and Equipment for which Service Provider is responsible, including backups.
- 3.3.1.21 Securely erasing, wiping clean, or otherwise destroying any remaining copies of TxDOT Owned Materials, Third Party Materials, TxDOT Data and TxDOT Confidential Information.

3.4 Human Resources Transfer

Service Provider shall provide reasonable assistance required in hiring Service Provider Personnel in accordance with **Section 4.3** of the Agreement or substitute personnel resources to perform the Services.

3.4.1 This shall include:

- 3.4.1.1 Providing a current account organizational chart, identifying the individual Service Provider Personnel assigned to perform the Services;

- 3.4.1.2 Providing a listing of the Service Provider Personnel positions and the amount of time the Service Provider Personnel in such positions spent to provide the Services;
- 3.4.1.3 Assessing the skills mix of the Service Provider Personnel providing the implicated Services;
- 3.4.1.4 Identifying any then-current or anticipated personnel resource requirements and identifying the overlap of such requirements with the skill set of the Service Provider Personnel then-assigned to perform the Services; and
- 3.4.1.5 Providing a listing of the Service Provider Personnel used to provide the Services in sufficient detail to determine their applicability to the transition process and on-going operation and support of TxDOT environments.

4 REMOVAL OF PROPERTY

Prior to removing any documents, Systems, Equipment, Software or other Materials from TxDOT Facilities, the Service Provider shall provide appropriate notice to TxDOT identifying the property it intends to remove. Such identification shall be in sufficient detail to apprise TxDOT of the nature and ownership of such property. The Service Provider shall not remove property owned by TxDOT from TxDOT Facilities without the prior written consent of TxDOT. The Service Provider shall comply with the removal procedures reasonably established by TxDOT for removal of property from TxDOT Facilities.



Texas Department of Transportation

Application Services

Exhibit 2.3

IT Service Continuity Management

Version 1.0

Solicitation No. 601440000032007

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1 INTRODUCTION

Upon the occurrence of a disaster, the Service Provider shall promptly provide Disaster Recovery (DR) Services, in accordance with the applicable Disaster Recovery Plans (DRPs), including as described in, and in accordance with, the requirements of this Exhibit. In addition, this Exhibit sets forth certain requirements that the Service Provider shall comply with in developing, maintaining, and implementing DRPs.

2 DISASTER RECOVERY

2.1 Initial Disaster Recovery

At Commencement, Service Provider will take over the current Disaster Recovery plan and testing as is and support that architecture, plan and testing until the Disaster Recovery strategy as defined in **Exhibit 3.1 Service Level Deliverable Matrix** is implemented.

The Service Provider, at a minimum, shall:

- 2.1.1 Leveraging the existing Disaster Recovery capabilities, work with TxDOT to establish declaration procedures and document those procedures in the Service Management Manual (SMM). TxDOT shall have the authority to declare a disaster.
- 2.1.2 As required in **Exhibit 3.1 Service Level Deliverable Matrix Disaster Recover Plan One-Time Deliverable**, for all Equipment, Network, Software, and Applications, by Commencement, the Service Provider will create or update all Disaster Recovery Plans to reflect Service Provider changes where appropriate to maintain a viable Disaster Recovery Plan for Service Provider Services upon Commencement.
- 2.1.3 Support testing of all Third-Party Disaster Recovery contracts in existence and continue to support such contracts until such time that a successful test has been achieved for alternative Disaster Recovery strategy and TxDOT requests the cancellation of the Third-Party Disaster Recovery contracts.

2.2 Disaster Recovery Strategy

The Service Provider, at a minimum, shall:

- 2.2.1 Identify and review applicable input to TxDOT's existing disaster recovery and business continuity and emergency preparedness plans such as the TxDOT Data Center Services ("DCS") Disaster Recovery Plan, DCS - Annual Disaster Recovery Test Plan and Schedule document, TxDOT IT Continuity of Operations Plan ("COOP"), TxDOT Emergency Preparedness Plan, TxDOT IT Mission Control Emergency Preparedness Plan, and other related disaster recovery and business continuity plans, processes, and procedures as defined in the Service Management Manual or otherwise communicated to Service Provider by TxDOT.
- 2.2.2 Review all Third Party disaster recovery contracts and test activities.
- 2.2.3 Conduct review of the planning, response and recovery activities consistent with the technical recovery guides, Recovery Point Objectives ("RPOs") and Recovery Time Objectives ("RTOs") as defined in the Service Management Manual and TxDOT's Standards identified in the "Agency-Level General Recovery Priorities and Processes" document.
- 2.2.4 Develop the Disaster Recovery Strategy critical deliverable in **Exhibit 3.1 Service Level Deliverable Matrix**, design new disaster recovery architectures, DRPs, TRGs, and update the SMM as required to migrate all Applications to the TxDOT approved Disaster Recovery model using the TxDOT-approved disaster recovery levels.

- 2.2.5 In accordance with the Disaster Recovery Strategy critical deliverable in **Exhibit 3.1 Service Level Deliverable Matrix**, implement new disaster recovery architectures, technology, and Application modifications as required to migrate all Applications to the TxDOT-approved Disaster Recovery Strategy using the TxDOT-approved disaster recovery levels.
- 2.2.6 Propose declaration procedures to TxDOT and document TxDOT-approved procedures in the Service Management Manual (SMM).
- 2.2.7 Use the Disaster Recovery Plan (DRP) and Technology Recovery Guide (TRG) templates as defined in the SMM.

2.3 Disaster Recovery Plan (DRP)

The Service Provider, at a minimum, shall:

- 2.3.1 As applicable, leverage and maintain DRPs where they currently exist in support of Services and in relation to any TxDOT specific DRPs, in each case subject to TxDOT's and the TxDOT prior review and approval.
- 2.3.2 Create, define and maintain DRPs where they do not exist in support of TxDOT Shared Services provided to TxDOT and in relation to any TxDOT specific DRPs, in each case subject to TxDOT prior review and approval.
- 2.3.3 Utilize the TxDOT specific plan and the associated TRGs for each of the TxDOT Applications.
- 2.3.4 For all Applications, within sixty (60) days after the Commencement Date, update all existing Services DRPs to reflect all changes implemented during the performance of Transition Services.
- 2.3.5 Update DRPs annually to reflect all changes implemented over the course of Service Provider's performance of the Services. TRGs shall be updated whenever a change is made to the environment or Application.
- 2.3.6 Updated DRPs and TRGs shall be sent for the applicable TxDOT review and must document and demonstrate Service Provider's plan and capability to restore Applications within their applicable RTOs.
- 2.3.7 Adjust the applicable DRPs and TRGs whenever TxDOT needs and use of the Services change.

- 2.3.8 Develop and maintain all DRPs that are developed by Service Provider and verify they comply with all TxDOT Standards, including the National Institute of Standards and Technology Special Publication 800-34 and 800-66 Section 4.7, and shall be tested in accordance with applicable Laws and this **Exhibit 2.3 IT Service Continuity Management**.

2.4 Disaster Recovery Testing

The Service Provider, at a minimum, shall:

- 2.4.1 Assume the DR test schedules in existence at the Commencement Date, and work with TxDOT to ensure that the annual test schedules continue without disruption.
- 2.4.2 In cooperation with TxDOT, SCPs, and DIR DCS, establish and schedule reasonable windows to accomplish all DR testing for Applications as documented in the Service Provider’s annual DR test plan and schedule, in accordance with the Disaster Recovery Test Schedule critical deliverable in **Exhibit 3.1 Service Level Deliverable Matrix**.
- 2.4.3 Assist TxDOT and the appropriate governance committee in prioritizing the test schedule of TxDOT Applications, as specified in **Exhibit 1.2 Governance Model**.
- 2.4.4 Propose test objectives for TxDOT’s approval and coordinate with related SCP test objectives.
- 2.4.5 Support TxDOT, DIR DCS and other functional in planning and preparation for annual test activities, including setting the objectives of the test. Each such test shall address the specific needs of each Application. The Service Provider’s test execution must demonstrate, at a minimum, the Service Provider’s and SCP(s)’ ability to meet or exceed the designated RTOs for those Applications in the event of a disaster.
- 2.4.6 Conduct all testing activities in a manner designed to minimize impacts to active production, test, and development environments. If an active environment is required to execute the test, the Service Provider will, prior to the test, communicate the use of the environment to and obtain approval from TxDOT.
- 2.4.7 Notify TxDOT of any anticipated DR risks, in accordance with the IT Service Continuity Management processes in the SMM, where TxDOT may choose not to participate in testing.
- 2.4.8 Evaluate the results of the test and identify and log potential corrective actions.
- 2.4.9 Provide initial test results to TxDOT, as applicable, and incorporate their feedback into the final test results report.
- 2.4.10 Facilitate test result review sessions with the TxDOT to gain consensus on the success level of the test (e.g., successful, successful with issues, unsuccessful, etc.) and to identify corrective actions.
- 2.4.11 Resolve corrective actions and report status to the TxDOT as defined in the SMM.

3 RECOVERY TARGETS

At a minimum, Service Provider will:

- 3.1.1 The Service Provider shall perform DR Services to meet or exceed the applicable RTO for each Application, as indicated in the relevant TxDOT DRP and tracked in the CMDB.
- 3.1.2 TxDOT may change an Application's DR Level, using the appropriate process as defined in the SMM. Service Provider will perform a technical assessment of the Application's capability to meet the minimum requirements of the requested RTO, identifying any changes needed to meet the minimum requirements, and propose a solution, as needed, which implements those changes.
- 3.1.3 Each Service Provider Service must have a DR Plan with a designated Recovery Time Objective (RTO) and Recovery Point Objective (RPO). Service Provider and TXDOT will agree on the RTO and RPO targets for each Application, system, and process.
- 3.1.4 Establish RTO and RPO targets and maintain them in the Service Providers Configuration Management Database (CMDB).
- 3.1.5 Perform DR Services to meet or exceed the applicable RTO for each Service, as indicated in the relevant TXDOT DRP and tracked in the CMDB.
- 3.1.6 TXDOT may change an Application's DR Level, using the appropriate process as defined in the SMM. Service Provider will perform a technical assessment of the Application's capability to meet the minimum requirements of the requested RTO, identifying and executing any changes needed to meet the minimum requirements.
- 3.1.7 Service Provider is to design and maintain the Application and supporting environment to adhere to the RTO and RPO targets as agreed in the SMM.
- 3.1.8 On an ongoing basis, as required in **Exhibit 3.3 Reports** within Report Category Disaster Recovery, Service Provider will report to TXDOT the Application RTO, RPO, DR Test Schedule and DR Test Results.

4 DISASTER RECOVERY PLAN (DRP) AND TECHNICAL RECOVERY PLAN (TRG) CONTENTS

TxDOT expects the DRP and TRGs to provide sufficient level of detail for the Service Provider to successfully recover within the RTO.

4.1 DRP Contents

DRPs will be developed and maintained by Service Provider for all Services.

At a minimum, Service Provider will:

- 4.1.1 Ensure all DRPs adhere to the DRP format and contents as proposed by the Service Provider and agreed by TxDOT and defined in the SMM by the Service Provider.
- 4.1.2 All DRPs that are developed by Service Provider shall adhere to the Disaster Recovery Plan format and contents as defined in the SMM as approved by the TxDOT and address the following topics unless otherwise directed by TxDOT: Background, Scope, Declaration Criteria, Call-Out Procedure, Contingency Model Resource Plan, Key Documents and Procedures, Notification and Reporting, Technical Recovery Guide Activities for various system types.

4.2 TRG Contents

At a minimum, Service Provider will:

Developed and maintain TRGs for all Services with applications, systems, equipment or devices located at an TxDOT or Service Provider location.

- 4.2.1 TRGs will include all technical recovery documentation for all application, system, equipment or device configurations.
- 4.2.2 All TRGs will be developed and maintained by Service Provider and will adhere to the TRG format and content as proposed by the Service Provider and agreed by TxDOT and defined in the SMM by the Service Provider.
- 4.2.3 Server and application environment dependencies will be identified, documented, and maintained ensuring technical recovery steps are known and can be sequenced appropriately to ensure Service Provider Services can be restored including:
 - a. OS dependencies required to support applications and databases;
 - b. Directories and file system;
 - c. Inter-server environment relationships and dependencies;
 - d. Security dependencies;
 - e. Interface dependencies;
 - f. Application and/or database specific dependencies; and
 - g. Operations dependencies associated to the server or application.
- 4.2.4 TRGs will be maintained, reviewed, and approved. This will include processes of quality control performed by the Service Provider and review and concurrence by TxDOT.
- 4.2.5 The process of maintaining currency of the TRGs will be fully documented and repeatable.
- 4.2.6 TRGs will capture operational elements of the environments including:
 - a. System operational requirements which need to be re-enabled as required to support the business purpose of the environment;
 - b. Post boot instructions required;
 - c. Integration instructions required for cross team support in restoring the overall business purpose of the environment.

- 4.2.7 Service Provider will utilize technical recovery approaches based on sequenced recovery events and restoration of associated dependencies for each environment. This sequenced order of recovery events will be documented for every environment and be relevant to end-to-end recovery requirements.
- 4.2.8 Focus of technical recovery will be on restoration of business service, ensuring all related recovery dependencies are addressed.
- 4.2.9 Backup and recovery technical requirements and related processes in the context of recovering specific environments will be fully described as part of the technical recovery procedures as required to enable end-to-end technical recovery of the business purpose for each environment. This includes specifics associated to each environment including distinction of:
 - a. Hardware/OS recovery
 - b. Application software and related OS configuration recovery
 - c. Non-database data recovery
 - d. Database recovery



Texas Department of Transportation

Application Services

Exhibit 2.4

Key Personnel

Version 1.0

Solicitation No. 60144000032007

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1 Service Provider Organizational Chart

Service Provider will insert its proposed organization structure in the space below, defining the legend of personnel by category.

Figure 1 – Key and Support Personnel Organizational Chart

Legend:

- Leadership =
- Key Personnel* =
- Support Personnel =
- Sub-contracors =

2 Service Provider Key Personnel

Name	Name and Description of Position	Location	Committed Period	% Allocated
	Account Director	Austin, TX	m/dd/yyyy – m/dd/yyyy	100% (full term)
	Service Delivery Director			
	Financial Director			
	HCM ERP Lead			
	FSCM ERP Lead			
	ERP Technical Lead			
	ADM Technical Lead			
	Transition Director			
	Others			

3 Service Provider Key Personnel Resumes

{Note this section is transitory during the Procurement and will be removed before contract execution in final contract scrub process, only Sections 1 and 2 will remain in the contract document}.

Respondent must include in its Response the resumes and qualifications of all proposed Respondent Key Personnel, including their specific experience working on related projects. Resumes should specifically detail experience working on projects and services of similar scale and complexity as the Services sought through this RFO, including work on projects used as references. Resumes shall be no more than two (2) pages in length.

The Account Organization in Section 1 and 2 above must include actual names of Key Personnel initially assigned to the account and their resumes, not simply generic resumes with the types of skills sought.

The Respondent must provide these resumes in the space below:



Texas Department of Transportation

Application Services

Exhibit 3.0

Performance Model

Version 1.0

Solicitation No. 601440000032007

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1 GENERAL

The methodology set out in this **Exhibit 3.0 Performance Model** will support the Performance Management cycle of monitoring, reporting and improving the delivery of the Services to TxDOT.

As of the Commencement Date (or as otherwise specified in this Exhibit and the Attachments to this Exhibit), the Service Provider will perform the Services to which Service Levels apply so that the Service Level performance will, in each month of the Term, meet or exceed, the Service Levels.

Critical Service Levels, Key Service Levels, One Time Critical Deliverables, and Recurring Critical Deliverables may be added or substituted by TxDOT as specified in this Exhibit during the Term. For example, such additions or substitutions may occur in conjunction with changes to the environment and the introduction of new Service, Equipment, Software, or means of Service delivery – provided, however, that where such change is a replacement or upgrade of existing technology, there shall be a presumption of equivalent or improved performance.

The achievement of the Service Levels by the Service Provider requires the coordinated, collaborative effort of the Service Provider with Third Parties, including other Service Component Providers (SCPs) and the TxDOT ITD Service Governance function (ITD SG).

2 RELATED AND UNIQUE SERVICE LEVELS AND TYPES

To clarify how specific Service Levels are intended to be tracked and calculated, individual Service Levels may be generally categorized as one of two types, representing the way individual SCPs and the Service Provider are either individually or jointly responsible for the specific Service Level's performance. Service Level Credits assessed against Service Provider will be calculated based on the Service Provider's Service Level Invoice Amount, At-Risk Amount, and Allocation of Pool Percentage.

- **Type R (related):** Type R Service Levels are related measures shared between the Service Provider, TxDOT and other SCP(s). Type R Service Levels for the Service Provider are measured in the aggregate, counting events for both the Service Provider, TxDOT, and/or other the SCP(s). For the SCP, the Type R Service Level measures a discrete subset of the same pool of events, the subset applicable to that SCP. The definition and descriptions of Type R Service Levels as well as the Expected Service Level and Minimum Service Level remain identical in the related agreements for both the Service Provider and the applicable SCP(s) during the Term, unless otherwise documented as an exclusion in **Exhibit 3.2 Service Level Definitions** in accordance with **Section 17 EXCLUSIONS** below.
- **Type U (unique):** Type U Service Levels are intended to measure Services that are specific to one (1) SCP's or the Service Provider's performance, and therefore are not shared.

The groupings described above are intended to clarify Service Level types for tracking purposes; none of the Service Provider's obligations as fully described in the Agreement are limited by these groupings.

3 SERVICE LEVEL AND DELIVERABLE REPORTING

Unless otherwise specified in this **Exhibit 3.0**, each Critical Service Level, Key Service Level, Recurring Critical Deliverable, and One-Time Critical Deliverable shall be measured and reported

by Service Component (DT HLS, MNS, ERP MAS, ADM, MSS, etc.) monthly. The Service Provider shall provide reports and data to the ITD SG function. The Service Provider shall comply with the tools, processes, and reporting formats as defined in **Exhibit 3.2 Service Level Definitions**. The format, layout, and content of any reports shall be agreed between TxDOT and the Service Provider, and published by the ITD SG function. The ITD SG function will publish the Service Provider's monthly performance reports in accordance with SMM such that TxDOT is able to verify the SCPs' performance and compliance with the Critical Service Levels, Key Service Levels, Recurring Critical Deliverables, and One-Time Critical Deliverables (for purposes of clarity, with respect to One-Time Critical Deliverables, such reporting is only required until all One-Time Critical Deliverables are received and approved by TxDOT). The monthly performance reports must be updated daily throughout the month and available for review by TxDOT. The monthly reports shall describe any failure to meet Critical Service Levels and Key Service Levels for the month.

In addition to the reports described above, the Service Provider shall also provide detailed supporting information for each report to TxDOT in machine-readable form suitable for use on a personal computer. The data and detailed supporting information shall include sufficient detail such that TxDOT can reproduce the calculations made by the Service Provider and validate the results reported in the monthly Service Level performance reports. All detailed supporting information shall be TxDOT Confidential Information, and TxDOT may access such information online and in real-time, where feasible, at any time during the Term. In addition, the Service Provider shall provide TxDOT with direct, unaltered access to review and audit all raw data collection related to Service Levels.

The Service Provider will create and maintain detailed procedure documentation of its Service Level Agreement (SLA) measurement process used to collect SLA data and calculate SLA attainment. The process documentation must include quality assurance reviews and verification procedures. The measurement process must be automated to the extent possible, and any manual data collection steps must be clearly documented, verified and auditable. All methods, codes, and automated programs must be documented and provided to TxDOT for validation and approval. The Service Provider must ensure it tests and validates the accuracy and currency of the documentation and measurement process on a quarterly basis.

4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS

TxDOT will send notice to the Service Provider at least ninety (90) calendar days prior to the date that additions or deletions to Performance Measures, (which include the movement of Critical Service Levels to Key Service Levels and Key Service Levels to Critical Service Levels), or modifications to Service Level Credit Allocation Percentages for any Critical Service Levels, modifications to Critical Service Levels and Key Service Levels measurement methodologies, or additions or deletions to Recurring Critical Deliverables are to be effective, provided that TxDOT may send only one (1) such notice (which notice may contain multiple changes) each calendar quarter. Movement of Critical Service Levels to Key Service Levels and Key Service Levels to Critical Service Levels does not constitute creation of new Service Levels.

The Service Provider is required to implement into its SLA performance management system or support TxDOT implementation where TxDOT administers the Service Level all additions, deletions and modifications TxDOT makes to SCP Service Levels.

5 SERVICE LEVEL DEFAULT

A Service Level Default occurs when:

1. Performance for a particular Critical Service Level fails to meet the applicable Minimum Service Level, or
2. Performance for a particular Critical Service Level fails to meet the applicable Expected Service Level (but does not fail to meet the applicable Minimum Service Level), and has failed to meet such Expected Service Level for four (4) or more occurrences in any rolling twelve (12) month period.

Service Level Credits shall not apply to Key Service Levels.

In the event of a Service Level Default, the Service Provider shall provide TxDOT credits as defined below:

1. **Exhibit 3.1 Service Level and Deliverable Matrix** sets forth the information required to calculate the Service Level Credit in the event of a Service Level Default. For each Service Level Default, the Service Provider shall pay to TxDOT, subject to [Section 6 EARNBACK](#) below, a Service Level Credit that will be computed in accordance with the following formula:

$$\text{Service Level Credit} = A \times B \times C$$

Where:

- A** = The Allocation of the Pool Percentage specified for the Performance Category in which the Service Level Default occurred as shown in **Exhibit 3.1 Service Level and Deliverable Matrix**.
- B** = The Service Level Credit Allocation Percentage for which the Service Level Default occurred as shown in **Exhibit 3.1 Service Level and Deliverable Matrix**.
- C** = The At-Risk Amount

For example, assume that the Service Provider fails to meet the Service Level for a Critical Service Level, the Service Provider's Service Level Invoice Amount for the month in which the Service Level Default occurred was \$100,000 and that the At-Risk Amount is 15% of these charges.

Additionally, assume that Allocation of Pool Percentage for the Performance Category of such Critical Service Level is 50% and that its Service Level Credit Allocation Percentage is 40%.

The Service Level Credit due to TxDOT for such Service Level Default would be computed as follows:

- A** = 50% (the Allocation of Pool Percentage) multiplied by
- B** = 40% (the Service Level Credit Allocation Percentage) multiplied by
- C** = \$15,000 (fifteen percent (15%) of \$100,000, the Service Provider's corresponding Service Level Invoice Amount)

= \$3,000 (the amount of the Service Level Credit)

2. Subject to Item 3, if more than one (1) Service Level Default has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to TxDOT.
3. In no event shall the amount of Service Level Credits credited to TxDOT with respect to all Service Level Defaults occurring in a single month exceed, in total, the At-Risk Amount.
4. The Service Provider shall notify TxDOT in writing if TxDOT becomes entitled to a Service Level Credit, which notice shall be included in the standard monthly reporting for Critical Service Levels and Key Service Levels as described in [Section 3 SERVICE LEVEL AND DELIVERABLE REPORTING](#) above.
5. The total amount of Service Level Credits that the Service Provider will be obligated to pay to TxDOT, with respect to Service Level Defaults occurring each month, shall be credited on the invoice for the month following the month during which the Service Level Default(s) giving rise to such credit(s) occurred. For example, the amount of Service Level Credits payable with respect to Service Level Defaults occurring in August shall be set forth in the Monthly Invoice for September issued in October.
6. The Service Provider acknowledges and agrees that the Service Level Credits shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in derogation of any other rights and remedies TxDOT has hereunder or under the Agreement.

6 EARNBACK

The Service Provider shall have Earnback opportunities with respect to Service Level Credits as follows:

1. The Service Provider shall earn back a Service Level Credit for a given Service Level Default when Service Level Performance meets or exceeds the Expected Service Level Target for each of the four (4) Measurement Windows immediately following the Measurement Window in which the Service Level Default occurred.
2. Whenever the Service Provider is entitled to an Earnback, the Service Provider shall include such Earnback as a charge to TxDOT (indicated as an Earnback) on the same invoice that contains charges for the Measurement Window giving rise to such Earnback, and include such information in the Service Provider's monthly performance reports as described in [Section 3 SERVICE LEVEL AND DELIVERABLE REPORTING](#) of this [Exhibit 3.0 Performance Model](#).
3. Upon termination or expiration of the Agreement, Service Level Credits issued by the Service Provider are no longer subject to Earnback.

7 ADDITIONS, MODIFICATIONS, AND DELETIONS OF SERVICE LEVELS

TxDOT may add, modify or delete Critical Service Levels, and Key Service Levels as described below by sending written notice in accordance with [Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS](#) above.

7.1 Additions

TxDOT may add Service Levels in accordance with this **Section 7.1** and by providing written notice in accordance with **Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS**. Service Level commitments associated with added Service Levels will be determined as follows:

1. The Parties shall attempt in good faith to agree on a Service Level commitment using industry standard measures or third party advisory services (e.g., Gartner Group, Yankee Group, etc.),
2. With respect to this individual Service Level, the period between the Statement Of Work (SOW) Commencement Date and the Service Level Effective Date shall be used as a validation period. The Service Provider and TxDOT will review the actual Service Level Performance during this validation period. If the Service Level Performance does not generally meet the Expected Service Level Target, the Service Provider will create a corrective action plan subject to TxDOT's approval, and the Parties will extend the validation period (reset the Service Level Effective Date) by a mutually agreed period not to exceed three (3) months. The Service Provider will implement the corrective action plan and report on progress to TxDOT during the extended validation period. This process may be repeated if requested by the Service Provider and approved by TxDOT in writing. If the Parties eventually agree that the Services must be changed (e.g., staffing or Restoration time targets) or the Expected Service Level Target or Minimum Service Level Target must be revised, the Parties will enact such agreed changes through the Change Control Procedures.

7.2 Modifications

TxDOT may modify Service Level commitments or measurement methodology in accordance with this **Section 7.2** and by providing written notice in accordance with **Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS**.

The Service Provider may propose modifications to Service Level measurement methodology for TxDOT approval. Service Level measurement methodology may be modified by updating **Exhibit 3.2 Service Level Definitions**.

For any Service Level commitments associated with modified service levels, the Parties shall attempt in good faith to agree on a modification to current Service Level commitments using industry standard measures or third party advisory services. In the event the Parties cannot agree on proposed modifications, **Article 19 Dispute Resolution** of the Agreement applies.

7.3 Deletions

TxDOT may delete Critical Service Levels or Key Service Levels by sending written notice in accordance with **Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS** herein.

7.4 Impact of Additions and Deletions of Critical Service Levels on Service Level Credit Allocation Percentages

When adding or deleting a Critical Service Level, TxDOT shall modify the Service Level Credit Allocation Percentages for the Critical Service Levels such that the total Service Level Credit Allocation Percentages for all Critical Service Levels sums to less than or equal to Pool Percentage Available for Allocation as defined in **Exhibit 3.1 Service Levels Matrix**.

If TxDOT adds a Critical Service Level in accordance with **Section 7.1 Additions** above, but does not modify the Service Level Credit Allocation Percentages for the Critical Service Levels under this **Section 7.4**, then, until TxDOT so modifies such Service Level Credit Allocation Percentages, the Service Level Credit Allocation Percentage for such added Critical Service Level shall be zero (0).

7.5 Modifications of Service Level Credit Allocation Percentages for Critical Service Levels

TxDOT may modify the Service Level Credit Allocation Percentages for any Critical Service Levels by sending written notice in accordance with **Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS**. TxDOT shall modify the Service Level Credit Allocation Percentages for two or more of the Critical Service Levels such that the sum of the Service Level Credit Allocation Percentages for all Critical Service Levels is less than or equal to the Pool Percentage Available for Allocation as defined in **Exhibit 3.1 Service Level and Deliverable Matrix**.

8 SERVICE DELIVERY FAILURE, CORRECTIVE ACTION PLAN FAILURE EVENT

1. If three (3) Service Level Defaults for the same Critical Service Level occur in any rolling six (6) month period, then upon such third occurrence, this shall be deemed a "Service Delivery Failure." Within thirty (30) days of the occurrence of a Service Delivery Failure, the Service Provider will provide TxDOT with a written plan (the "Service Delivery Corrective Action Plan") for improving the Service Provider's performance to address the Service Delivery Failure, which plan will include a specific implementation timetable and measurable success criteria. Within thirty (30) days of plan submission, or such other timeframe agreed to by TxDOT, the Service Provider will implement the Service Delivery Corrective Action Plan (CAP), which will include making timely and appropriate investments in people, processes and technology. In addition, the Service Provider will demonstrate to TxDOT's reasonable satisfaction that the changes implemented by it have been made in normal operational processes to sustain compliant performance results in the future.
2. Upon the occurrence of (i) a Service Delivery Failure, or (ii) if the Service Provider fails to implement the Service Delivery Corrective Action Plan in the specified timetable or if after the implementation of the Service Delivery Corrective Action Plan performance has not consistently improved, then the Service Provider will be liable for a Service Level Credit in an amount equal to one percent (1 %) of the then-current Service Level Invoice Amount (the "CAP Failure Credit"). The CAP Failure Credit will be applied to the monthly

invoice until the Service Provider has demonstrated effective Service delivery, as evidenced by either (i) no reoccurrence of the Service Level Defaults which triggered the applicable Service Delivery Failure or (ii) in TxDOT's reasonable judgment, the Service Provider has remedied the failure which caused such Service Delivery Failure.

3. The CAP Failure Credit will not be subject to Earnback. The Service Provider acknowledges and agrees that the CAP Failure Credit shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in derogation of any other rights and remedies TxDOT has hereunder or under the Agreement. For purposes of clarity, the CAP Failure Credit is separate from and therefore additive to any other Service Level Credits due in a given month, even if the Service Level Credits are for Service Level Defaults related to the Service Delivery Failure. In no event shall the sum of the CAP Failure Credit and any Service Level Credits credited to TxDOT with respect to all Service Level Defaults occurring in a single month exceed, in total, the At-Risk Amount.

9 RECURRING CRITICAL DELIVERABLES

Certain of the Service Provider's obligations under the Agreement are periodic obligations to deliver key Recurring Critical Deliverables. **Exhibit 3.1 Service Level and Deliverable Matrix** sets forth the amounts that shall be payable, and frequency the credit applies, by the Service Provider to TxDOT in the event the Service Provider fails to deliver any of the Recurring Critical Deliverables in accordance with defined Acceptance Criteria which includes the required time specified in **Exhibit 3.1 Service Level and Deliverable Matrix** (the "Recurring Critical Deliverables Credit"). Imposition of a Recurring Critical Deliverables Credit for failure to meet the Recurring Critical Deliverables obligations shall not be subject to or included in the At-Risk Amount. The total amount of Recurring Critical Deliverables Credit that the Service Provider will be obligated to pay to TxDOT shall be reflected on the invoice that contains charges for the month following which the Recurring Critical Deliverables Credits accrued (for example, the amount of Recurring Critical Deliverables Credits payable for failure to deliver any Recurring Critical Deliverable(s) in August shall be set forth in the invoice for September charges issued in October). Under no circumstances shall the imposition of the Recurring Critical Deliverables Credit described above or TxDOT's exercise of any other rights hereunder be construed as TxDOT's sole or exclusive remedy for any failures described hereunder.

TxDOT may add, modify, or retire Recurring Critical Deliverables by sending written notice in accordance with **Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS**.

10 ONE-TIME CRITICAL DELIVERABLES – AFTER EFFECTIVE DATE

Certain of the Service Provider's obligations under the Agreement are one-time or periodic obligations to deliver One-Time Critical Deliverables. **Exhibit 3.1 Service Level and Deliverable Matrix** sets forth the Deliverable Credits that shall be payable, and the frequency the credit applies, by the Service Provider to TxDOT in the event the Service Provider fails to deliver any of the One-Time Critical Deliverables within the required time specified in **Exhibit 3.1 Service Levels Matrix**. Imposition of Deliverable Credits for failure to meet the One-Time Critical Deliverables obligations shall not be subject to or included in the At-Risk Amount. The total amount of

Deliverable Credits that the Service Provider will be obligated to pay to TxDOT shall be reflected on the invoice that contains charges for the month following which the Deliverable Credits accrued (for example, the amount of Deliverable Credits payable for failure to deliver any One-Time Critical Deliverable(s) in August shall be set forth in the invoice for September charges issued in October).

11 COMMENCEMENT OF OBLIGATIONS

The Service Provider will be responsible for providing measurement data in support of the Critical Service Levels and Key Service Levels on the Commencement Date. Other obligations set forth herein will commence on the Commencement Date or as otherwise specified in **Exhibit 3.1 Service Level and Deliverable Matrix** referencing the column "Comm +mos**" (the "Service Level Credit Start Date") reflect when the Service Provider will be responsible for Service Level Credits for any failures to attain the Critical Service Level. Any Service Level Defaults prior to the Service Level Credit Start Date will not be considered in the evaluation of a Service Delivery Failure.

12 IMPROVEMENT PLAN FOR KEY SERVICE LEVELS

If the Service Provider fails to meet the Minimum Service Level for the same Key Service Level for three (3) months in any rolling six (6) month period, the Service Provider shall provide TxDOT with a written plan for improving its performance to satisfy the Key Service Level within thirty (30) days of the third (3rd) failure to meet the Service Level for the Key Service Level. At the Service Provider's sole cost and expense, it shall promptly implement such plan. If the Service Provider fails to implement the plan in the specified timetable, or if after ninety (90) days after any such implementation of the plan, the Key Service Level has not consistently improved, then TxDOT may at its option declare that such failure will constitute a Service Delivery Failure and the Service Provider will comply with the requirements of **Section 8 SERVICE DELIVERY FAILURE, CORRECTIVE ACTION PLAN FAILURE EVENT** above.

13 IMPROVEMENT PLAN FOR CRITICAL SERVICE LEVELS

If the Service Provider fails to meet the Minimum Service Level for a Critical Service Level, the Service Provider shall follow the TxDOT performance management process to provide TxDOT with a written Service Level Improvement Plan for improving the Service Provider's performance to satisfy the Critical Service Level within fifteen (15) Business Days of the failure to meet the Service Level. The Service Provider will track its progress in implementing the improvement plan, and it will report the status of such plan as defined **Exhibit 1.2 Governance** the status of such plan.

The TxDOT ITD SG function shall initiate a Service Level Improvement Plan (SLIP) via the standard Problem Management Process when a Service Level underperforms. The Service Provider shall comply with the Service Level Improvement Plan. All Service Level Improvement Plans must contain information about the root cause of the Service Level miss and corrective actions. The objective of a Service Level Improvement Plan is to identify the root cause and formulate corrective actions to move performance to acceptable levels, implement those actions,

and to correlate implemented corrective actions with Service Level results. All approved SLIP corrective actions shall be measured in the RCA Implementation SLA results.

14 MEASURING TOOLS

As of the Effective Date, the measuring tools and methodologies set forth in **Exhibit 3.2 Service Level Definitions** represent acceptable measuring tools and methodologies for the Critical Service Levels and Key Service Levels designated.

If there are any Critical Service Levels for which the measuring tools and methodologies have not been agreed upon by TxDOT and the Service Provider, and for which measuring tools are not included in **Exhibit 3.2 Service Level Definitions**, and the Service Provider fails to propose a measuring tool for such Critical Service Level that is acceptable to TxDOT prior to the date upon which the Service Provider shall be responsible for Service Level performance and Service Level Credits due for Service Level Default, such failure shall be deemed a Service Level Default for the Critical Service Level until the Service Provider proposes and implements such acceptable measuring tool. TxDOT will not unreasonably withhold approval for the Service Provider's recommendation for an alternate tool.

Tools for new Critical Service Levels will be implemented according to the Change Control Procedures. Upon TxDOT's written notice approving a proposed alternate or new measurement tool, such tool shall be deemed automatically incorporated into **Exhibit 3.2 Service Level Definitions** as of the date for completion of implementation set forth in TxDOT's notification further documented as a standard contract change in accordance with the SMM.

If, after the Effective Date or the implementation of tools for new Critical Service Levels, the Service Provider desires to use a different measuring tool for a Critical Service Level, the Service Provider shall provide written notice to TxDOT requesting approval of such change including business justification. If TxDOT approves the requested tool change, the Parties will reasonably adjust the measurements as necessary to account for any increased or decreased sensitivity in the new measuring tools; provided that, if the Parties cannot agree on the required adjustment, the Service Provider will continue to use the measuring tool that had been initially agreed to by the Parties.

It is not anticipated that changes in the measuring tools will drive changes in Service Levels; rather, the need to collect and accurately reflect the performance data should drive the development or change in performance monitoring tools. The Service Provider will configure all measuring tools to create an auditable record of each user access to the tool and any actions taken with respect to the data measured by or residing within the tool. All proposed measuring tools must include functionality enabling such creation of an auditable record for all accesses to the tool.

15 SINGLE INCIDENT/MULTIPLE DEFAULTS

If a single incident ticket results in the failure of the Service Provider to meet more than one (1) Service Level, TxDOT shall have the right to select any one of such multiple Service Level Defaults for which it will be entitled to receive a Service Level Credit and must respond to the Service Provider's reporting of the multiple Service Level Default and request for selection by notifying the Service Provider of the selection within five (5) TxDOT Business days. TxDOT shall not be entitled to a Service Level Credit for each of such Service Level Defaults.

16 EXCEPTIONS

The Service Provider shall not be responsible for a failure to meet any Service Level solely to the extent that such failure is directly attributable to any circumstances that excuse the Service Provider's performance in accordance with **Section 10.2 Savings Clause** of the Agreement.

17 EXCLUSIONS

Any incidents or requests opened prior to Commencement Date by TxDOT are excluded from SLA measurements and will be tracked separately.

Additional exclusions are indicated in **Exhibit 3.2 Service Level Definitions**.

18 SERVICE LEVEL ESCALATION EVENT

A Service Level Escalation Event occurs, if:

(a) the Service Provider asserts that it has been unable to perform all or a portion of the Services measured by a Type R Service Level solely as a result of the failure by another SCP with whom it shares such Type R Service Level to perform obligations specified in the Service Provider's agreement with TxDOT, including its SOWs and the Service Management Manual, and

(b) the Service Provider has performed its own obligations as set forth in the Agreement, including the SOWs and Service Management Manual, which actions shall include:

- (i) immediately notifying SCP(s) or TxDOT that such failure may result in a Service Level Default;
- (ii) providing the SCP or TxDOT with reasonable opportunity to correct such failure to perform and thereby avoid the SCP non-performance;
- (iii) documenting that it has performed its obligations under the Agreement notwithstanding another SCP's failure to perform; and
- (iv) notifying TxDOT that a corrective action has commenced.

Upon the occurrence of a Service Level Escalation Event, the Service Provider may escalate the SCP or TxDOT failure through the appropriate governance structure for resolution in accordance with **Exhibit 1.2 Governance Model**. If the applicable governance committee has determined that the Service Provider has satisfied each of the requirements and obligations set forth above, such resolution shall include excusing the Service Provider's performance related to such failure and may include other actions as reasonably determined by TxDOT including appropriate changes to the Service Management Manual.

19 PERCENTAGE OBJECTIVES

Both Parties understand that certain Service Levels may not be measured against an objective of one hundred percent (100%); for example, Time (days, hours, etc.), defects where zero (0) hours/days and zero percent (0%), respectively, are the appropriate objectives. The calculations described in this Section will be modified when appropriate to reflect these objectives.

20 CONTINUOUS IMPROVEMENT – SERVICE LEVELS

The Parties agree to the concept of continuous improvement and that the Critical Service Levels and Key Service Levels, unless otherwise noted as an exception in **Exhibit 3.1 Service Level and Deliverable Matrix**, should be modified during this Agreement in accordance with **Section 4 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS, & MODIFICATIONS** to reflect this concept. To accomplish this, Critical Service Levels and Key Service Levels will be modified each twelve (12) month period following the commencement of obligations date specific to each Critical Service Level and Key Service Level as described below:

1. Each Expected Service Level will be reset to the average of the four highest reported actual results (for example, 99.60% is higher than 99.40%) at or above the Expected Service Levels achieved during the previous year; provided that, if fewer than four reported actual results exceeded the Expected Service Level, the Expected Service Level will be reset by taking the four (4) highest monthly actual results, replacing each such actual result that is below the Expected Service Level with the Expected Service Level, and dividing the sum of the resulting four (4) numbers by four (4).

For example, if the Expected Service Level being adjusted were 99.6%, and there were three actual results that were higher and none equal (e.g. 99.90%, 99.80%, and 99.70%), the calculation would be $((99.90\% + 99.80\% + 99.70\% + 99.60\%) / 4) = 99.75\%$ with the subsequent reset governed by Item 2 of this **Section 20**.

2. Notwithstanding Item 1 of this **Section 20** above, in no event shall any single increase in an Expected Service Level pursuant to Item 1 of this **Section 20** above exceed ten percent (10%) of the difference between one hundred percent (100%) and the then-current Expected Service Level.

For example, if the Expected Service Level being adjusted were 99.60%, the maximum increase for that reset would be 0.04% (i.e. from 99.60% to 99.64%).

3. Each Minimum Service Level will be reset by adding to the Minimum Service Level being adjusted a sum equal to five percent (5%) of the difference between one-hundred percent (100%) and the then-current Minimum Service Level.

For example, if the Minimum Service Level being adjusted were 99.40%, the increase would be 0.03% (i.e., from 99.40% to 99.43%).

4. For ease of administration, year one results will utilize 10 months of data to calculate annual results by the first anniversary of Commencement date. Thereafter beginning with the second anniversary of the Commencement Date and continuing with every anniversary of the Commencement Date thereafter, the process described in this **Section 20** will be performed as of the anniversary of the Commencement Date, utilizing the previous twelve (12) months' data, replacing the Critical Service Level or Key Service Level unique dates that were based upon the commencement of obligations dates specific to each Critical Service Level.

21 PRIORITY LEVELS

There may be different Service Levels associated with the Resolution of an Incident or Problem based on the assigned Priority.

21.1 Priority 1

A Priority 1 event is an event that:

1. impacts, or if not promptly addressed, would likely impact: · (i) the security of data and information systems; · (ii) a critical system, application, or service affecting operations of TxDOT;
2. causes, or if not promptly addressed, would likely cause, an error or outage that: · (i) affects either multiple departments or results in a loss of functionality for user(s) performing critical functions for TxDOT; or · (ii) negatively impacts compliance with applicable regulations, or jeopardizes privacy of information or could lead to the imposition of penalties, fines, or other financial impacts on TxDOT or one of its customers; or
3. is designated by TxDOT and agreed to by both Parties

21.2 Priority 2

A Priority 2 event is an event that:

1. impacts or, if not addressed would likely impact: · (i) an entire department, multiple users, or users that are geographically dispersed, · (ii) a key business function, · (iii) a VIP customer; (iv) as a child ticket of a larger event, or
2. leads or, if not addressed would imminently lead, to performance severely degraded; or
3. is reasonably designated by TxDOT

21.3 Priority 3

A Priority 3 event is an event that:

1. that impacts, or if not addressed would impact, a single user's productivity, or is a child ticket of a larger event. Workaround may exist for the problem or the problem is for a non-business critical task.

21.4 Priority 4

A Priority 4 event is and event that:

1. The event is defined as an event that may require an extended Resolution time, but the individual or group has a reasonable workaround while waiting for the Resolution.
2. The event does not have an adverse impact on the business operations of TxDOT because (i) of either the nature of the fault or the small extent of the fault and (ii) an acceptable work around is already in place.

3. The effect of the event is such that it does not require immediate resolution.

22 LOW VOLUME

Some Service Levels are expressed in terms of achievement of a level of performance over a percentage of items occurring during a Measurement Window. In these instances, if the number of items occurring during a given Measurement Window is less than or equal to one hundred (100), the following algorithm will be used to determine the number of compliant items that Service Provider must successfully complete to achieve the Service Level concerned (Minimum Compliant Items), notwithstanding the percentage expressed in **Exhibit 3.1 Service Level and Deliverable Matrix** as the target.

1. The number of items occurring during such Measurement Window shall be multiplied by the Expected Service Level; and
2. If the product of that multiplication is not a whole number, then such product shall be truncated to a whole number.
3. For example, assume that a Service Level states that the Service Provider must complete ninety-five percent (95%) of incidents within four (4) hours to achieve this Service Level.
4. For example, the following sample calculations illustrate how the above algorithm would function to determine the Minimum Compliant Items (incidents completed within four (4) hours) to achieve this Service Level, in each case given a different number of total incidents occurring during the corresponding Measurement Window:
 - 4.1. If the number of incidents is 100, the Minimum Compliant Items is 95 incidents (100 incidents x 95 percent = 95 incidents).
 - 4.2. If the number of incidents is 99, the Minimum Compliant Items is 94 incidents (99 incidents x 95 percent = 94.05 incidents, truncated to 94).
 - 4.3. If the number of incidents is nine (9), the Minimum Compliant Items is eight (8) incidents (9 incidents x 95 percent = 8.55 incidents, truncated to 8).

Target	Expected 95%
Number of Items	Minimum Compliant Items
100	95
90	85
80	76
70	66
60	57

50	47
40	38
30	28
20	19
10	9



Texas Department of Transportation

Application Services

Exhibit 3.2

Service Level Definitions

Version 1.0

Solicitation No. 601440000032007

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A.0 CRITICAL SERVICE LEVELS

This Section sets forth qualitative descriptions of the Critical Service Levels. The numerical Minimum Service Levels, Expected Service Levels and commencement of obligations associated with such Critical Service Levels are set forth in **Exhibit 3.1 Service Level and Deliverable Matrix**.

A.1 Application Availability – Tier 1

SERVICE LEVEL NAME	
Application Availability – Tier 1	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services
METRIC DESCRIPTION	<p>The Service Level “Application Availability – Tier 1” measures the percentage of time Applications with Tier 1 Availability are Available to the end user during the applicable Measurement Window.</p> <p>If Downtime occurs for an Application with Tier 1 Availability, the Outage is counted against the Application, and the Application is considered unavailable for purposes of this Service Level.</p>
METRIC INCLUSIONS and DATA SOURCES	Availability Tier 1 Applications and related CIs are identified in the CMDB. Scheduled hours of operations and maintenance windows for each infrastructure element related to the Applications will be maintained in the SMM.
METRIC EXCLUSIONS	<p>Individual applications and services unavailable as a result of events in which the root cause is determined to be outside the control of the Service Provider.</p> <p>Failures that do not result in any Application incurring Downtime.</p>
HOURS OF MEASUREMENT	24
DAYS OF MEASUREMENT	365(366)
MINIMUM SERVICE LEVEL	99.95%
EXPECTED SERVICE LEVEL	99.99%

<p>ALGORITHM</p>	<p>The Service Level calculation for “Application Availability – Tier 1” is (a) the total number of available minutes during the Measurement Window, minus (b) the total number of unscheduled downtime divided by (c) available minutes during the Measurement Window, with the result expressed as a percentage to two decimal places.</p> <p>Available minutes = the total number of minutes in a month (60 minutes x 24 hours x number of days in the month) for the service.</p> <p>Unscheduled Downtime = the total number of available minutes in which a service is not available for reasons outside of metric exclusions and solely due to the fault of the Service Provider.</p>
<p>COLLECTION PROCESS</p>	<p>If an Outage event occurs it will be identified by the responsible Service Component Provider (SCP) event monitoring system or by a user initiated incident, and tracked to resolution via an incident ticket in the TxDOT Incident ticketing system. The Service Desk will assign incident tickets to the appropriate SCP.</p> <p>The Service Provider will improve the Incident ticket quality, including unavailability records and accurate Start Time, via root cause analysis for Priority 1 and 2 Incidents, and the use of tools if such tool data is available.</p> <p>For reporting purposes, required data elements will be collected from each of the data sources. For example:</p> <ul style="list-style-type: none"> ITSM - incident ticket number, incident summary, incident resolution text, resolution time, impacted CI name(s), actual outage start time, actual outage stop time, and outage duration CMDB - application instances and related CIs supporting impacted application Service Management Manual - maintenance schedules, hours of operation <p>Collected data will be sourced by the Service Level Management Reporting system for purposes of aggregating, calculating, measuring and reporting SLA results. Manual input will be considered for purposes of supplementing collected data where necessary.</p>
<p>REPORTING TOOLS</p>	<p>As described in the process above, the following tools will be utilized:</p> <ul style="list-style-type: none"> • Services event monitoring system • TxDOTNow Service Management system • Service Level Management Reporting system • Service Management Manual

RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Availability
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.2 Application Availability – Tier 2

SERVICE LEVEL NAME	
Application Availability – Tier 2	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services
METRIC DESCRIPTION	<p>The Service Level “Application Availability – Tier 2” measures the percentage of time Applications with Tier 2 Availability are Available to the end user during the applicable Measurement Window.</p> <p>If Downtime occurs for an Application with Tier 2 Availability, the Outage is counted against the Application, and the Application is considered unavailable for purposes of this Service Level.</p>
METRIC INCLUSIONS and DATA SOURCES	Availability Tier 2 Applications and related CIs are identified in the CMDB. Scheduled hours of operations and maintenance windows for each infrastructure element related to the Applications will be maintained in the SMM.
METRIC EXCLUSIONS	<p>Individual applications and services unavailable as a result of events in which the root cause is determined to be outside the control of the Service Provider.</p> <p>Failures that do not result in any Application incurring Downtime.</p>
HOURS OF MEASUREMENT	24
DAYS OF MEASUREMENT	365 (366)
MINIMUM SERVICE LEVEL	99.80%
EXPECTED SERVICE LEVEL	99.90%

<p>ALGORITHM</p>	<p>The Service Level calculation for “Application Availability – Tier 2” is (a) the total number of available minutes during the Measurement Window, minus (b) the total number of unscheduled downtime divided by (c) available minutes during the Measurement Window, with the result expressed as a percentage to two decimal places.</p> <p>Available minutes = the total number of minutes in a month (60 minutes x 24 hours x number of days in the month) for the service.</p> <p>Unscheduled Downtime = the total number of available minutes in which a service is not available for reasons outside of metric exclusions and solely due to the fault of the Service Provider.</p>
<p>COLLECTION PROCESS</p>	<p>If an outage event occurs it will be identified by the responsible Service Component Provider (SCP) event monitoring system or by a user initiated incident, and tracked to resolution via an incident ticket in the TxDOT Incident ticketing system. The Service Desk will assign incident tickets to the appropriate SCP.</p> <p>The Service Provider will improve the Incident ticket quality, including unavailability records and accurate Start Time, via root cause analysis for Priority 1 and 2 Incidents, and the use of tools if such tool data is available.</p> <p>For reporting purposes, required data elements will be collected from each of the data sources. For example:</p> <ul style="list-style-type: none"> ITSM - incident ticket number, incident summary, incident resolution text, resolution time, impacted CI name(s), actual outage start time, actual outage stop time, and outage duration CMDB - application instances and related CIs supporting impacted application Service Management Manual - maintenance schedules, hours of operation <p>Collected data will be sourced by the Service Level Management Reporting system for purposes of aggregating, calculating, measuring and reporting SLA results. Manual input will be considered for purposes of supplementing collected data where necessary.</p>
<p>REPORTING TOOLS</p>	<p>As described in the process above, the following tools will be utilized:</p> <ul style="list-style-type: none"> • Services event monitoring system • TxDOTNow Service Management system • Service Level Management Reporting system • Service Management Manual

RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Availability
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.3 Application Availability – Tier 3

SERVICE LEVEL NAME	
Application Availability – Tier 3	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services
METRIC DESCRIPTION	<p>The Service Level “Application Availability – Tier 3” measures the percentage of time Applications with Tier 3 Availability are Available to the end user during the applicable Measurement Window.</p> <p>If Downtime occurs for an Application with Tier 3 Availability, the Outage is counted against the Application, and the Application is considered unavailable for purposes of this Service Level.</p>
METRIC INCLUSIONS and DATA SOURCES	Availability Tier 3 Applications and related CIs are identified in the CMDB. Scheduled hours of operations and maintenance windows for each infrastructure element related to the Applications will be maintained in the SMM.
METRIC EXCLUSIONS	<p>Individual applications and services unavailable as a result of events in which the root cause is determined to be outside the control of the Service Provider.</p> <p>Failures that do not result in any Application incurring Downtime.</p>
HOURS OF MEASUREMENT	24
DAYS OF MEASUREMENT	365(366)
MINIMUM SERVICE LEVEL	99.5%
EXPECTED SERVICE LEVEL	99.75%

<p>ALGORITHM</p>	<p>The Service Level calculation for “Application Availability – Tier 3” is (a) the total number of available minutes during the Measurement Window, minus (b) the total number of unscheduled downtime divided by (c) available hours during the Measurement Window, with the result expressed as a percentage to two decimal places.</p> <p>Available minutes = the total number of minutes in a month (60 minutes x 24 hours x number of days in the month) for the service.</p> <p>Unscheduled Downtime = the total number of available minutes in which a service is not available for reasons outside of metric exclusions and solely due to the fault of the Service Provider.</p>
<p>COLLECTION PROCESS</p>	<p>If an outage event occurs it will be identified by the responsible Service Component Provider (SCP) event monitoring system or by a user initiated incident, and tracked to resolution via an incident ticket in the TxDOT Incident ticketing system. The Service Desk will assign incident tickets to the appropriate SCP.</p> <p>The Service Provider SCP will improve the Incident ticket quality, including unavailability records and accurate Start Time, via root cause analysis for Priority 1 and 2 Incidents, and the use of tools if such tool data is available.</p> <p>For reporting purposes, required data elements will be collected from each of the data sources. For example:</p> <ul style="list-style-type: none"> ITSM - incident ticket number, incident summary, incident resolution text, resolution time, impacted CI name(s), actual outage start time, actual outage stop time, and outage duration CMDB - application instances and related CIs supporting impacted application Service Management Manual - maintenance schedules, hours of operation <p>Collected data will be sourced by the Service Level Management Reporting system for purposes of aggregating, calculating, measuring and reporting SLA results. Manual input will be considered for purposes of supplementing collected data where necessary.</p>
<p>REPORTING TOOLS</p>	<p>As described in the process above, the following tools will be utilized:</p> <ul style="list-style-type: none"> • Services event monitoring system • TxDOTNow Service Management system • Service Level Management Reporting system • Service Management Manual

RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Availability
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.4 Response Time of Application

SERVICE LEVEL NAME	
Response Time of Application	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	No
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services
METRIC DESCRIPTION	<p>The Service Level “Response Time of the Application” measures the percentage of time the supported applications provide appropriate response times.</p> <p>Response times, measurement frequency, and associated test page identifiers for each supported application will be maintained in the SMM (for example, an application home page may be a representative test page).</p> <p>Material changes to test pages shall result in re-establishment of the applicable response time.</p>
METRIC INCLUSIONS and DATA SOURCES	All accesses to the application by TxDOT, Service Provider personnel, SCPs, and any Authorized Users.
METRIC EXCLUSIONS	Events determined to be outside the control of the Service Provider.
HOURS OF MEASUREMENT	24
DAYS OF MEASUREMENT	365(366)
MINIMUM SERVICE LEVEL	97.00%
EXPECTED SERVICE LEVEL	99.00%
ALGORITHM	The Service Level calculation for “Response Time of Application” is the total number of page load time responses received for the supported applications that meet the required response times divided by the total number of page load time response requests issued for the supported applications during the Measurement Window, with the result expressed as a percentage.

COLLECTION PROCESS	The automatic web monitoring tools will be configured to collect Response Time data for associated test page identifiers, as well as end-to-end Response times. The tools will provide a response time report on a daily, weekly and monthly basis. The data from these reports will be fed to the Service Level Management Reporting system on a regular basis.
REPORTING TOOLS	TBD
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Availability
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.5 Incident Resolution Time – Level 2 & Level 3 (Priority 1)

SERVICE LEVEL NAME	
Incident Resolution Time – Level 2 & Level 3 (Priority 1)	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level for “Incident Resolution Time – Level 2 & 3 (Priority 1)” measures the percentage of time Service Provider Resolves Level 2 and Level 3 (Priority Level 1) Incidents assigned by the Service Desk within the applicable timeframes.
METRIC INCLUSIONS and DATA SOURCES	Includes all Priority 1 Service Component Incidents. The applicable resolution timeframes are listed below. <u>Priority 1 Incidents:</u> ≤ 2 hours
METRIC EXCLUSIONS	Events determined to be outside the control of the Service Provider. Security Incidents will follow the Security Incident Management process as defined in the SMM and may be eligible for an SLA exception or as otherwise mutually agreed upon.
HOURS OF MEASUREMENT	24 hours
DAYS OF MEASUREMENT	365(366)

MINIMUM SERVICE LEVEL	95.00%
EXPECTED SERVICE LEVEL	99.00%
ALGORITHM	<p>The Service Level calculation for “Incident Resolution Time – Level 1 & 2 (Priority 1)” is the total number of Level 2 Support and Level 3 Support (Priority 1) Incidents assigned by the Service Desk for which the Resolution Time is less than or equal to the relevant resolution timeframe, divided by the total number of Resolved Priority 1 Incidents plus the total number of open Priority 1 Incidents that have exceeded the relevant resolution timeframe, with the result expressed as a percentage.</p> <p>For purposes of clarity, note the following: if an Incident is opened within the current Measurement Window, but its relevant resolution timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such Incident is actually Resolved in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)</p>
COLLECTION PROCESS	<p>Incident tickets will be logged in the TxDOTNow Service Management system. Incidents will be categorized and assigned to resolver teams who will work to resolve the incident and progress the ticket through the incident management lifecycle.</p> <p>Incident data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Incident, Problem, and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.6 Incident Resolution Time – Level 2 & Level 3 (Priority 2)

SERVICE LEVEL NAME	
Incident Resolution Time – Level 2 & Level 3 (Priority 2)	
SERVICE LEVEL TYPE	Critical Service Level

CURRENTLY MEASURED	Yes	
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R	ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level for “Incident Resolution Time – Level 2 & 3 (Priority 2)” measures the percentage of time Service Provider Resolves Level 2 and Level 3 (Priority Level 2) Incidents assigned by the Service Desk within the applicable timeframes.	
METRIC INCLUSIONS and DATA SOURCES	Includes all Priority 2 Service Component Incidents. The applicable resolution timeframes are listed below. <u>Priority 2 Incidents</u> : ≤ 4 hours	
METRIC EXCLUSIONS	Events determined to be outside the control of the Service Provider. Security Incidents will follow the Security Incident Management process as defined in the SMM and may be eligible for an SLA exception or as otherwise mutually agreed upon.	
HOURS OF MEASUREMENT	24 hours	
DAYS OF MEASUREMENT	365(366)	
MINIMUM SERVICE LEVEL	95.00%	
EXPECTED SERVICE LEVEL	99.00%	
ALGORITHM	<p>The Service Level calculation for “Incident Resolution Time – Level 1 & 2 (Priority 2)” is the total number of Level 2 Support and Level 3 Support (Priority 2) Incidents assigned by the Service Desk for which the Resolution Time is less than or equal to the relevant resolution timeframe, divided by the total number of Resolved Priority 2 Incidents plus the total number of open Priority 2 Incidents that have exceeded the relevant resolution timeframe, with the result expressed as a percentage.</p> <p>For purposes of clarity, note the following: if an Incident is opened within the current Measurement Window, but its relevant resolution timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such Incident is actually Resolved in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)</p>	

COLLECTION PROCESS	<p>Incident tickets will be logged in the TxDOTNow Service Management system. Incidents will be categorized and assigned to resolver teams who will work to resolve the incident and progress the ticket through the incident management lifecycle.</p> <p>Incident data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system</p> <p>Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Incident, Problem, and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.7 Root Cause Analysis Delivery

SERVICE LEVEL NAME			
Root Cause Analysis Delivery			
SERVICE LEVEL TYPE	Critical Service Level		
CURRENTLY MEASURED	No		
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	<table border="1"> <tr> <td>R</td> <td>ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD</td> </tr> </table>	R	ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
R	ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD		
METRIC DESCRIPTION	The Service Level “Root Cause Analysis Delivery” measures the percentage of time Service Component Provider delivers to TxDOT, a Root Cause Analysis (RCA) within (i) ten (10) Business Days from service restoration (for Priority 1), (ii) ten (10) Business Days from request by TxDOT, or (iii) ten (10) Business Days from Service Level Improvement Plan initiation, or (iv) otherwise as agreed upon by TxDOT.		
METRIC INCLUSIONS and DATA SOURCES	<p>The RCA is documented and tracked within the Problem Management process, and upon completion, is submitted by the Service Provider to the TxDOT for review and approval.</p> <p>Service Provider will provide Root Cause Analyses on the most business-critical events, as maintained in the SMM, and as requested by TxDOT for all other Incidents.</p>		

METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	7:00 AM – 6:00 PM
HOURS OF MEASUREMENT	10 Business Days (110 Business Hours)
MINIMUM SERVICE LEVEL	96.00%
EXPECTED SERVICE LEVEL	98.00%
ALGORITHM	The Service Level calculation for “Root Cause Analysis Delivery – Enterprise” is the total number of Root Cause Analyses that are delivered to TxDOT within the required timeframe, divided by the total number of Root Cause Analyses delivered to TxDOT during the applicable Measurement Window, with the result expressed as a percentage.
COLLECTION PROCESS	<p>Problem investigations for Root Cause Analyses will be logged and tracked in the TxDOTNow Service Management system. Problems will be categorized and assigned to teams who will analyze the Problem, perform and document the root cause analysis. The Problem record will be completed and progressed through the Problem Management lifecycle.</p> <p>Problem data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	TxDOTNow Service Management system Service Level Management Reporting system
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Incident, Problem, and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.8 Service Request Fulfillment

SERVICE LEVEL NAME	
Service Request Fulfillment	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD

METRIC DESCRIPTION	The Service Level “Service Request Fulfillment” measures the percentage of time Service Provider successfully completes Service Requests on schedule. Service Requests, which are defined as requests that do not require solution proposal development, include such requests as provisioning ID access, password resets, Service Catalog requests, etc. Specific target timeframes are maintained in the SMM.
METRIC INCLUSIONS and DATA SOURCES	Service Requests shall be an agreed upon set of service requests as specified in the SMM.
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	As maintained in SMM.
DAYS OF MEASUREMENT	As maintained in SMM.
MINIMUM SERVICE LEVEL	94.00%
EXPECTED SERVICE LEVEL	96.00%
ALGORITHM	The Service Level for “Service Request Fulfillment” is, for a given Measurement Period, the total number of Service Requests that are completed within the committed timeframes, divided by the total number of Service Requests scheduled for completion during such Measurement Period as well as all uncompleted Service Requests scheduled to be completed in a prior Measurement Period, with the result expressed as a percentage. For purposes of clarity, note the following: if a Service Request is opened within the current Measurement Window, but its relevant committed timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such Service Request is actually resolved in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)
COLLECTION PROCESS	Service Requests that do not require solution proposal development will be logged and tracked in the TxDOTNow Service Management System. Service Requests will be categorized and assigned to resolver teams who will work to fulfill the Service Request and progress the ticket through the service request management lifecycle. Service Request data will be uploaded to Service Level Management Reporting system on a daily basis; this tool will filter service request tickets based on appropriate measurement criteria.
REPORTING TOOLS	TxDOTNow Service Management system Service Level Management Reporting system
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the SLA results for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to authorized users via inherent report drill-down functionality for a rolling 13 months.

PERFORMANCE CATEGORY	Incident, Problem, and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.9 Solution Proposal Delivery

SERVICE LEVEL NAME	
Solution Proposal Delivery	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	No
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services, Service Desk,
METRIC DESCRIPTION	<p>The Service Level for “Solution Proposal Delivery” measures the percentage of time Service Provider delivers a viable proposal to TxDOT within the committed timeframes, in response to a solution request.</p> <p>Following validation of requirements by Service Provider, the Service Provider shall deliver a proposal for each request within the process and timeframes defined in the SMM.</p> <p>When a proposal is delivered, it must include a committed timeframe for project implementation specified as Business Days from the time the project is assigned to the project bench to the implementation completion. This committed number of Business Days will be used in the “Solution Implementation” Service Level.</p> <p>Specific sizing criteria and guidelines shall be maintained in the SMM.</p>
METRIC INCLUSIONS and DATA SOURCES	Each proposal submitted to TxDOT will be counted as a measurable event. If there are multiple proposals for one request due to requirements changes then subsequent iterations will be counted as another event. Each will count as an event and an opportunity to succeed or fail.
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	7:00 AM – 6:00 PM
DAYS OF MEASUREMENT	Business Days
MINIMUM SERVICE LEVEL	95.00%
EXPECTED SERVICE LEVEL	97.00%

ALGORITHM	<p>The Service Level calculation for “Solution Proposal Delivery” is the total number of solution proposals that are delivered within the committed timeframes, divided by the total number of delivered proposals plus the total number of open proposals that have exceeded the committed timeframes, with the result expressed as a percentage.</p> <p>For purposes of clarity, note the following: if a solution proposal request is opened within the current Measurement Window, but its relevant committed timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such request is actually delivered in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)</p>
COLLECTION PROCESS	<p>Solution proposal requests will be logged and tracked in the TxDOTNow Service Management system as a Demand Record. Solution proposal requests will be categorized and assigned to teams who will work to deliver a proposal and progress the ticket through the service Request Management lifecycle.</p> <p>Solution proposal data will be uploaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	<p>Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to authorized users via inherent report drill-down functionality for a rolling 13 months.</p>
PERFORMANCE CATEGORY	<p>Application Development, Project, Enhancement</p>
METRIC REPORTING	<p><input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual</p>

A.10 Milestone Completion

SERVICE LEVEL NAME	
Milestone Completion	
SERVICE LEVEL TYPE	Critical Service Level
CURRENTLY MEASURED	No
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services

METRIC DESCRIPTION	<p>The Service Level “Milestone Completion” measures the percentage of time critical project milestones are completed as defined in Acceptance Criteria including on-time.</p> <p>On-time critical project milestone completion is defined as critical project milestones that are completed on or before the originally estimated date in accordance with defined Acceptance Criteria (or as modified to reflect changes agreed to in writing by TxDOT through Project Change Request process).</p>
METRIC INCLUSIONS and DATA SOURCES	Critical Project Milestones
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	24 hours
DAYS OF MEASUREMENT	365(366)
MINIMUM SERVICE LEVEL	95.00%
EXPECTED SERVICE LEVEL	97.00%
ALGORITHM	<p>The Service Level calculation for “Milestone Completion” is the total number of critical project milestones completed as defined in Acceptance Criteria including on-time, divided by the total number of critical project milestones completed, with the result expressed as a percentage.</p> <p>Critical project milestones will be reported in the Measurement Window that the project is completed.</p>
COLLECTION PROCESS	Project data, including critical milestones, will be maintained by the SCP in the approved TxDOT project management System.
REPORTING TOOLS	<p>TxDOTNow Service Management system</p> <p>PPM-PRO</p> <p>Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Application Development, Project, Enhancement
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

A.11 Batch Processing

SERVICE LEVEL NAME
Batch Processing

SERVICE LEVEL TYPE	Critical Service Level	
CURRENTLY MEASURED	Yes	
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U	ERP Managed Application Services
METRIC DESCRIPTION	The Service Level “Batch Processing” measures the number of batch jobs successfully completed within the time frame required by TxDOT.	
METRIC INCLUSIONS and DATA SOURCES	Batch processing created in the Measurement window	
METRIC EXCLUSIONS	N/A	
HOURS OF MEASUREMENT	24 hours	
DAYS OF MEASUREMENT	365(366)	
MINIMUM SERVICE LEVEL	99.00%	
EXPECTED SERVICE LEVEL	99.50%	
ALGORITHM	<p>The Service Level calculation for “Batch Processing” is the total number of batch jobs that were initiated and that successfully ran to completion within the “Scheduled Batch Window” and if applicable within the specific execution ties for that batch job during the Measurement Window, divided by the total number of batch jobs that were initiated during the Measurement Window, with the result expressed as a percentage.</p> <p>Scheduled Batch Window will be maintained in the SMM.</p>	
COLLECTION PROCESS	<p>The Batch Processing service level will be measured by the total number of batch processes in compliance for the month, divided by the total number of batch jobs within the measurement period.</p> <p>Collected data will be sourced by the Service Level Reporting system for purposes of aggregating, calculating, measuring and reporting SLA results. Manual input will be considered for purposes of supplementing collected data where necessary.</p>	
REPORTING TOOLS	Peoplesoft	
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.	
PERFORMANCE CATEGORY	Operations	
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual	

B.0 KEY SERVICE LEVELS

This Section sets forth qualitative descriptions of the Key Service Levels. The numerical Minimum Service Levels, Expected Service Levels and commencement of obligations associated with such Key Service Levels are set forth in **Exhibit 3.1 Service Level and Deliverable Matrix**.

B.1 Change Management Effectiveness

SERVICE LEVEL NAME	
Change Management Effectiveness	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	No
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level for “Change Management Effectiveness” measures the percentage of time Service Provider successfully implements Changes to Services.
METRIC INCLUSIONS and DATA SOURCES	Includes all Service Provider Service Component Changes. Changes are not successfully implemented if they: (i) do not comply with the Change Management procedures (including the Change Control Process), the SMM and, except as specified in clause (iii) to this sentence, any associated project plan, (ii) cause either a Priority 1 Incident or Priority 2 Incident, (iii) exceeded the change window, (iv) are backed out, or (v) partial success of change is backed out or unsuccessful.
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	24
DAYS OF MEASUREMENT	365 (366)
MINIMUM SERVICE LEVEL	96.00%
EXPECTED SERVICE LEVEL	98.00%
ALGORITHM	The Service Level calculation for “Change Management Effectiveness” is the number of changes that are successfully implemented by Service Provider divided by the number of changes implemented by Service Provider, with the result expressed as a percentage. Changes will be reported in the Measurement Window that the Change ticket is closed.

COLLECTION PROCESS	<p>Changes will be logged and tracked in the TxDOTNow Service Management system. Changes will be documented, categorized, and assigned to implementer teams who will work to plan, review, obtain approvals, and progress the change through the Change Management lifecycle.</p> <p>Change data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system</p> <p>Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Service Management
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

B.2 Invoice Dispute Resolution

SERVICE LEVEL NAME	
Invoice Dispute Resolution	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	No
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services, Service Desk
METRIC DESCRIPTION	The Service Level for “Invoice Dispute Resolution” measures the percentage of invoice disputes that are resolved within twenty (20) Business Days.
METRIC INCLUSIONS and DATA SOURCES	N/A
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	7:00 AM – 6:00 PM
DAYS OF MEASUREMENT	Business Days
MINIMUM SERVICE LEVEL	95.00%
EXPECTED SERVICE LEVEL	97.00%

ALGORITHM	<p>The Service Level calculation for “Invoice Dispute Resolution” is the total number of invoice disputes that are resolved within twenty (20) Business Days of submission, divided by the total number of resolved invoice disputes plus the total number of open invoice disputes that have exceeded twenty (20) Business Days, with the result expressed as a percentage.</p> <p>For purposes of clarity, note the following: if an invoice dispute is initiated within the current Measurement Window, but the twenty Business Days extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such dispute is actually resolved in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)</p>
COLLECTION PROCESS	<p>Invoice Disputes will be logged and tracked in the TxDOTNow Service Management system as a Service Request. Invoice Dispute requests will be categorized and assigned to teams who will work to research and resolve the dispute, and progress the request through the Request Management lifecycle.</p> <p>Invoice Dispute data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	<p>Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.</p>
PERFORMANCE CATEGORY	<p>Service Management</p>
METRIC OWNER	
METRIC REPORTING	<p><input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual</p>

B.3 License and Maintenance Renewal Timeliness

SERVICE LEVEL NAME	
License and Maintenance Renewal Timeliness	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	No

SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U	ERP Managed Application Services, ADM Services
METRIC DESCRIPTION	<p>The Service Level for “License and Maintenance Renewal Timeliness” measures the timeliness of all software license and hardware maintenance renewals and installs as appropriate managed by Service Provider.</p> <p>Expirations for software license and hardware maintenance are maintained in the TxDOTNow Service Management system.</p>	
METRIC INCLUSIONS and DATA SOURCES		
METRIC EXCLUSIONS	N/A	
HOURS OF MEASUREMENT	24	
DAYS OF MEASUREMENT	365 (366)	
MINIMUM SERVICE LEVEL	98.00%	
EXPECTED SERVICE LEVEL	99.50%	
ALGORITHM	<p>The Service Level calculation for “License and Maintenance Renewal Timeliness” is the total number of license or maintenance renewals processed and installed as appropriate prior to their expiration divided by the total number of license or maintenance agreements scheduled to expire within the Measurement Window.</p> <p>For months in which the total volume of license renewals is low, such that missing three (3) renewals would result in a miss of a Minimum Service Level target or missing two (2) renewals would result in a miss of an Expected Service Level target, the following will apply:</p> <ol style="list-style-type: none"> 1. If the Service Provider misses three (3) renewals, then the performance for this Service Level shall be deemed to equal the Minimum Service Level target (e.g., reported as 98%). 2. If the Service Provider misses two (2) or less renewals, then the performance for this Service Level shall be deemed to equal the Expected Service Level target (e.g., reported as 99%). 3. If the Service Provider misses four (4) or more renewals, then the standard calculation applies. 	

<p>COLLECTION PROCESS</p>	<p>Service Provider will provide current proof of entitlements, license renewal dates, and maintenance renewal dates to TxDOT. Data will be maintained in the approved TxDOT contract management tool. A License and Maintenance Renewal Report will compare renewals that are due in the Measurement Window against those that met or failed the target renewal date.</p> <p>Software and hardware renewals and software installations as appropriate will be logged and tracked in the TxDOTNow ITSM system. Service Provider will receive a Service Request to renew from the TxDOT ITSM system.</p> <p>When appropriate a Change Request will be issued to install software. Software renewal installations will be categorized and assigned to resolver teams who will work to fulfill the request.</p> <p>Software and hardware renewal data will be uploaded to the Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
<p>REPORTING TOOLS</p>	<p>TxDOT contract management tool TxDOTNow Service Management system Service Level Management Reporting system</p>
<p>RAW DATA STORAGE (ARCHIVES)</p>	<p>Data used to calculate the Service Level result for reporting will be stored in the Digital Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.</p>
<p>PERFORMANCE CATEGORY</p>	<p>Service Management</p>
<p>METRIC REPORTING</p>	<p><input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual</p>

B.4 RCA Implementation

<p>SERVICE LEVEL NAME</p>	
<p>RCA Implementation</p>	
<p>SERVICE LEVEL TYPE</p>	<p>Key Service Level</p>
<p>CURRENTLY MEASURED</p>	<p>No</p>

SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R	ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level “RCA Implementation” measures the percentage of time Service Provider completes RCA implementation activities within the committed timeframes.	
METRIC INCLUSIONS and DATA SOURCES	RCA Implementation activities associated with all Service Component Provider Problem Tickets.	
METRIC EXCLUSIONS	RCA Implementation activities internal to Service Provider other than those for Service Level Improvement Plans. RCA Implementation activities solely owned by Third Parties, not the Service Provider	
HOURS OF MEASUREMENT	24	
DAYS OF MEASUREMENT	365 (366)	
MINIMUM SERVICE LEVEL	90.00%	
EXPECTED SERVICE LEVEL	95.00%	
ALGORITHM	<p>The Service Level calculation for “RCA Implementation” is the total number of RCA implementation activities that are completed within the required timeframe, divided by the total number of RCA implementation activities completed plus the total number of RCA implementation activities that have passed the committed timeframe, with the result expressed as a percentage.</p> <p>For purposes of clarity, note the following: if a RCA implementation activity is opened within the current Measurement Window, but its relevant committed timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such RCA implementation activity is actually closed in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation).</p>	
COLLECTION PROCESS	<p>RCA implementation activities will be logged and tracked in the TxDOTNow Service Management system. RCA implementation activities will be assigned to teams who will implement the RCA implementation activities. The RCA implementation activities will be progressed through the Problem Management lifecycle.</p> <p>Problem data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>	
REPORTING TOOLS	<p>TxDOTNow Service Management system Service Level Management Reporting system</p>	

RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Incident, Problem and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

B.5 Incident Resolution Time – Level 2 & Level 3 (Priority 3)

SERVICE LEVEL NAME	
Incident Resolution Time – Level 2 & Level 3 (Priority 3)	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level for “Incident Resolution Time – Level 2 & 3 (Priority 3)” measures the percentage of time Service Provider Resolves Level 2 and Level 3 (Priority Level 3) Incidents assigned by the Service Desk within the applicable timeframes.
METRIC INCLUSIONS and DATA SOURCES	Includes all Priority 3 Service Component Incidents. The applicable resolution timeframes are listed below. Priority 3 Incidents: The Incident shall be Resolved within 1320 minutes (i.e. 22 Business Hours) where such minutes shall be measured only between 7:00 AM and 6:00 PM inclusive on Business Days.
METRIC EXCLUSIONS	Events determined to be outside the control of the Service Provider. Security Incidents will follow the Security Incident Management process as defined in the SMM and may be eligible for an SLA exception or as otherwise mutually agreed upon.
HOURS OF MEASUREMENT	24 hours
DAYS OF MEASUREMENT	365(366)
MINIMUM SERVICE LEVEL	95.00%
EXPECTED SERVICE LEVEL	99.00%

ALGORITHM	<p>The Service Level calculation for “Incident Resolution Time – Level 1 & 2 (Priority 3)” is the total number of Level 2 Support and Level 3 Support (Priority 3) Incidents assigned by the Service Desk for which the Resolution Time is less than or equal to the relevant resolution timeframe, divided by the total number of Resolved Priority 3 Incidents plus the total number of open Priority 3 Incidents that have exceeded the relevant resolution timeframe, with the result expressed as a percentage.</p> <p>For purposes of clarity, note the following: if an Incident is opened within the current Measurement Window, but its relevant resolution timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such Incident is actually Resolved in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)</p>
COLLECTION PROCESS	<p>Incident tickets will be logged in the TxDOTNow Service Management system. Incidents will be categorized and assigned to resolver teams who will work to resolve the incident and progress the ticket through the incident management lifecycle.</p> <p>Incident data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	<p>Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.</p>
PERFORMANCE CATEGORY	<p>Incident, Problem, and Request</p>
METRIC REPORTING	<p><input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual</p>

B.6 Incident Resolution Time – Level 2 & Level 3 (Priority 4)

SERVICE LEVEL NAME	
Incident Resolution Time – Level 2 & Level 3 (Priority 3)	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	Yes

SHARE TYPE and APPLICABLE SERVICE COMPONENTS	R	ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level for “Incident Resolution Time – Level 2 & 3 (Priority 4)” measures the percentage of time Service Provider Resolves Level 2 and Level 3 (Priority Level 4) Incidents assigned by the Service Desk within the applicable timeframes.	
METRIC INCLUSIONS and DATA SOURCES	Includes all Priority 4 Service Component Incidents. The applicable resolution timeframes are listed below. Priority 4 Incidents: The Incident shall be Resolved within 3300 minutes (i.e. 55 Business Hours) where such minutes shall be measured only between 7:00 AM and 6:00 PM inclusive on Business Days.	
METRIC EXCLUSIONS	Events determined to be outside the control of the Service Provider. Security Incidents will follow the Security Incident Management process as defined in the SMM and may be eligible for an SLA exception or as otherwise mutually agreed upon.	
HOURS OF MEASUREMENT	24 hours	
DAYS OF MEASUREMENT	365(366)	
MINIMUM SERVICE LEVEL	95.00%	
EXPECTED SERVICE LEVEL	99.00%	
ALGORITHM	The Service Level calculation for “Incident Resolution Time – Level 1 & 2 (Priority 4)” is the total number of Level 2 Support and Level 3 Support (Priority 4) Incidents assigned by the Service Desk for which the Resolution Time is less than or equal to the relevant resolution timeframe, divided by the total number of Resolved Priority 4 Incidents plus the total number of open Priority 4 Incidents that have exceeded the relevant resolution timeframe, with the result expressed as a percentage. For purposes of clarity, note the following: if an Incident is opened within the current Measurement Window, but its relevant resolution timeframe extends beyond the end of the current Measurement Window, then it is excluded from the current Measurement Window’s calculation (unless such Incident is actually Resolved in the current Measurement Window, in which case it is included in the current Measurement Window’s calculation)	

COLLECTION PROCESS	<p>Incident tickets will be logged in the TxDOTNow Service Management system. Incidents will be categorized and assigned to resolver teams who will work to resolve the incident and progress the ticket through the incident management lifecycle.</p> <p>Incident data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria.</p>
REPORTING TOOLS	<p>TxDOTNow Service Management system</p> <p>Service Level Management Reporting system</p>
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Incident, Problem, and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

B.7 Knowledge Base Article Timeliness

SERVICE LEVEL NAME	
Knowledge Base Article Timeliness	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	Yes
SHARE TYPE and APPLICABLE SERVICE COMPONENTS	U ERP Managed Application Services, ADM Services
METRIC DESCRIPTION	The Service Level “Knowledge Base Article Timeliness” measures the delivery of a Knowledge Base article created by the Service Provider, approved by TxDOT, and delivered to TDOT ServiceNow Service Desk Provider for posting to Self-Service for end-user access by a TxDOT designated delivery date.
METRIC INCLUSIONS and DATA SOURCES	Knowledge Base articles delivered through the measurement period “ Knowledge Base ” means TxDOT’s logical database (currently ServiceNow) containing data and information used by the service knowledge management system.
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	24
DAYS OF MEASUREMENT	365 (366)

MINIMUM SERVICE LEVEL	85.00%
EXPECTED SERVICE LEVEL	95.00%
ALGORITHM	The Service Level calculation for “Knowledge Base article timeliness” is the total number of articles created by the Service Provider and approved by TxDOT, delivered to the ServiceNow Service Desk Provider by the TxDOT designated delivery date Measurement Window.
COLLECTION PROCESS	The Knowledge Base article timeliness service level will be measured by the total number of Knowledge Base articles not delivered by the TxDOT designated delivery date, divided by the total number of Knowledge Base articles requested to be delivered within the measurement window
REPORTING TOOLS	TxDOTNow Service Management system Service Level Management Reporting system
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Incident, Problem and Request
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

B.8 Data Quality

SERVICE LEVEL NAME	
Data Quality	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	No
SHARE TYPE and CORRESPONDING METRIC(S)	R ERP Managed Application Services, ADM Services, Service Desk, Managed Business Network Services, Managed Traffic Network Services, Hardware Lifecycle Services, TBD
METRIC DESCRIPTION	The Service Level for “Data Quality” measures the percentage of critical attributes for key processes that meet the data quality standard. The key processes, associated critical attributes and business rules will be maintained in the SMM.

<p>METRIC INCLUSIONS and DATA SOURCES</p>	<p>Definitions for purposes of this Service Level: “Key processes” mean those processes that are foundational to the delivery of services (e.g., Major Incident Management, Refresh), as defined in the SMM. “Critical attributes” mean the attributes associated with the Configuration Items for which quality data is necessary to successfully operate the key processes (e.g. operating system, operating system version), as defined in the SMM. “Business rules” mean the set of checks that will be performed to on an attribute to determine quality, as defined in the SMM.</p>
<p>METRIC EXCLUSIONS</p>	<p>N/A</p>
<p>HOURS OF MEASUREMENT</p>	<p>N/A</p>
<p>DAYS OF MEASUREMENT</p>	<p>N/A</p>
<p>MINIMUM SERVICE LEVEL</p>	<p>95.50%</p>
<p>EXPECTED SERVICE LEVEL</p>	<p>98.50%</p>
<p>ALGORITHM</p>	<p>The Service Level calculation for “Data Quality” is the total number of fields completely filled in for the applications configuration item records, with dependency maps, measured on the last Business Day of the Measurement Window, divided by the total number of fields across all application configuration item records as measured on the last Business Day of the Measurement Window.</p>
<p>COLLECTION PROCESS</p>	<p>The initial set of key process areas included in the measurement are: Software License Compliance, Software License Renewal, Technology Refresh, Information Security Management, and Financial Management. Key processes will be confirmed at the beginning of transition. Critical attributes and applicable business rules used to measure data quality will be assessed and agreed on during transition. Data quality business rules will be run against the selected attributes on a regular basis within the Measurement Window. Data quality output will be loaded into the Service Level Reporting system on a regular basis within the Measurement Window, where the Service Level result will be calculated and reported based on appropriate measurement criteria as defined in the SMM.</p>
<p>REPORTING TOOLS</p>	<p>CMDB Service Level Management Reporting system</p>

RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Operations Management
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

B.9 Patch Compliance

SERVICE LEVEL NAME	
Patch Compliance	
SERVICE LEVEL TYPE	Key Service Level
CURRENTLY MEASURED	No
SHARE TYPE and CORRESPONDING METRIC(S)	R ERP Managed Application Services, ADM Services, Managed Business Network Services, Managed Traffic Network Services, Statewide DCS, TBD
METRIC DESCRIPTION	The Service Level for “Patch Compliance” measures the percentage of patches (both Security and Software) initiated timely and applied successfully as documented in the Change Request ticket. Timeliness requirements to initiate a patch are defined in the Patch Management SMM.
METRIC INCLUSIONS and DATA SOURCES	<p>Timeliness measurement is based on the time the patches are received from the vendor to the time the change request ticket to the TxDOT is created.</p> <p>Scheduled hours of operations and maintenance windows for each infrastructure element will be maintained in the SMM. Changes are not successfully implemented if they: (i) do not comply with the Change Management procedures (including the Change Control Process) and the SMM; (ii) cause either a Priority 1 Incident or Priority 2 Incident; (iii) exceed the change window; (iv) are backed out; or (v) partial success of change is backed out or unsuccessful.</p> <p>Patches not approved by TxDOT for implementation are excluded from this SLA.</p>
METRIC EXCLUSIONS	N/A
HOURS OF MEASUREMENT	N/A

DAYS OF MEASUREMENT	N/A
MINIMUM SERVICE LEVEL	95.00%
EXPECTED SERVICE LEVEL	97.00%
ALGORITHM	The Service Level calculation for “Patch Compliance” is the total number of patch Change Requests initiated within the required timeframes and applied successfully, divided by the total number of patches that were released from the vendor and approved by TxDOT for application in the environment.
COLLECTION PROCESS	Changes will be logged and tracked in the TxDOTNow Service Management system. Changes will be documented, categorized, and assigned to implementer teams who will work to plan, review, obtain approvals, and progress the change through the Change Management lifecycle. Change data will be loaded to Service Level Management Reporting system on a daily basis, where the Service Level result will be calculated and reported based on appropriate measurement criteria
REPORTING TOOLS	TxDOTNow Service Management system Service Level Management Reporting system
RAW DATA STORAGE (ARCHIVES)	Data used to calculate the Service Level result for reporting will be stored in the Service Level Management Reporting system database, which will be accessible to users via report drill-down functionality for a rolling 13 months.
PERFORMANCE CATEGORY	Operations Management
METRIC REPORTING	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual



Texas Department of Transportation

Application Services

Exhibit 3.4

Operating Agreements

Version 1.0

Solicitation No. 601440000032007

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To ensure the integrated and seamless delivery of the Services, pursuant to **Section 9.12** of the Master Services Agreement (“Agreement”), the Service Provider is required to enter an Operating Agreement (“OA”) with the Service Component Providers (SCPs), including, but not limited to, other SCPs supporting Service Desk, Technical Field Services, ERP Managed Application Services, Application Development and Maintenance Services, Business Network Services, Traffic Network Services, and Hardware Lifecycle Services, collectively (“SCPs”).

1 GENERAL

The Service Provider acknowledges and agrees that the delivery of the Services to TxDOT requires significant integration, cooperation, and coordination of processes and procedures with TxDOT and the SCPs, and the Service Management Manual (SMM) will document the obligations between the Service Provider, TxDOT and the SCPs to ensure seamless delivery of the Services to TxDOT. The OA will address the joint operation, issue resolution, and governance of the delivery of the Services. The Service Provider and the SCPs will acknowledge and agree in the OA that the Service Provider will assist and coordinate the delivery of Services to TxDOT. In addition, the Service Provider and SCPs shall each promptly disclose to the other any material difficulties or delays that either experiences in connection with the delivery or operation of the Services.

2 OPERATING AGREEMENT ISSUE ESCALATION AND RESOLUTION

Within the Operating Agreement (OA), the Service Provider shall establish written procedures under which the Service Provider and SCPs shall resolve any problems or complaints regarding the delivery of the Services or another SCP's performance thereof (the "OA Issue Escalation and Resolution Procedures"). Such procedures shall address: (1) the specific individuals whom each SCP and Service Provider shall notify of any issue with respect to the delivery of the Services to TxDOT, (2) the timeframe within which such issues will be addressed, (3) the steps that each SCP and Service Provider will take to ensure that problems with the Services can be identified and addressed at all times. Upon completing an initial draft of the OA issue escalation and resolution procedures, the Service Provider and SCPs will provide a copy of such procedures to TxDOT for TxDOT's review.

3 OPERATING AGREEMENT PROCESSES, PROTOCOLS AND COMMUNICATIONS

The Service Provider will contribute to the design of these OAs, and will be responsible for implementing, following and responding to these agreements once developed. At a minimum, these OAs will include SCP to SCP agreements that address processes, protocols, and communications for:

1. Joint operation, issue resolution, and governance of the delivery of Services;
2. Customer support functions for multi-service provider solution requests;
3. Incident resolution and project management for multi-service provider escalations;

4. Operations management;
5. Security matters including active or persistent threats and multi-service provider response/remediation functions;
6. Defined and agreed standards of accountability for all involved;
7. Documented interdependencies among SCPs for service delivery, including timing, quality and communications standards as to ensure that handoffs or support requirements between the parties are understood, documented, and followed by all parties;
8. Service terms, conditions, operating hours, response times and escalations;
9. Documented interdependencies for Related SLAs;
10. minimize, and to the greatest extent possible, eliminate, process, and communication gaps or overlaps in Service Request management, ITIL Incident, Problem, and Change processes and Service Delivery processes as to drive a cohesive and well-run Service to TxDOT; and
11. provide a holistic Service to TxDOT inclusive of all work, process, communication, and data/report sharing requirements contained herein.

4 REGULAR MEETING AND UPDATE

The project team leaders from the Service Provider and SCPs shall meet regularly, but no less frequently than monthly, during the term of this Agreement, to prioritize tasks, discuss changes and scheduling, identify problems and resolutions, and otherwise coordinate and cooperate in connection with the development and implementation of the Services.

5 TERMINATION

The OA(s) executed by the Service Provider shall terminate upon termination of the Agreement; except that the OA's between the Service Provider and the SCPs shall terminate upon termination of Agreement between TxDOT and the SCP, unless another termination date is determined by TxDOT.

6 OA REVIEW

Within sixty (60) days of the latter of (i) the Effective Date, or (ii) the Effective Date of the Master Services Agreement entered between TxDOT and the Service Provider or the SCPs who are a counter-party to the OA, the Service Provider will submit a draft OA to TxDOT for its review and comment. The Service Provider will address and resolve any questions or concerns TxDOT may have with respect to the OA. The Service Provider will revise and resubmit the OA. If, after fifteen (15) days from TxDOT's receipt of the OA, TxDOT has not provided comments to the OA or otherwise requested an extension of the period for review, the Service Provider may proceed with the proposed OA.

7 AMENDMENT AND MODIFICATION

The OA will include various interface descriptions and specifications, and interdependencies specified by the Service Provider and SCPs. The Service Provider acknowledges and agrees that over the term of the OA, to ensure that the Services continue to be delivered in an integrated and seamless manner to TxDOT, certain changes and amendments to the OA may need to be made. Accordingly, the Service Provider may from time to time amend the OA; however, changes to interdependency commitments may be made by agreement of the applicable SCPs without a formal amendment if interdependency commitments are designated as such in the OA. Prior to any proposed amendment of the OA or change in an interdependency commitment, the Service Provider will provide a copy of the proposed amendment or change to TxDOT for TxDOT's review. If, after fifteen (15) days from receipt of the proposed amendment or change, TxDOT has not provided comments to or otherwise requested an extension of the period for review, the Service Provider may amend the OA or proceed with the change as proposed. In addition, the Service Provider covenants and agrees to update the OA as reasonably necessary so that it remains aligned and consistent with the SMM.

8 HIERARCHY OF DOCUMENTS

To the extent that there is a conflict between the provisions of this Agreement and the OA(s), the conflict will be resolved in accordance with **Section 2 Contract Documents and Order of Precedence** of the Agreement. The Service Provider acknowledges and agrees that the terms of the OA will not be used for determining any SCP's obligations under this Agreement.

9 EXHAUSTION OF REMEDIES; NON-INTERFERENCE WITH THE SERVICES

The Service Provider shall attempt in good faith to timely resolve all disputes, controversies or claims arising out of, relating to, or in connection with OAs in such a manner that shall not adversely affect or materially disrupt the performance or operations of the Services or which may otherwise result in a material adverse impact to TxDOT. If the Service Provider is unable to timely resolve any such dispute, controversy, or claim, the Service Provider may escalate the issue to TxDOT for resolution. If TxDOT is unable to resolve any such issue, the Service Provider may, with the consent of TxDOT, escalate the dispute in accordance with **Exhibit 1.2 Governance Model**.

10 SERVICE COMPONENT PROVIDER SUBSTITUTION

The Service Provider acknowledges and agrees that TxDOT may from time to time substitute or change one or all of the SCPs delivering all or part of the Services (each a "Service Provider Substitution"). In the event of a Service Provider Substitution, the Service Provider will enter into an OA with each such substituted Service Provider(s) that complies with the terms of this Exhibit.



Texas Department of Transportation

Application Services

Exhibit 4.0

Business Model

Version 1.0

Solicitation No. 60144000032007

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INTRODUCTION

The following documents comprise the entire Business Model for the Application Services Request for Offer (RFO):

1. Exhibit 4.0 – Business Model
2. Exhibit 4.1 – Pricing Structure
3. Exhibit 4.2 – Financial Responsibility Matrix
4. Exhibit 4.3 – Form of Invoice and Data Feed
5. Exhibit 4.4 – In-Flight Projects
6. Exhibit 4.5 – Skill Set Descriptions
7. Exhibit 4.6 – Personnel Projection Matrix

This Exhibit contains the methodology and requirements for calculating the Charges for all Services, unless otherwise expressly provided in the Master Services Agreement (“MSA” or “Agreement”).

The Respondent shall follow the instructions contained within these and all other RFO and Agreement documents, including all Exhibits.

All capitalized terms in this **Exhibit 4.0 Business Model** shall have the same meanings given them in **Exhibit 1.1 Definitions**. All **Exhibit 4.0 Business Model** documents hereto are incorporated by reference herein.

The Service Provider shall be responsible for the accuracy and completeness of the operational and financial assumptions underlying its pricing. All pricing assumptions should be included in **Exhibit 4.1 Pricing Structure (Assumptions)** tab. If no assumptions are specified, then the Texas Department of Transportation (TxDOT) will assume there are none. TxDOT requires that all assumptions be eliminated prior to contract execution. TxDOT’s contractual arrangements with a Service Provider shall not be subject to assumption verification or post-closing diligence. Accordingly, Service Provider shall minimize their assumptions and seek to eliminate all assumptions during the proposal and due diligence period. Service Provider shall not be entitled to adjust its pricing or any other terms of the Agreement due to incorrect, incomplete, unresolved, or undocumented assumptions on the part of the Service Provider.

All Charges calculated in accordance with **Exhibit 4.0 Business Model** shall be invoiced to TxDOT by the Service Provider in accordance with the applicable invoice and payment provisions set forth in **Section 12 Invoicing and Payment** of the Agreement. The Service Provider shall not impose any fixed or monthly required minimum fees or support level pricing for any Service or at the total contract level; in no event will TxDOT be required to pay Service Provider for Services not consumed or utilized by TxDOT.

All Charges are expressed and shall be paid in U.S. dollars.

1 FINANCIAL PROVISIONS

1.1 Showback

The TxDOT ITD Service Governance (ITD SG) function is responsible for developing, managing, and maintaining the showback system as well as developing and coordinating the associated processes for all Service Component Providers (SCPs), as described in **Exhibit 2.1.1 Cross-Functional SOW**. SCPs are responsible for data collection, data integrity, and providing data feeds to ITD SG for showing back those fees to TxDOT customers (e.g., business units, divisions, districts). Where applicable, ITD SG manages the showback unit rate development process by establishing the methodology, developing the calculations, and maintaining the process, which may include the allocation of some or all of the SCP's Charges into another SCP's Charges for showback purposes.

ITD SG is the financial intermediary between the SCPs and TxDOT. In this role, the ITD SG provides the Services to provision and manage the showback and utilization tracking system, showback and utilization reporting, showback statement consolidation, and management of the invoice dispute process. A component of the showback statement consolidation responsibility is the reconciliation of the cumulative total of all SCPs' Monthly Invoices with the cumulative total of the customers' showback statements. ITD SG provides the supporting detail necessary to facilitate TxDOT's payment of the Monthly Invoice to each SCP.

For all Charges, Service Provider shall provide data to ITD SG to support the Charges by TxDOT customer and TxDOT customer account identifier that conforms with the requirements of **Section 12.1 Invoicing and Payment** of the Agreement. ITD SG shall make available to TxDOT customers the monthly showback volumes, rates, and extended charge per Service per TxDOT customer and TxDOT customer account identifiers. ITD SG shall allocate SCP service level credits to TxDOT customers based on the nature of the credit and the impacted TxDOT customers in accordance with the SMM. Service Level Credits are only allocated to TxDOT customers once the right of Earnback has been lost or has expired. Showback detail for each customer should be made available in the showback system in a format that aligns with the form(s) of invoice described in **Exhibit 4.3 Form of Invoice and Data Feed**.

At a minimum, TxDOT requires the Service Provider to provide detailed billing data by TxDOT customer, TxDOT customer account identifier, by service type, and by such factors as requested by TxDOT, including the ability to track usage by major Application and Authorized User. TxDOT is responsible for providing Service Provider with the factors to track, as well as the methodology to be used to indicate usage among such factors. ITD SG provides detailed billing information available online in a database that lends itself to searching, ad hoc reporting, and the ability to export data. This detailed billing information, provided by ITD SG, must include the current Contract Year and the previous two (2) Contract Years' data. Billing detail beyond this time period is archived and available upon request.

For most billable Services, the showback methodology may distribute charges to the benefiting programs based upon proportionate usage. This approach requires appropriate utilization data to be captured for each Service and used to distribute charges to the benefiting programs identified by each business unit or reporting element specified by TxDOT.

For certain billable Charges, such as Transition Charges, it may not be possible to determine utilization attributable to specific TxDOT customers. In this case, the Charges associated with each milestone are distributed to the TxDOT customers in the following manner, as directed by TxDOT.

1. Charges directly attributable to a TxDOT customer should be allocated to that TxDOT customer.
2. Charges which cannot be attributable solely to a TxDOT customer should be allocated based on each TxDOT customer's total costs as a proportion of the total costs for all Customers.

1.2 Financial Planning and Forecasting

The Service Provider shall provide TxDOT with a semi-annual forecast of Charges and usage trends by Service (aligned with the State's fiscal year). The forecast must be inclusive of all volumes and Charges, including Projects, New Services, and forecasted TxDOT volume and Charge changes required to support their budgeting process. The forecast must include all known and expected changes captured as part of the Technology Plan and Capacity Management processes. As described in the SMM, such forecasts shall be delivered by Service Provider to TxDOT on the following schedule:

- In even-numbered years, the financial forecast will be delivered on **February 1** and **October 1**. The February 1 financial forecast will include updated forecasts for the current biennium and projections for the next biennium.
- In odd-numbered years, the financial forecast will be delivered on **April 1** and **October 1**.

The Service Provider shall provide TxDOT with a historical view of actual billed Services per month as set forth in a standard report – the form and substance of which shall be approved by TxDOT within sixty (60) days after the Effective Date. This report shall provide an eighteen (18) month rolling view of billed Services for the eighteen (18) months immediately prior to the month in which such report is provided.

1.3 Volume Discount

The volume discount excludes all consideration of transition services.

Service Provider shall apply the volume-based discounts in **Exhibit 4.1 Pricing Structure** for the total work delivered to TxDOT. The discounts apply on an aggregate incremental tiers basis and not applied unilaterally to the entire sum of Charges. For example, if the Monthly Charges for service types equals \$2.2M, the first \$1M will be discounted by the first-tier percent and the second \$1.2M will be discounted by the second-tier percent and so on.

1.4 Contract Performance Incentives

The Service Provider shall have the option throughout the term of this Agreement to propose initiatives to TxDOT that create value in areas that are not already identified and required in the Agreement. These Contract Performance Incentives (CPIs) are intended to incent Service Provider performance beyond the requirements of the Agreement. CPIs are outcomes-based performance incentives that are designed to reward innovation investments that create value that is shared between the Service Provider and TxDOT. As an example, the Service Provider may consider

investing in a consumption management program designed to optimize TxDOT spend that creates value beyond the cost of the initiative.

TxDOT may identify a business objective and solicit the Service Provider for a CPI initiative proposal or the Service Provider may independently approach TxDOT with a proposed CPI initiative. In either scenario, the Service Provider shall develop a CPI proposal that includes the following:

1. Objective and quantified outcome;
2. Acceptance criteria defining measure of success;
3. Detailed description of initiative and solution;
4. Business model, including:
 - a. Service Provider investment amount and description;
 - b. Total value created and proposed sharing of value between SCP and TxDOT; and
5. Assumption and dependencies.

TxDOT has the option to accept, propose changes to, or reject the proposed CPI initiative. TxDOT does not anticipate funding the CPI initiative but rather sharing the value that is created with the Service Provider. This value sharing may take the form of monetary compensation or contract term extension, depending on the nature and size of the value created. All approved CPI initiatives will be documented with a Work Order that describes the business model terms and acceptance criteria in detail.

2 CHARGES

2.1 Categories

- a. The Annual Charges for Service Provider Services for each Contract Year are set forth in **Exhibit 4.1 Pricing Structure** and reflect the resources required to provide Service Provider Services. There are four (4) Service Provider Services Charge categories that fully compensate Service Provider for providing Services, each designed to bundle Services with similar economic profiles:
 1. **Resource Unit (RU) Charges** are for steady state run services. There are two types of Resource Unit Charges:
 - i. **Fixed Charges** encompass Services with static cost structures, even during times of growth or recession. These Charges are not subject to change based on volume of service consumption.
 - ii. **Variable Charges** represent Services whose cost structure to deliver the Services is highly dependent on the underlying volumes of Service. These Charges are calculated by multiplying the applicable unit rate from **Exhibit 4.1 Pricing Structure** for the related contract month by the quantity of

corresponding RUs actually consumed by TxDOT during the applicable Billing Month.

2. **Deliverable Charges** are fixed charges for Services paid upon delivery and TxDOT's Acceptance of the applicable Deliverables. There are two (2) types of Deliverable Charges:
 - i. **Transition Charges** are for Transition Service Deliverables completed and accepted. TxDOT will pay Transition Charges for Deliverables completed prior to Commencement Date as part of the first Monthly Invoice to TxDOT after Commencement.
 - ii. **Request for Solution (RFS) Project Payment Based Deliverables** are for future Projects not currently anticipated that must be agreed between TxDOT and the Service Provider and require an approved solution proposal priced using the Rate Card rates set forth in **Exhibit 4.1 Pricing Structure (Project Bench)**. RFS Project Payment Based Deliverable Charges will be billed on a fixed milestone basis.
 3. **Rate Card Charges** compensate Service Provider for staff augmentation services using the Rate Card rates set forth in **Exhibit 4.1 Pricing Structure (Project Bench)**.
 4. **Pass-Through Expenses** are for Service Provider expenses that TxDOT has agreed to pay directly to a Third Party or reimburse to Service Provider.
- b. **Exhibit 4.0 Business Model** is not intended to fully describe each Service in detail but rather how the Services are charged, with **Exhibit 2.1.1 Cross-functional SOW**, **Exhibit 2.1.2 ERP MAS Statement of Work**, **Exhibit 2.1.3 ERP MAS Solution Response**, **Exhibit 2.1.4 ADM Statement of Work**, **Exhibit 2.1.5 ADM Solution Response**, **Exhibit 2.2 Termination Assistance Services**, and **Exhibit 2.3 IT Service Management Continuity** providing a description of the Services, **Exhibit 3.0 Performance Model** providing a description of the expected performance, and the Service Provider solution document providing a description of how Service Provider intends to deliver the Services, including the required people, processes, and tools included in the Charges. **Exhibit 4.2 Financial Responsibility Matrix** provides guidance with respect to the financial responsibilities of the Service Provider and TxDOT.
 - c. The Service Provider shall invoice TxDOT on a monthly basis in accordance with **Section 12.1 Invoicing and Payment** of the Agreement for a pro rata portion of the annual fixed Charge, which shall be calculated by dividing the annual fixed Charge specified in **Exhibit 4.1 Pricing Structure** for the applicable Contract Year by the corresponding twelve (12) months. Variable Charges may change on a monthly basis based on the methodology for calculating Charges. The Service Provider shall invoice TxDOT for Deliverable Charges upon completion of Deliverables but no sooner than the first month following the Commencement Date.
 - d. Charges may be revised from time to time by agreement of the Parties based on the usage, demand, and business requirements of TxDOT. Charges may only be modified over time in

accordance with the Agreement, including this Exhibit. Service Provider acknowledges and agrees that the Charges (RU, Deliverable, Rate Card, and Pass-Through), as adjusted pursuant to this Exhibit, fully compensate Service Provider for providing the Services.

2.2 Changes to Charges

TxDOT may from time to time (e.g., based on information provided by Service Provider in response to a TxDOT request for analysis for savings opportunities pursuant to **Section 9.5(c) Change Control, TxDOT Approval** of the Agreement) propose to add, remove, or modify the methodology for charging Services and may also from time to time, by giving at least thirty (30) days' notice to Service Provider (or such shorter period as may be required by applicable Laws), move Charges from one (1) Charge category to another Charge category, in each case for purposes of re-allocating the pricing under the Agreement without changes in scope; provided that, in any such event, the aggregate Monthly Charges for all Charge categories shall not be increased or decreased as a result of such re-allocation. Notwithstanding the foregoing, in connection with changes to Charge categories, TxDOT may also propose appropriate adjustments to reduce the existing or new Charges, as applicable, to reflect advancements or changes in technology and related changes in functionality and relative performance, where applicable. If TxDOT proposes to add or remove a Charge category or move Charges from one Charge category to another, the Parties shall agree on the Charges components applicable thereto and on corresponding adjustments to the Charges components for the remaining other Charge categories. Notwithstanding the foregoing, to the extent any of the foregoing changes are required by federal funding requirements or applicable Laws, ITD SG will implement such changes in a timely manner, and if such changes require the addition or removal of a Charge category, then the Charges components applicable thereto and the corresponding adjustments to the Charges components for the remaining other Charge categories shall be equitably adjusted by the Parties.

2.3 Billing Month

The monthly billing period ("Billing Month") is from the first day of the calendar month through the last day of the same calendar month. If the Commencement Date of Service or any New Service occurs on a day later than the first day of a calendar month, then the first Billing Month shall be the period from the Commencement Date through the last day of such calendar month, and in that case, any amounts payable on a monthly basis shall be prorated for such month based upon the actual number of days from the Commencement Date to the end of such month. In the event of termination, if the termination date occurs on a day prior to the last day of a calendar month, then the last Billing Month shall be the period from the first calendar day of the month of termination through the termination date. Any amounts payable on a monthly basis shall be prorated for such month based upon the actual number of days from the first calendar day of the month of termination to the termination date.

2.4 Resource Unit Charges

2.4.1 General

Resource Unit Charges consist of variable and fixed Charges. The variable Charges pricing methodology utilizes Resource Units defined in **Section 3 RESOURCE UNIT DEFINITIONS**

with Charges calculated from the unit rates provided in **Exhibit 4.1 Pricing Structure**. The monthly variable Charges shall be calculated by multiplying the applicable unit rate for the applicable Contract Year by the quantity of corresponding Resource Units actually consumed during the applicable Billing Month. Fixed Charges are static and billed on a monthly basis as documented in **Exhibit 4.1 Pricing Structure**.

2.4.2 Resource Unit Measurement Methodology

- a. In managing the provision of Services, the Service Provider shall maintain the flexibility to respond to changes in TxDOT demand for the Services on a day-to-day and month-to-month basis, particularly as to those portions of the Services where TxDOT experiences significant variations in demand. Unless otherwise provided in the Agreement, if the provision of the Services requires increased dedicated support, additional resources, or extended hours of service, the Service Provider shall provide such support, resources, or extended hours of service at no additional charge to TxDOT.
- b. Resource Unit usage is measured on a monthly basis to determine TxDOT actual consumption for calculation of Charges. Starting on the Commencement Date and monthly thereafter, Service Provider shall measure, track, and report usage of Resource Units. Unless otherwise expressly stated herein with respect to an RU, Service Provider shall measure and determine as of the last day of each calendar month the RU volume used in determining Resource Unit Charges for such month. Upon Commencement, Service Provider shall compute monthly Charges on a prorated daily basis.
- c. The Service Provider shall develop, with TxDOT approval, billing triggers to determine the criteria to initiate or stop billing a Resource Unit volume. These billing triggers will be documented in the Service Management Manual and, at a minimum, summarize all information related to calculation of Charges for each Resource Unit category, including billing start trigger, billing stop trigger, system of record, extract algorithm for billing feed, and exclusions.
- d. Prior to the Commencement Date, TxDOT and the Service Provider will review the measurement tools and processes for RU measurement, as well as resulting data, to validate that such tools and processes are appropriate, accurate, producing consistent data, and reaching all devices that are to be measured. Any automated system used by the Service Provider to perform invoicing and billing responsibility will be configured to track and record all user entries, reports, modifications, and all other actions taken in relation to the billing source data. Subject to **Section 9.8 Audit Rights** of the Agreement, TxDOT or its designee may, at any time, perform an audit. In coordination with TxDOT, the Service Provider shall document in the SMM the tools, methodologies and processes used to measure, track and report RU usage. This documentation shall be completed prior to Commencement Date and subsequently maintained as necessary when changes occur. The method and tools for measuring, tracking, and reporting Resource Units is subject to TxDOT written approval.
- e. Service Provider shall record all billable RU consumption amounts and feed the information through the TxDOT ITFM platform. ITD SG applies the contractual rates and pricing for final billing in accordance with **Section 1.1 Showback**.

- f. The Resource Unit Charges shall fully compensate the Service Provider for providing the applicable Services at the actual usage levels for each Resource Unit in a given month. In no event will TxDOT be required to pay Service Provider for volumes not consumed by TxDOT.

2.5 Deliverable Charges

2.5.1 General

Deliverable Charges consist of Transition Charges and Project Charges. Deliverable Charges shall only be chargeable to TxDOT upon TxDOT's acceptance in writing of the applicable Deliverable. Deliverable Charges shall be itemized on the applicable Monthly Invoice feed to ITD SG in a level of detail approved by TxDOT.

2.5.2 Transition Charges

TxDOT will pay Transition Deliverables completed and accepted prior to Commencement Date as part of the first Monthly Invoice to TxDOT after Commencement. Transition Charges shall be itemized on the applicable Monthly Invoice to TxDOT in sufficient detail to delineate the specific nature of the Charges. The invoice shall clearly identify each Transition Charge (i.e., the relevant Transition Deliverable with which it is associated). Unless otherwise agreed, TxDOT shall not incur any charges, fees, or expenses payable to Service Provider or any third party engaged by the Service Provider in connection with the Transition Services, other than those charges, fees and expenses specified in **Exhibit 4.1 Pricing Structure**.

2.5.3 Request for Solution (RFS) Project Payment Based Deliverables

- a. Payment Based Deliverable Charges apply to certain projects that may arise from a TxDOT Request for Solution (RFS) as described in **Exhibit 2.1.1 Cross Functional SOW**. RFS Project Based Deliverables are to be used on discrete units of work that do not recur on a regular or periodic basis and has each of the following characteristics:
1. A defined start and end date
 2. Requested and approved by TxDOT
 3. Not an inherent, necessary, or customary part of the day-to-day (i.e., regular, not daily) Services
 4. Not required by Service Provider to meet the existing Service Levels
 5. Not otherwise part of the Services to be provided within the monthly Charges, and
 6. Requires more than one hundred (100) hours of effort (excluding hours for Project management of the work)
- b. Service Provider and TxDOT shall agree to the RFS Project Payment Based Deliverables as part of the Form of Work Order. The Form of Work Order must be agreed between TxDOT and the Service Provider and require an approved solution proposal leveraging project bench resources and priced using the Rate Card rates set forth in **Exhibit 4.1 Pricing Structure**. The

Payment Based Milestones shall be associated with defined Deliverables that align with completion of specified RFS project phases or interim Deliverables that are measurable and acceptable to TxDOT.

- c. If Service Provider fails to successfully complete any Payment Based Deliverable by the date specified in the Service Proposal, TxDOT shall not be required to pay any portion of the Charges associated with the Payment Based Deliverable unless, and until, the successful completion of that Payment Based Deliverable is approved by TxDOT. The Service Provider and TxDOT agree the Deliverable Amount shall reflect the accrued, but not yet invoiced Service Provider Charges incurred in performing the RFS project related to the Payment Based Deliverable.
- d. After any given Payment Based Deliverable has been successfully completed by Service Provider, and approved by TxDOT, Service Provider may invoice TxDOT for the Payment Based Deliverable amount. Service Provider shall not invoice TxDOT for any amounts other than the Payment Based Deliverable amount.
- e. Transformation Project pricing for projects described in Article 9 of **Exhibit 2.1.2 ERP Managed Application Services SOW**, are billed as RFS Project Payment Based Milestones.

2.6 Rate Card Services

TxDOT may, at their sole discretion, request Rate Card Services delivered utilizing the **Exhibit 4.1 Pricing Structure** Rate Card rates and the labor categories and skill sets. Rate Card Services are billable on a Monthly Productive Hours Worked basis under the following guidelines:

- a. For each Rate Card resource that performs Monthly Productive Hours Worked in a given month, Service Provider shall invoice TxDOT at the applicable rate in **Exhibit 4.1 Pricing Structure**, which is inclusive of all travel expenses.
- b. Service Provider shall not invoice TxDOT in any given month for more than the maximum number of Monthly Productive Hours Worked which will be calculated by multiplying the number of Business Days in the month by eight (8) hours, unless overtime is approved by TxDOT, which is to be paid at the same rate as Monthly Productive Hours Worked.
- c. Service Provider shall not invoice TxDOT for Rate Card resource overtime, unless agreed to in advance, in writing and on an exception basis by TxDOT.
- d. TxDOT shall not incur any Rate Card Charges for the following activities:
 1. Services performed by Service Provider Personnel that have not been approved, in advance, by TxDOT per established approval processes;
 2. Services performed by Service Provider Personnel providing non-Rate Card Services;
 3. Project scoping, solutioning, and proposal activities;

4. Time expended by Service Provider Personnel to remedy Service Provider performance failure;
 5. Nonproductive time (whether or not conducted on TxDOT Sites), such as holidays, vacation time, sick leave, time spent consuming meals, or other personal time; and
 6. Time used for education, training, mentoring, travel, administrative, or management (e.g., Service Provider internal meetings, internal reporting, process implementation work, time and expense accounting, performance reviews, knowledge transfer).
- e. The Charges for the Service Provider Personnel performing Rate Card Services shall be calculated as the product of:
1. Rates set forth in **Exhibit 4.1 Pricing Structure**; and
 2. the number of Productive Hours the Service Provider's Personnel devoted to providing such approved Services during such month.

2.7 Pass-Through Expenses

Upon TxDOT's request, Service Provider shall procure products and services on TxDOT's behalf by (1) purchasing the products and services on behalf of TxDOT, (2) leasing, or arranging for a third party to lease, such products to TxDOT, or (3) licensing, or arrange for a third party to license, such products to TxDOT. TxDOT shall pay directly to Service Provider, the supplier, third party lessor, or third party licensor, as agreed by the Parties, the purchase, lease, or license fees, as applicable, in respect of products and services procured on behalf of TxDOT on a Pass-Through Expense basis in accordance with **Section 11.2 Pass-Through Expenses** of the Agreement and pursuant to the applicable procedures in the Service Management Manual (SMM). Unless otherwise expressly set forth in the Agreement, Service Provider shall not add any mark-up or margin to the costs of such items procured on TxDOT's behalf. Except as otherwise agreed by the Parties or as otherwise provided in this Agreement, (i) all rights in and title to any products purchased by Service Provider on behalf of TxDOT shall belong to TxDOT, as applicable, and (ii) all products shall be new. Service Provider shall adhere to the applicable product and services standards specified by TxDOT or set forth in the Service Management Manual and shall not deviate from such standards without TxDOT's prior approval. To the extent an authorized TxDOT representative specifies the third party vendor, pricing and/or other terms and conditions for procuring products or services on behalf of TxDOT, Service Provider shall not deviate from such instructions without TxDOT's prior approval. The foregoing notwithstanding, the Service Provider shall comply with the terms and conditions of **Section 11.2** of the Agreement with respect to the procurement and pricing of any goods or services that are designated for procurement on a Pass-Through Expense basis.

2.8 Equipment

The Service Provider is responsible for all equipment used in or for the provision of the Services, including the support, maintenance, purchase or lease costs of the assets, and refresh of that

equipment. Depending on the type of Equipment, the financial treatment of these costs will be categorized into two major equipment types, non-billable and billable Equipment.

2.9 New Services Charges

If, and to the extent that TxDOT requests Service Provider to perform any New Services in accordance with the terms of the Agreement, the Charges shall be adjusted in accordance with the corresponding proposal submitted by Service Provider and approved by TxDOT in accordance with **Section 11.5 New Services** of the Agreement; provided, however, that to the extent that any New Services are FTE-based, the Charges for such New Services shall be subject to the terms of **Section 2.6 Rate Card Services**, unless the Parties otherwise agree in writing.

3 RESOURCE UNIT DEFINITIONS

3.1 Application Development and Maintenance (ADM)

3.1.1 Application Development, Testing, and Implementation Services

Application Development Services (ADS) shall be completed by Service Provider for Fixed Fee Payment Based Milestones or Sprints. TxDOT has the option to pay Service Provider using either Milestones or Sprints. At no additional cost, the Service Provider shall provide TxDOT with an ADS cost estimate in accordance with **MSA Attachment E Form of Work Order** and in alignment with the Services described in **Exhibit 2.1.4 Application Development and Maintenance Services Statement of Work**. Upon TxDOT approval, Work Orders will be added to **Exhibit 4.1 Pricing Structure**.

Service proposals shall be approved by TxDOT prior to work commencing. Any work performed prior to TxDOT approval shall be the Service Provider's financial responsibility. Service Provider shall not charge TxDOT more than the TxDOT-approved Service Proposal without first obtaining TxDOT's approval according to the process defined in the SMM.

3.1.2 Application Development Services Payment Based Milestone Payments

Service Provider and TxDOT shall agree to the ADS Payment Based Milestones as part of the **Work Order**. The Payment Based Milestones shall be associated with defined Deliverables that align with completion of specified ADS phases or interim Deliverables that are measurable and acceptable to TxDOT.

If Service Provider fails to successfully complete any Payment Based Milestone by the date specified in the Service Proposal, TxDOT shall not be required to pay any portion of the Charges associated with the Payment Based Milestone unless, and until, the successful completion of that Payment Based Milestone is approved by TxDOT. The Service Provider and TxDOT agree the Milestone Amount shall reflect the accrued, but not yet invoiced Service Provider Charges incurred in performing the ADS related to the Payment Based Milestone.

After any given Payment Based Milestone has been successfully completed by Service Provider, and approved by TxDOT, Service Provider may invoice TxDOT for the Payment Based Milestone

amount specifically as adjusted by the ADS Final Payment percentage described in **Section 3.1.3** below. Service Provider shall not invoice TxDOT for any amounts other than the Payment Based Milestone amount.

3.1.3 Application Development Services Final Payment

TxDOT shall retain the sum calculated by applying the ADS Final Payment percentage of 10% to each accepted Payment Based Milestone amount (“**ADS Final Payment**”).

- a. Provided the Service Provider has rectified all Priority 1 and 2 defects, the ADS Final Payment shall become payable upon on the sooner of i) final Payment Based Milestone acceptance and the Application’s Warranty Period expiration; or ii) forty-five (45) days from last Payment Based Milestone acceptance.
- b. If any Priority 1 or 2 defects are outstanding, TxDOT may retain the ADS Final Payment until such time the defect is resolved, at which time TxDOT must pay the ADS Final Payment, less any costs or expenses incurred for any third party to perform the Service Provider obligations in relation to the defect, including any legal costs incurred in resolving the defect, whether such costs are incurred in to ensure the Service Provider performs its obligations or to engage a third party to do so, in accordance with the Agreement.

3.1.4 Application Development Services Sprint Pricing

TxDOT may elect to engage with Service Provider in an Agile software development process and pay for Services on a fixed price per sprint basis. The sprint team is comprised of eight FTEs, including both dedicated and shared resources. Each scrum role is aligned to a rate card role and the fixed price per sprint is calculated based on hours per sprint multiplied by the rate for the aligned roles. The following table provides a typical sprint team overview and serves as the basis for the Cost Plan calculation.

Rate Card Category	Scrum Roles	Weekly Hours
Onsite Senior Manager	1 Scrum Master/ Manager	40
Onsite Senior Business Systems Analyst	Senior Business Analyst/Tester	40
Onsite Test Analyst	Business Analyst/Tester	40
Onsite Web Security Administrator	Security Tester	10
Onsite Web Software Developer	Developers	140
Onsite Database Administrator	Database administrator	10
Onsite Infrastructure Architect	Infrastructure Analyst	10
Onsite Application Architect	Application Architect	30
Total		320

Sprint teams will deliver no fewer than thirteen (13) story points per week on average per project. Service Provider has committed to improve the sprint productivity during the Term. A sprint team’s velocity will improve over time.

3.1.5 Application Development Services Termination Charges

In the event a Service Proposal is terminated TxDOT shall pay all amounts due for Services performed by the Service Provider and ultimately accepted by TxDOT.

3.1.6 Application Maintenance Services (AMS) Fixed Fee

Service Provider shall charge an annual Fixed Fee for the provision of all Application Maintenance Services. The AMS Fixed Fee for each Contract Year shall be set forth in **Exhibit 4.1 Pricing Structure**, and the labor component of the AMS Fixed Fee shall be based on **Exhibit 4.1 Pricing Structure** Rate Card.

The AMS Fixed Fee, as adjusted pursuant to this Exhibit, shall fully compensate Service Provider for providing AMS, including the Third Party Software Acceptance activities, for the Applications as set forth in the in **Exhibit 4.1 Pricing Structure (Application Maintenance)** tab. Unless otherwise provided in the Agreement, if the Services requires increased dedicated support, additional resources, or extended hours of service, Service Provider shall provide such support, resources, or extended hours of service at no additional Charge.

Service Provider shall invoice on a monthly basis in accordance with **Section 12.1 Invoicing** of the Agreement for a pro rata portion of the AMS Fixed Fee, which shall be calculated by dividing the AMS Fixed Fee specified in **Exhibit 4.1 Pricing Structure** for the applicable Contract Year by the number of months in that Contract Year the Service Provider is providing Services.

Specifically excluded from AMS are Major Enhancements which shall be charged as Application Development Services. Minor Enhancements are included in the AMS Fixed Fee.

3.1.7 Initial AMS Baseline

During the three (3) months following the Commencement Date, Service Provider shall complete an AMS hourly support baseline per Application (“AMS Baseline”). The AMS Baseline and skill level labor category of resources shall be used to allocate the AMS Fixed Fee proportionately to each Application (“Proportional AMS Application Fee”). For example, if 10% of all AMS effort is spent supporting Application A, then 10% of the AMS Fixed Fee would be associated with Application A.

3.1.8 Productivity Improvements

Service Provider has committed to improve the AMS productivity during the Term. The AMS Fixed Fee must include year-on-year reductions related to the AMS productivity improvements.

3.1.9 Application Removal

If an Application is removed from the Supported Applications List, the AMS Fixed Fee will be reduced by the Proportional AMS Application Fee applicable to that Application and shall be reflected in the first monthly invoice following retirement.

3.1.10 Application Addition

If an Application is added to the Supported Applications List (“**New Application**”), the Service Provider shall provide TxDOT with an AMS cost estimate in accordance with a **MSA Attachment E Form of Work Order** of the Master Services Agreement and in alignment with the Services described in **Exhibit 2.1.4 Application Development and Maintenance Services SOW**.

The AMS Fixed Fee adjustment shall be determined in accordance with the following subsections:

- a) Such AMS Fixed Fee adjustment shall be based on a blended rate that is consistent with the rate applied to other similar, if applicable, Applications under AMS support.
- b) For the development of new, custom application software, the post-production maintenance costs will be agreed upon prior to beginning new application development so that TxDOT understands the total cost of ownership for that application before approving its development.
- c) With respect to a New Application developed by the Respondent as part of ADS, the New Application AMS Fixed Fee adjustment shall not exceed 15% of the New Application ADS effort, inclusive of the original ADS Monthly Productive Hours Worked plus any approved ADS project change request, multiplied by the appropriate AMS Rate Card rates in effect at that time.
- d) Maintenance for the support of COTS packages, exclusive of supporting manpower, will be passed through to TxDOT at the COTS vendor’s maintenance rate for the application itself plus the standard Pass-Through Charge.
- e) The New Application AMS price must include year-on-year productivity improvement reductions equal to or greater than the productivity improvements of the current Application Portfolio.

3.1.11 Application Changes

If an Application on the Supported Application List is changed because of ADS, or if the AMS requirements associated with an Application change, the Proportional AMS Application Fee may be adjusted as agreed by the Parties based on the scope of the change, as long as the anticipated AMS change is identified at the time the ADS or other development work is initially authorized. A Proportional AMS Application Fee change shall not negatively impact the year-on year productivity commitments in **Section 3.1.8 Productivity Improvements** above.

3.1.12 Staff Augmentation Services

Section 2.6 Rate Card Services describes the charging methodology for Staff Augmentation Services.

3.1.13 Resource Roles and Rates

Exhibit 4.5 Skill Set Descriptions provides a description of the labor categories and resource roles therein. Service Provider shall use these labor categories and resources roles along with the

related rates in developing all solution proposals and cost estimates. Cost estimates should be developed using Full Time Equivalent productivity, which equates to a level of effort, excluding vacation, holidays, training, administrative and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one FTE is assumed to be 1,920 productive hours per year. Pricing for services provided under this Contract are inclusive of any travel expenses that may be incurred in the performance of those services.

TxDOT shall not incur any Resource Charges for project scoping, solutioning and proposal activities.

3.1.14 Low Complexity Application Support

- a. **RU Definition:** Recurring Charge for support of Low Complexity Application Support as defined in **Exhibit 2.1.2 Statement of Work Section 4.17.**
- b. **Metric:** per Application
- c. **Costs Included:**
 - i. All costs associated with the implementation, including material, parts, labor, taxes, travel, and third-party vendor support.
 - ii. Services and project activities including planning, implementation, and administrative documentation requirements.

3.1.15 Software Services Charge (SSC)

If requested by TxDOT, the Charges shall include application software, application software maintenance, or application software-as-a-service (SaaS) procured by the Service Provider pursuant to the Software Charge methodology below and utilized by Service Provider in the provision of the Services. SSC/SaaS shall be based on the application software expenditures paid or incurred by Service Provider. Service Provider will use commercially reasonable efforts to obtain the lowest possible discounted prices for such application software for the benefit of TxDOT, including utilization of DIR purchase arrangements in accordance with the Agreement. Notwithstanding anything to the contrary herein, (a) TxDOT shall have the option of procuring such application software directly from Third Parties; (b) TxDOT shall pay upon delivery of such application software, maintenance, or software-as-a-service and on the payment schedule agreed to in a demand or solution request at cost; and (c) TxDOT shall have the option of procuring such application software directly from Service Provider under this Agreement only to the extent TxDOT obtains Service Provider's support of such application software pursuant to the terms of this Agreement (except to the extent otherwise mutually agreed).

3.2 ERP Managed Application Services (MAS)

3.2.1 ERP Application Maintenance Services (AMS) Fixed Fee

Service Provider shall charge an annual Fixed Fee for the provision of all Application Maintenance Services. The ERP AMS Fixed Fee for each Contract Year will be set forth in **Exhibit 4.1 Pricing Structure**, and the labor component of the AMS Fixed Fee will be based on **Exhibit 4.1 Pricing Structure (Rate Card)**.

The ERP AMS Fixed Fee, as adjusted pursuant to this Exhibit, shall fully compensate Service Provider for providing ERP AMS for the Applications as set forth in the Application Maintenance tab in **Exhibit 4.1 Pricing Structure**. Unless otherwise provided in the Agreement, if the Services requires increased dedicated support, additional resources, or extended hours of service, Service Provider shall provide such support, resources, or extended hours of service at no additional Charge.

Service Provider shall invoice on a monthly basis in accordance with **Section 12.1 Invoicing** of the Agreement for a pro rata portion of the AMS Fixed Fee, which shall be calculated by dividing the ERP AMS Fixed Fee specified in **Exhibit 4.1 Pricing Structure** for the applicable Contract Year by the number of months in that Contract Year the Service Provider is providing Services.

Specifically excluded from ERP AMS Fixed Fees are Major Enhancements which shall be charged as a Project in accordance with **Section 2.5.3 RFS Project Payment Based Deliverables**. Minor Enhancements are included in the AMS Fixed Fee.

ERP AMS shall be priced on a per service location and per application basis. Separate Fixed Fee charges shall be provided for Blended Onshore and Offshore service locations and for Onshore only and further categorized by application SCP as follows:

- a. Blended Onshore and Offshore
 - i. ERP Finance Supply Chain Management (FSCM)
 - ii. ERP Human Capital Management (HCM)
 - iii. ERP Enterprise Learning Management (ELM)
- b. Onshore
 - i. ERP Finance Supply Chain Management (FSCM)
 - ii. ERP Human Capital Management (HCM)
 - iii. ERP Enterprise Learning Management (ELM)

TxDOT anticipates using the Blended Onshore and Offshore service location with the Onshore only pricing used a contingency option if necessary.

3.2.2 Productivity Improvements

Service Provider has committed to improve the AMS productivity during the Term. The AMS Fixed Fee must include year-on-year reductions related to the AMS productivity improvements.

3.2.3 Optional Services: Upgrades

- a. **RU Definition:** One-time, non-recurring Charge for upgrades resulting from a TxDOT request. There are three (3) types of Upgrade charges:
 - i. Oracle/PeopleSoft Image Upgrade – FSCM
 - ii. Oracle/PeopleSoft Image Upgrade – HCM
 - iii. Oracle/PeopleSoft Image Upgrade - ELM
 - iv. Oracle/PeopleTools Upgrade
- b. **Metric:** per Upgrade
- c. **Costs Included:**
 - i. All costs associated with an upgrade, including material, parts, labor, taxes, travel, and third-party vendor support.
 - ii. Services and project activities including planning, implementation, and administrative documentation requirements.

3.2.4 Optional Services: New or Additional Modules

- d. **RU Definition:** One-time, non-recurring Charge for onboarding new or additional modules, resulting from a TxDOT request. The onboarding of new or additional modules is provided on a fixed charge basis per request based on complexity. These are not to exceed rates and subject to reduction based on the specifics of a module and the estimated level of effort. There are two (2) types of New or Additional Modules Charges, each having a high, medium, and low unit rate based on complexity:
 - i. ERP FSCM
 - ii. ERP HCM
 - iii. ERP ELM
- e. **Metric:** per Module
- f. **Costs Included:**
 - i. All costs associated with the implementation, including material, parts, labor, taxes, travel, and third-party vendor support.
 - ii. Services and project activities including planning, implementation, and administrative documentation requirements.

3.2.5 Optional Services: Growth or Offboarding

- g. **RU Definition:** A monthly recurring increase to the AMS Charges for onboarding new or additional modules, as defined by TxDOT approved ERP application, or a monthly recurring decrease to the AMS Charges for offboarding existing modules, each resulting from a specific customer request. There are two (2) types of Growth or Offboarding Modules charges, each having a high, medium, and low unit rate based on complexity:
 - i. ERP FSCM
 - ii. ERP HCM
 - iii. ERP ELM
- a. **Metric:** per Module
- b. **Costs Included:**
 - i. Labor and maintenance required to manage, maintain, and enhance the service.
 - ii. Service Provider management tools.
 - iii. Installation, move, add, change and discontinuance services.

3.2.6 Optional Services: Data Masking

- a. **RU Definition:** A monthly recurring Charge for Data Masking as defined in **Exhibit 2.1.2 ERP MAS Statement of Work Section 8.1.**
- b. **Metric:** To be proposed by Service Provider in **Exhibit 4.1 Pricing Structure (Optional Services)**
- c. **Costs Included:**
 - i. Labor and maintenance required to manage, maintain, and enhance the service.
 - ii. Service Provider management tools.
 - iii. Installation, move, add, change and discontinuance services.

3.2.7 Optional Services: Data Archiving

- a. **RU Definition:** A monthly recurring Charge for Data Archiving as defined in **Exhibit 2.1.2 ERP MAS Statement of Work Section 8.2.**
- b. **Metric:** To be proposed by Service Provider in **Exhibit 4.1 Pricing Structure (Optional Services)**
- c. **Costs Included:**
 - i. Labor and maintenance required to manage, maintain, and enhance the service.

- ii. Service Provider management tools.
- iii. Installation, move, add, change and discontinuance services.

3.2.8 Optional Transformation Projects

Optional Transformation Projects will be charged on a deliverable basis in accordance with [Section 2.5 Deliverable Charges](#).



Texas Department of Transportation

Application Services

Exhibit 4.4

In-Flight Projects

Version 1.0

Solicitation No. 60144000032007

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EXHIBIT 4.4
IN-FLIGHT PROJECTS

The following update methodologies and attachments are incorporated as part of this **Exhibit 4.4**:

Title	Methodology for updating associated Exhibit Attachments
<u>Exhibit 4.4</u> In-Flight Projects	<u>Exhibit 4.4</u> may only be modified by formal amendment, in accordance with <u>Section 21.7</u> of the Agreement.
<u>Attachment 4.4-A</u> In-Flight Projects	<u>Attachment 4.4-A</u> is a point of reference at contract execution with updates prior to Commencement made in accordance with the request and project management processes.

1. IN-FLIGHT PROJECTS OVERVIEW

This document describes selection criteria and project information for the projects anticipated to be in-flight as of Commencement Date. The actual project list is **Attachment 4.4-A** and includes planned projects to be completed by Service Provider after the Commencement Date.

1.1 Project-Selection Criteria

This section describes the criteria used to select the current and planned projects on **Attachment 4.4-A**.

The projects listed in **Attachment 4.4-A** are extracted from the TxDOT ITSM system and/or TXDOT tools and direction based on previously defined work efforts. These projects require activity/effort on the part of the Service Provider. Projects that are specific to an SCP or SCPs, but do not require MSI involvement outside of steady state Cross-functional services were not included in this list.

The projects listed in **Attachment 4.4-A** are a point in time reference and may be modified by TXDOT based on needs of the Shared Services program prior to Commencement Date with notification to the Service Provider as appropriate.

1.2 Document Structure

The structure of **Attachment 4.4-A** is represented below.

Field Name	Description
REQ ID	ServiceNow number for the Solution Request (REQ or WO#) where known
Project Description	Summary description of the project
Requestor	The source of the Solution Request.
Submit Date	Date and time ticket was entered into the ServiceNow system (system timestamp).
Status	<u>Pending</u> = waiting for TXDOT; <u>Planning in Progress</u> = evaluating request for complete requirements and obtaining TXDOT representative approval; <u>Implementation in Progress</u> = actively working the request
Request By Date	Date this ticket needs to be completed by. Entered into the ticket when submitted by the Requestor.

Field Name	Description
Stage Gate	Stage Gate descriptions are included in the project management SMM.



Texas Department of Transportation

Application Services

Exhibit 4.5

Skill Set Descriptions

Version 1.0

Solicitation No. 60144000032007

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	J. Systems Engineer	15
	K. Data/Math Modeler	17
	L. Performance / Automation Test Analyst	17
	M. Programmer Associate	18
	N. Advanced Systems Engineer	20
	O. Business Systems Analyst	21
	P. Associate Business Process Engineer	22
	Q. Project Manager I / Test Leads	24
	R. Database Analyst	25
	S. Programmer	27
	T. Senior Systems Engineer	28
	U. Project Manager II / Test Manager	29
	V. Business Process Engineer	30
	W. Web Master	32
	X. Web Security Administrator	33
	Y. Web Software Developer	33
	Z. Senior Business Systems Analyst	34
	AA. Infrastructure Architect	35
	BB. Database Administrator	37

CC. Project Manager III/Test Program Manager 38

DD. Senior Business Process Engineer 39

EE. Data Analyst..... 40

FF. Application Architect..... 41

GG. Senior Manager 42

HH. Senior Web Architect..... 44

II. Data Engineer..... 44

JJ. Senior Application Architect 45

KK. Creative Director..... 47

LL. Data Scientist 47

MM. Business Consultant 48

NN. Business Intelligence Analyst 49

OO. Senior Business Consultant..... 50

1 INTRODUCTION

The following document comprise the entire Business Model for Application Services:

1. Exhibit 4.0 – Business Model
2. Exhibit 4.1 – Pricing Structure
3. Exhibit 4.2 – Financial Responsibility Matrix
4. Exhibit 4.3 – Form of Invoice and Data Feed
5. Exhibit 4.4 – In-Flight Projects
6. Exhibit 4.5 – Skill Set Descriptions
7. Exhibit 4.6 – Personnel Projection Matrix

This Exhibit sets forth the skill set descriptions that are applicable in defining the Application Services labor categories as set out in the Rate Card provided in **Exhibit 4.1 Pricing Structure**.

The content of this Exhibit is to be used as a guideline and is not intended to be a checklist of skills, experience and education. These qualification guidelines represent the skills, experience and education typically possessed by the individuals that are grouped in these categories, but every individual may not possess every attribute. UNDER NO CIRCUMSTANCES SHOULD YEARS OF EXPERIENCE BE USED AS THE SOLE CRITERIA.

Except as otherwise specified in this Attachment or as mutually agreed by the Parties, all skill set descriptions pertaining to the Labor Category (LC) are defined within this Exhibit.

The Service Provider shall follow the instructions contained within these and all other RFO and Agreement documents, including all Exhibits.

All capitalized terms in this **Exhibit 4.5 Skill Set Descriptions** shall have the same meanings given them in **Exhibit 1.1 Definitions**. All **Exhibit 4.0 Business Model** documents hereto are incorporated by reference herein.

2 SKILL SETS BY LABOR CATEGORY

The following table shows the skill set descriptions and their corresponding labor category that is used for detailed pricing in the applicable pricing templates document by the Service Provider:

	Job Title	Labor Category
A	Operations	1
B	Technical Specialist	1
C	Junior Test Analyst	1
D	Training Specialist	1
E	Technical Specialist Programming	1
F	Associate Systems Engineer	2
G	Documentation Specialist	2
H	Test Analyst	2

	Job Title	Labor Category
I	Associate Business Systems Analyst	2
J	Systems Engineer	3
K	Data/Math Modeler	3
L	Performance / Automation Test Analyst	3
M	Programmer Associate	3
N	Advanced Systems Engineer	4
O	Business Systems Analyst	4
P	Associate Business Process Engineer	4
Q	Project Manager I / Test Leads	4
R	Database Analyst	4
S	Programmer	4
T	Senior Systems Engineer	5
U	Project Manager II / Test Managers	5
V	Business Process Engineer	5
W	Web Master	5
X	Web Security Administrator	5
Y	Web Software Developer	5
Z	Senior Business Systems Analyst	6
AA	Infrastructure Architect	6
BB	Database Administrator	6
CC	Project Manager III/ Test Program Manager	7
DD	Senior Business Process Engineer	7
EE	Data Analyst	7
FF	Application Architect	8
FF	Senior Manager	8
HH	Senior Web Architect	8
II	Data Engineer	8
JJ	Senior Application Architect	9
KK	Creative Director	9
LL	Data Scientist	9
MM	Business Consultant	10
NN	Business Intelligence Analyst	10
OO	Senior Business Consultant	11

3 SKILL SET DESCRIPTIONS

A. Operations

Major Duties and Responsibilities

- 3.A.1.1 Gathers and interprets complex data
- 3.A.1.2 Prepares presentations
- 3.A.1.3 Communicates statistical or technical data within the organization
- 3.A.1.4 Moderate contact with others outside the organization
- 3.A.1.5 Develops and maintains data
- 3.A.1.6 Administers policies/procedures
- 3.A.1.7 Assumes operational assignments

Specific Services Performed

- 3.A.1.8 Asset Management
 - 3.A.1.8.1 Conducts physical inventories of equipment
 - 3.A.1.8.2 Conducts and participates in audits to determine the accuracy of inventories and records
 - 3.A.1.8.3 Special billing reports
- 3.A.1.9 Business Office
 - 3.A.1.9.1 Performs asset management for hardware and software
 - 3.A.1.9.2 Process orders for Change/Add/Move requests
 - 3.A.1.9.3 Procure hardware and software
 - 3.A.1.9.4 Research and provide price quotes for hardware and software
- 3.A.1.10 Communications Technology
 - 3.A.1.10.1 Oversee and/or perform complex or sensitive service orders
 - 3.A.1.10.2 Serve as second level escalation for major, sensitive or recurring voice troubles
 - 3.A.1.10.3 Provide billing issue resolution and adjustments
 - 3.A.1.10.4 Assists project leader with administrative tasks involving planning alterations, openings, relocations, consolidations and/or removal of communications systems

- 3.A.1.10.5 Schedules installation and testing with Third Parties and Authorized Users prior to cutovers
- 3.A.1.10.6 Assists the focal point with operational and support groups for project implementation
- 3.A.1.10.7 Participates in feasibility studies, costing and proposal preparation
- 3.A.1.10.8 Provides training and assistance on new technology / telecom applications, systems, features and communication charges

3.A.1.11 Service Desk - Level 1

- 3.A.1.11.1 Provides Customer assistance with routine inquiries and problems such as software, hardware and network operations
- 3.A.1.11.2 Respond to Customer inquiries and concerns, both with written correspondence and telephone contact
- 3.A.1.11.3 Investigate, evaluate and resolve Customer issues, concerns or complaints that cannot be resolved during the initial Customer contact
- 3.A.1.11.4 Provide feedback regarding case status to the Customer
- 3.A.1.11.5 Problem ticket follow-up/tracking (Status, Customer Satisfaction Calls, Requests or Queries)
- 3.A.1.11.6 Enters information into problem tracking system for purposes of tracking each Customer issue
- 3.A.1.11.7 Logs and tracks inquiries and compiles Customer service statistics
- 3.A.1.11.8 Monitors Customer questions and complaints to ensure adherence to established Customer and Service Provider procedures

3.A.1.12 Site Coordination

- 3.A.1.12.1 Represents/manages multi-tenant sites
- 3.A.1.12.2 Facilitates end user communication
- 3.A.1.12.3 Monitors and provides support for most hardware resources.
- 3.A.1.12.4 Prepares business cases and appropriations requests.
- 3.A.1.12.5 Monitors and reports on operations/financial metrics.
- 3.A.1.12.6 Interfaces closely with process staffs to help them achieve their strategic plans and deployment initiatives.

3.A.1.13 Security/Disaster Recovery

- 3.A.1.13.1 Assist in providing security consulting
- 3.A.1.13.2 Act as a focal point for gathering audit comments and follow-up documentation
- 3.A.1.13.3 Assist in providing vital records support

3.A.1.13.4 Upon request, works with appropriate groups to acquire various security reports for to detect security violations

3.A.1.13.5 Assist in providing disaster recovery support

3.A.1.14 Facilities Management

3.A.1.14.1 Assists in planning, scheduling, monitoring and reporting activities for facility projects

3.A.1.14.2 Determines, monitors and reviews costs, operational budgets, schedules and staffing requirements for facility teams

3.A.1.15 Provides assistance in facilitating status review meetings among team members and Customer

3.A.1.16 Production Management

3.A.1.17 Change Management - central deployment of system changes

3.A.1.18 Problem Management – responding to inquiries for routine system issues

3.A.1.19 Cycle Management – responding to routine mainframe batch issues

3.A.1.20 Schedule Management – Assist in central deployment of changes to distributed cycle and mainframe batch cycle

3.A.1.21 Management Reporting – Assist in statistical reporting of metric and operational performance data

3.A.1.22 Maintenance Management – Assist in general deployment of maintenance services

Examples of Operations Job Types

3.A.1.23 Asset Manager

3.A.1.24 Service Desk Level I Operator

3.A.1.25 Data Entry

3.A.1.26 Print Distribution

3.A.1.27 Inventory Specialist

3.A.1.28 Communications Assistant

3.A.1.29 Computer Operator

3.A.1.30 Business Analyst

3.A.1.31 Technical Analyst

3.A.1.32 Technical Support Coordinator

Education and/or Training

3.A.1.33 College graduate or equivalent experience in business or associated field

B. Technical Specialist

Job Description

- 3.B.1.1 Under general supervision, performs analytical, technical, and administrative work in the planning, design, development and implementation of new and existing personal computer systems
- 3.B.1.2 Works on moderately complex applications
- 3.B.1.3 Confers with end users to determine the types of hardware and software required
- 3.B.1.4 Writes programs to fulfill requirements or selects appropriate off-the-shelf software and modifies, if necessary, to suit the requirements
- 3.B.1.5 Trains end users in the use of the equipment and software
- 3.B.1.6 Identifies data, analysis method and report format required to present and explain an issue, phenomenon or potential solution.
- 3.B.1.7 Plans, schedules and facilitates technical reviews as necessary
- 3.B.1.8 Documents technical discussions, action plans and assignments
- 3.B.1.9 Determines and report status of projects and assignments
- 3.B.1.10 Collates, analyzes and publishes metrics.
- 3.B.1.11 Coordinates, allocates, tracks and refreshes IT assets, such as phones, cell phones or PCs
- 3.B.1.12 Gathers/determines Customer requirements and requests IT assets/services using appropriate processes

Job Qualifications

- 3.B.1.13 Must have an extensive knowledge of the product's practical and/or business use
- 3.B.1.14 Must have advanced knowledge of the primary features, a solid understanding of the operating system(s) that the software runs on, as well as the ability to install, configure, set-up and migrate software
- 3.B.1.15 Must have advanced knowledge of Customer's desktops, laptops, keyboards, printer plotters, modems and associated connections
- 3.B.1.16 May have certification in production or technology
- 3.B.1.17 Must have good oral and writing communication skills
- 3.B.1.18 Ability to create and manipulate electronic databases
- 3.B.1.19 Ability to take general direction and develop a work plan, including identification and retrieval of necessary information, data, required analysis method or technique and effective report format
- 3.B.1.20 High level of interpersonal skills to work effectively in a team environment
- 3.B.1.21 Effective communication and presentation skills
- 3.B.1.22 Ability to create high-level presentations using the Microsoft suite of software
- 3.B.1.23 Relatively high level of analytical ability where problems are complex
- 3.B.1.24 Ability to organize, plan and document tasks

3.B.1.25 Knowledge of technology in areas to which assigned

3.B.1.26 Understanding of IT and technical jargon related to Customer

Skills and Abilities

3.B.1.27 Analytical ability where problems are somewhat complex

3.B.1.28 Interpersonal skills to work with others

3.B.1.29 Oral and written communication skills

3.B.1.30 Knowledge of basic technology in area to which assigned

3.B.1.31 Basic understanding of data processing concepts

3.B.1.32 Ability to organize, plan and document tasks

3.B.1.33 Self starter; needs no or little supervision

Education and Experience

3.B.1.34 Associate's degree and three (3) plus years of experience or equivalent

C. Junior Test Analyst

Job Description

3.C.1.1 Contribute to creation of test plans, test cases and prepare test environments

3.C.1.2 Performing functional, application, and regression testing

3.C.1.3 Creating and executing manual testing procedures

3.C.1.4 Identifying, analyzing and reporting defects

Job Qualifications

3.C.1.5 Familiar with standard concepts, practices and procedures within the testing field

3.C.1.6 Understanding of the software development life cycle and software development methodologies

3.C.1.7 Acquires and applies skills and knowledge through training and/or documentation

3.C.1.8 Accepts changes in the Customer environment, organizational structure, direction or priorities

3.C.1.9 Acquires knowledge of Customer's business in assigned area

3.C.1.10 Acquires knowledge of Customer's industry

3.C.1.11 Strong teamwork and interpersonal skills

3.C.1.12 Strong written and oral communication skills

3.C.1.13 Strong analytical skills

3.C.1.14 Able to interpret requirement documents and able to update test documents accordingly

Education and Experience

3.C.1.15 Bachelor's degree and up to three (3) years of experience or equivalent

D. Training Specialist

Job Description

- 3.D.1.1 Plans, develops, and executes user training with Customer's Authorized User community, based on needs.
- 3.D.1.2 Schedules, delivers, and follows up on Customer training needs regarding specific products.
- 3.D.1.3 May serve as a subject matter expert to the Customer's Authorized User community
- 3.D.1.4 Acts as the corporate training interface
- 3.D.1.5 Maintains training database and documentation

Job Qualifications

- 3.D.1.6 In-depth knowledge of products and/or services being delivered
- 3.D.1.7 Ability to deliver material, to a broad range of users with a variety of skill sets, excellent communication skills and, knowledge of adult learning principles
- 3.D.1.8 Utilizes productivity management principles to, facilitate client training needs,
- 3.D.1.9 Familiar with the analysis, design, development and implementation of instructional courseware using instructional design standards

Education and Experience

- 3.D.1.10 Bachelor's degree and two (2) plus years of experience or equivalent

E. Technical Specialist Programming

Job Description

- 3.E.1.1 Analyzes conventional methods employed by the user for which computerization is recommended
- 3.E.1.2 Develops problem definition and method/specifications for solution
- 3.E.1.3 Locates system problems and recommends and implements solutions
- 3.E.1.4 Develops detailed design and flow of system
- 3.E.1.5 Codes, tests, debugs, implements and documents new programs
- 3.E.1.6 Maintains, revises and documents changes to existing programs
- 3.E.1.7 Keeps supervision and users advised of progress
- 3.E.1.8 Frequent contact with others outside the work group
- 3.E.1.9 Adheres to local security procedures

Job Qualifications

- 3.E.1.10 Oral and written communications skills
- 3.E.1.11 High level of sound logic and analytical ability where problems are unusual and difficult
- 3.E.1.12 Attentiveness to detail and precision

- 3.E.1.13 Good interpersonal skills to work effectively with others
- 3.E.1.14 Strong knowledge of HTML, Web Development, Java Script, etc. and good Internet Explorer capabilities
- 3.E.1.15 Strong knowledge of relational data bases with programming capability; able to create/modify queries, reports and visual basic modules to meet Customer requirements
- 3.E.1.16 Ability to instruct Customer in database maintenance

Education and Experience

- 3.E.1.17 Associate's Degree and three (3) plus years of experience or equivalent

F. Associate Systems Engineer

General Purpose of Position

- 3.F.1.1 Possesses the technical skills necessary to participate in business systems development and maintenance processes using a systems methodology
- 3.F.1.2 Identifies problems or business opportunities, defines the scope of the assigned task, and develops a plan to accomplish that task
- 3.F.1.3 Utilizes technical skills, creativity and communication skills, with assistance from team members, to design and document a system that fulfills Customer requirements
- 3.F.1.4 Meets team standards, and provides the flexibility to meet future Customer needs
- 3.F.1.5 Interprets and modifies programs
- 3.F.1.6 Develops test plans that address system design requirements, user test data, and issues concerning size and scope
- 3.F.1.7 Addresses production support issues and providing feedback to the Customer

Major Duties and Responsibilities

- 3.F.1.8 Provides application programming/systems development and support for systems of low complexity
- 3.F.1.9 Identifies data elements and processes using modeling and documentation techniques
- 3.F.1.10 Documents controls, audit trails, security requirements, plans and decisions
- 3.F.1.11 Estimates activities required to complete assignments for a specific task
- 3.F.1.12 Follows a systems methodology when developing or supporting an application
- 3.F.1.13 Participates in design walk-throughs
- 3.F.1.14 Implements test plans, including the creation of test data and the verification of the test environment
- 3.F.1.15 Maintains hardware and software in the production environment for assigned areas
- 3.F.1.16 Executes assigned implementation and conversion plans
- 3.F.1.17 Schedules and monitors the processing of production cycles
- 3.F.1.18 Addresses production problems and makes changes to system functionality

3.F.1.19 Captures metrics

Skills and Abilities

3.F.1.20 Is proficient in at least one programming language

3.F.1.21 Acquires and applies skills and knowledge through training and/or documentation

3.F.1.22 Uses prototyping skills when appropriate

3.F.1.23 Accepts changes in the Customer environment, organizational structure, direction or priorities

3.F.1.24 Acquires knowledge of the Customer's business in assigned area

3.F.1.25 Acquires knowledge of the Customer's industry

3.F.1.26 Assists in the cost/benefit analysis of alternative technical solutions

3.F.1.27 Organizes, develops and delivers presentations

3.F.1.28 Uses written communication to improve exchanges of information and relationships

3.F.1.29 Maintains knowledge of current technology through available training and individual study

Education and Experience

3.F.1.30 AS, BA, BS related degrees or equivalent experience

Experience

3.F.1.31 A minimum of one (1) to two (2) years.

G. Documentation Specialist

Job Description

3.G.1.1 Develops, produces, and maintains a variety of complex technical and user documentation

3.G.1.2 Plans and executes writing projects that need attention to complex technical content

3.G.1.3 Provides effective and useful presentation of that content, and timely reporting of progress in meeting schedule milestones

3.G.1.4 Complex knowledge and utilization of one (1) or more word processing tools

Job Qualifications

3.G.1.5 Ability to determine project requirements, perform complex writing, copy editing, technical editing and documentation design activities.

3.G.1.6 Ability to create document structure and graphics at project level

3.G.1.7 Must have good writing skills

3.G.1.8 The ability to write consistent and clear documentation with the goal of explaining complex information simply and accurately

Education and Experience

3.G.1.9 Bachelor's Degree and two (2) years of experience or equivalent.

H. Test Analyst

Job Description

- 3.H.1.1 Creating test plans, test cases and prepare test environments
- 3.H.1.2 Performing moderately complex functional, application, and regression testing
- 3.H.1.3 Planning and scheduling tasks to ensure that developed products meet business requirements and design specifications
- 3.H.1.4 Creating and executing manual testing procedures
- 3.H.1.5 Identifying, analyzing and reporting defects

Job Qualifications

- 3.H.1.6 Ability to collaborate the client organization and 3rd party vendors
- 3.H.1.7 Familiar with standard concepts, practices and procedures within the testing field
- 3.H.1.8 Understanding of the software development life cycle and software development methodologies
- 3.H.1.9 Acquires and applies skills and knowledge through training and/or documentation
- 3.H.1.10 Accepts changes in the Customer environment, organizational structure, direction or priorities
- 3.H.1.11 Acquires knowledge of the Customer's business in assigned area
- 3.H.1.12 Acquires knowledge of the Customer's industry
- 3.H.1.13 Strong teamwork and interpersonal skills
- 3.H.1.14 Strong written and oral communication skills
- 3.H.1.15 Strong analytical skills
- 3.H.1.16 Proven problem solving ability
- 3.H.1.17 Able to work with Customer as needed during test cycle.
- 3.H.1.18 Able to interpret requirement documents and able to update test documents accordingly

Education and Experience

- 3.H.1.19 Bachelor's degree and up to five (5) years of experience or equivalent

I. Associate Business Systems Analyst

Job Description

- 3.I.1.1 Assists in planning and implementing computer systems
- 3.I.1.2 Assists in coordinating of upgrades/enhancements to engineering business systems
- 3.I.1.3 Assists in coordinating information activities as necessary with other departments and/or divisions

- 3.I.1.4 Assists in coordinating projects and activities with Service Provider and Third Parties
- 3.I.1.5 Uses and administers company technology practices, standards and procedures
- 3.I.1.6 Assists in the assessment and documentation of business opportunities, benefits, risks, and success factors of potential applications
- 3.I.1.7 Assists in eliciting and clearly defining and documenting, Customer needs and associated requirements
- 3.I.1.8 Analyzes a variety of work processes and associated document and information flow
- 3.I.1.9 Analyzes and documents logical relationships among the data, process or events
- 3.I.1.10 Assists in implementing, new or enhanced applications into a production environment
- 3.I.1.11 Assists in delivering new or enhanced applications utilizing a variety of formal methodologies and disciplines

Job Qualifications

- 3.I.1.12 High level of sound logic and analytical ability where problems are unusual and difficult
- 3.I.1.13 Highly developed oral and written communications skills
- 3.I.1.14 High level of interpersonal skills to work effectively with others
- 3.I.1.15 Experience with networked data management systems
- 3.I.1.16 Knowledge and understanding of Information Technology industry trends, directions and market experience; ability to relate them to own organization
- 3.I.1.17 Knowledge of emerging technologies (new to company systems as well as those that are new to the information systems industry)
- 3.I.1.18 Knowledge of tools, techniques and good practices for protecting the integrity of corporate data and associated processing, company technology practices, standards and procedures.
- 3.I.1.19 Familiarity with company's information architecture and information management methodologies
- 3.I.1.20 Familiarity with the existing and planned software technology and the global, regional and local software architecture and infrastructure components

Education and Experience

- 3.I.1.21 Technical undergraduate degree in math, computer science, engineering, or related discipline with an information technology focus
- 3.I.1.22 Training in college level computer systems

J. Systems Engineer

Job Description

- 3.J.1.1 Has the experience and technical skills necessary to participate in the development and maintenance of business systems using a systems methodology

- 3.J.1.2 Identifies problems or business opportunities
- 3.J.1.3 Controls the scope of the systems development tasks, and supports the high-level project plan
- 3.J.1.4 Generates and maintains estimates
- 3.J.1.5 Converts Customer requirements and models from analysis, specifications and business needs, into technical specifications
- 3.J.1.6 Uses the knowledge and experience from past technical environments and communication skills to design and document a system that will meet Customer requirements, team standards, and ensure the flexibility of future Customer needs
- 3.J.1.7 Creates reusable code
- 3.J.1.8 Documents and implements test plans that address system design requirements, user test data, and cases of appropriate size and scope
- 3.J.1.9 Proactively addressing production support issues and providing recommendations for improvement
- 3.J.1.10 Provides application programming/systems development and support for systems of medium complexity
- 3.J.1.11 Develops and evaluates alternative system solutions to meet Customer requirements
- 3.J.1.12 Competent in the use of modeling and documentation techniques
- 3.J.1.13 Analyzes the Customer environment and new business requirements to define solutions that meet Customer needs and have the flexibility to accommodate future changes
- 3.J.1.14 Recommends business system improvements
- 3.J.1.15 Suggests and implements documents controls, audit trails, security requirements, plans and decisions
- 3.J.1.16 Establishes target dates and goals
- 3.J.1.17 Utilizes a systems methodology when developing or supporting systems development
- 3.J.1.18 Participates in technical designs and walk-throughs
- 3.J.1.19 Determines the impact of change on the Customer and system, and makes recommendations
- 3.J.1.20 Modifies program logic involving multiple systems and subsystems
- 3.J.1.21 Develops and implements test plans
- 3.J.1.22 Identifies the impact of system software and hardware upgrades on the application and creates a test strategy
- 3.J.1.23 Participates in implementation and conversion planning
- 3.J.1.24 Applies knowledge and procedures to assist others in scheduling, production support and problem resolution
- 3.J.1.25 Uses metrics to increase productivity

Job Qualifications

- 3.J.1.26 Is proficient in one or more programming languages
- 3.J.1.27 Understands and applies prototyping tools and processes
- 3.J.1.28 Gains understanding of the Customer's business in assigned area
- 3.J.1.29 Possesses knowledge of the Customer's industry
- 3.J.1.30 Uses knowledge and experience to improve performance
- 3.J.1.31 Participates in the cost/benefit analysis of alternative technical solutions
- 3.J.1.32 Organizes, develops and delivers presentations for multiple levels of Customer
- 3.J.1.33 Conducts training sessions for peers and Customer
- 3.J.1.34 Controls and monitors team assignments
- 3.J.1.35 Shares knowledge of current technology and methods with team and Customer

Education and/or Experience

- 3.J.1.36 BA, BS related degrees or equivalent experience
- 3.J.1.37 Bachelor's degree plus three (3) years of experience or at least one (1) year consulting experience with specialty in a highly complex system

K. Data/Math Modeler

Job Description

- 3.K.1.1 Developing, testing, implementing and supporting data and math-based models which run in an inter-active environment.

Job Qualifications

- 3.K.1.2 Gains understanding of the Customer's business in assigned area
- 3.K.1.3 Possesses knowledge of the Customer's industry
- 3.K.1.4 Uses knowledge and experience to improve performance
- 3.K.1.5 Participates in the cost/benefit analysis of alternative technical solutions
- 3.K.1.6 Organizes, develops and delivers presentations for multiple levels of Customer
- 3.K.1.7 Controls and monitors team assignments

Education and Experience

- 3.K.1.8 Bachelor's degree and at least three (3) years of experience

L. Performance / Automation Test Analyst

Job Description

- 3.L.1.1 Responsible for testing a variety of programs and systems for compliance with non-functional requirements
- 3.L.1.2 Use of automation test tools and creation of small tools to automate manual test cases

- 3.L.1.3 Specifying overall approach to creating test data, and conditions for test scenarios
- 3.L.1.4 Preparing testing schedules and documents expected results
- 3.L.1.5 Advising team on debugging aids available for environment
- 3.L.1.6 Ability to develop test scripts and utilize appropriate testing tools
- 3.L.1.7 Ability to prepare schedules, documentation and test data to simulate conditions

Job Qualifications

- 3.L.1.8 Ability to collaborate the client organization and 3rd party vendors
- 3.L.1.9 Familiar with standard concepts, practices and procedures within the testing field
- 3.L.1.10 Experience with use of performance test tools and automation test tools
- 3.L.1.11 Acquires and applies skills and knowledge through training and/or documentation
- 3.L.1.12 Accepts changes in the Customer environment, organizational structure, direction or priorities
- 3.L.1.13 Acquires knowledge of the Customer's business in assigned area
- 3.L.1.14 Acquires knowledge of the Customer's industry
- 3.L.1.15 Strong teamwork and interpersonal skills
- 3.L.1.16 Strong written and oral communication skills
- 3.L.1.17 Strong analytical skills
- 3.L.1.18 Proven problem-solving ability
- 3.L.1.19 Able to work with Customer as needed during test cycle.
- 3.L.1.20 Able to interpret requirement documents and able to update test documents accordingly

Education and Experience

- 3.L.1.21 AS, BA, BS related degrees or equivalent experience
- 3.L.1.22 A minimum of two (2) years of coding and/or performance/automation testing experience.
- 3.L.1.23 Communications industry knowledge/experience preferred

M. Programmer Associate

Job Description

- 3.M.1.1 Develops program specifications/detail design documents
- 3.M.1.2 Codes, tests, and debugs application programs
- 3.M.1.3 Works under the direction of a team leader, senior technical leader or analysts
- 3.M.1.4 Develops prototypes from functional specifications
- 3.M.1.5 Designs application sub-systems and small systems

- 3.M.1.6 Responsible for designing and building web pages using a variety of graphic software applications, techniques, and tools; designing and developing user interface features, site animation, and special-effects elements
- 3.M.1.7 Contributing to the design group's efforts to enhance the look and feel of the organization's online offerings; designing the website to support the organization's strategies and goals relative to external communications

Job Qualifications

- 3.M.1.8 Has participated in the application design of systems, including use of analytical techniques
- 3.M.1.9 Demonstrates an understanding of object-oriented development tools and techniques
- 3.M.1.10 Has worked on multiple platforms and/or with multiple methodologies
- 3.M.1.11 Capable of basic HTML content management support
- 3.M.1.12 Expert understanding of web based technologies; a working, through knowledge of html, Photoshop Illustrator, and/or other design related application

Education and Training

- 3.M.1.13 Trained in basic application development methods
- 3.M.1.14 Familiarity with web basics through college courses or other computer related experience
- 3.M.1.15 Bachelor's Degree
- 3.M.1.16 Under five (5) years of experience

N. Advanced Systems Engineer

General Purpose of Position

- 3.N.1.1 Applies principles, theories, and concepts, as well as expertise in related disciplines, to work activities and complex business systems
- 3.N.1.2 Contributes to the understanding of new principles and concepts
- 3.N.1.3 Leads systems development efforts that impact the Customer
- 3.N.1.4 Advises, counsels and mentors Customer and team members on technical issues
- 3.N.1.5 Improves strategic processes and direction, serves as a subject-matter expert
- 3.N.1.6 Transfers knowledge base across lines of business
- 3.N.1.7 Anticipates and resolves problems and advocates change

Major Duties and Responsibilities

- 3.N.1.8 Provides application programming/systems development and support for complex systems
- 3.N.1.9 Provides technical solutions for technology planning
- 3.N.1.10 Manages systems development efforts, including activities such as assigning tasks to co-workers, conducting project plan reviews, preparing systems development related documentation, and monitoring cost and resource estimates
- 3.N.1.11 Conducts post-development reviews and disseminates findings
- 3.N.1.12 Develops work breakdown structure for large systems development efforts
- 3.N.1.13 Establishes target dates and goals

- 3.N.1.14 Supports estimating, forecasting, budgeting, tracking, and control of economics
- 3.N.1.15 Develops and delivers presentations as a technical expert
- 3.N.1.16 Provides technical leadership for proposal efforts
- 3.N.1.17 Prepares cost models for new business opportunities
- 3.N.1.18 Plans and leads Customer requirements reviews
- 3.N.1.19 Applies Third Party products, services, and processes pertinent to the Customer base
- 3.N.1.20 Translates Customer requirements for Third Parties
- 3.N.1.21 Coaches others in improving programming techniques, methodologies, and deliverables
- 3.N.1.22 Facilitates analysis sessions across all levels of Customer
- 3.N.1.23 Evaluates and recommends testing tools
- 3.N.1.24 Mentors others in the configuration management process
- 3.N.1.25 Analyzes measurement results to identify improvements to work practices

Skills and Abilities

- 3.N.1.26 Is proficient in two or more programming languages
- 3.N.1.27 Applies business and industry knowledge to help anticipate the Customer's needs
- 3.N.1.28 Recommends and implements changes to Customer processes
- 3.N.1.29 Possesses knowledge of the Customer's industry
- 3.N.1.30 Recommends, tests, and evaluates new tools and hardware
- 3.N.1.31 Advocates and guides technology change
- 3.N.1.32 Evaluates the viability of the schedule and updates it as the project progresses
- 3.N.1.33 Defines and leads training sessions
- 3.N.1.34 Implements measurement processes, and uses metrics to plan and control projects
- 3.N.1.35 Demonstrates and advises on modeling techniques
- 3.N.1.36 Mentors team and Customer current technology and methods

Education and Training

- 3.N.1.37 Bachelor's Degree or equivalent experience
- 3.N.1.38 Four (4) plus years of experience or equivalent

O. Business Systems Analyst

Job Description

- 3.O.1.1 Establishes uses and supports integration and communications among, applications, databases and technology platforms
- 3.O.1.2 Uses and administers company technology practices, standards and procedures

- 3.O.1.3 Manages an inventory of technology related assets hardware, software, application systems, databases, licenses, products
- 3.O.1.4 Assists in the assessment and documentation of business opportunities, benefits, risks, and success factors of potential applications
- 3.O.1.5 Elicits and clearly defines and documents Customer needs and associated requirements
- 3.O.1.6 Analyzes a variety of work processes and associated document and information flow
- 3.O.1.7 Analyzes and documents logical relationships among the data, process or events
- 3.O.1.8 Defines and implements specific technical foundation for an application (software, data bases, and hardware)
- 3.O.1.9 Designs effective graphic user interface desktop workstation
- 3.O.1.10 Implements new or enhanced applications into a production environment
- 3.O.1.11 Delivers new or enhanced applications utilizing a variety of formal methodologies and disciplines
- 3.O.1.12 May guide and advise less experienced business systems analysts.

Job Qualifications

- 3.O.1.13 High level of sound logic and analytical ability difficult
- 3.O.1.14 Highly developed oral and written communications skills
- 3.O.1.15 High level of interpersonal skills to work effectively with others motivate employee and elicit work output
- 3.O.1.16 Ability to guide and advise less experienced business systems analysis personnel
- 3.O.1.17 Knowledge and understanding of Information Technology industry trends, directions and market experience; ability to relate them to own organization
- 3.O.1.18 Knowledge of architectural concepts, principles, and tools relevant to infrastructure, information, Applications, organizational structure, etc.
- 3.O.1.19 Knowledge of emerging technologies (new to company systems as well as those that are new to the information systems industry)
- 3.O.1.20 Knowledge of tools, techniques and good practices for protecting the integrity of corporate data and associated processing, company technology practices, standards and procedures
- 3.O.1.21 Familiarity with company's information architecture and information management methodologies
- 3.O.1.22 Familiarity with the existing and planned software technology and the global, regional and local software architecture and infrastructure components

Education and Experience

- 3.O.1.23 Bachelor's Degree and four (4) plus years' experience or equivalent.

P. Associate Business Process Engineer

Job Description

- 3.P.1.1 Identifies opportunities for business process improvement
- 3.P.1.2 Investigates and evaluates potential business process improvement solutions
- 3.P.1.3 Assists in defining business process improvement solutions while ensuring compliance with Customer IT standards
- 3.P.1.4 Participates in implementing business process improvement recommendations that increase the use of shared common data and facilitates common processes across departments
- 3.P.1.5 Aids other Customer process engineers to ensure integration of all processes
- 3.P.1.6 Assists in identifying IT cost reduction opportunities associated with IT projects and/or support services
- 3.P.1.7 Facilitates the definition of best in class business processes
- 3.P.1.8 Assists in the implementation of cross function and/or cross sector business processes
- 3.P.1.9 Incorporates a common process methodology in all re-engineering activity
- 3.P.1.10 Maintains common process implementation metrics
- 3.P.1.11 Supports the management of outsourced projects/outsourcer; ensures compliance to quality standards (cost, performance, time, defects)
- 3.P.1.12 Supports the prioritization of business requirements

Job Qualifications

- 3.P.1.13 Highly developed oral and written communications skills
- 3.P.1.14 High level of interpersonal skills to work effectively with others
- 3.P.1.15 Strong analytical ability
- 3.P.1.16 Creative problem solver in a team environment
- 3.P.1.17 Sound business and technical judgment to advise the company on the risks and benefits associated with specific projects
- 3.P.1.18 Familiarity with information systems and infrastructure in support of engineering, manufacturing, and general business processes
- 3.P.1.19 Knowledge and understanding of IT industry trends, directions and market experience; ability to relate them to organization
- 3.P.1.20 Knowledge of architectural concepts, principles and tools relevant to infrastructure, information, Applications, organizational structure, etc.
- 3.P.1.21 Ability to establish, use and support integration and communications among applications, databases, and technology platforms
- 3.P.1.22 Knowledge of activities, tasks, practices and tools associated with analysis of a variety of work processes and associated document and information flow

3.P.1.23 Knowledge of process for evaluation and selection of products, tools, services and infrastructure components in line with company's business needs and architectural principles

Education and Experience

3.P.1.24 Technical undergraduate degree in math, computer science, engineering, or related discipline with an information technology focus

3.P.1.25 Background in major complex, process improvement activities

3.P.1.26 Background in applying business process management techniques to re-engineer business processes

3.P.1.27 Minimum three (3) years of consulting experience

Q. Project Manager I / Test Leads

Job Description

3.Q.1.1 Applies advanced planning and scheduling techniques (WBS, OBS, CPM)

3.Q.1.2 Performs schedule variance analysis

3.Q.1.3 Presents project status to the project team

3.Q.1.4 Develops templates

3.Q.1.5 Facilitates plan development

3.Q.1.6 Able to provide project management training

3.Q.1.7 Develops and documents basic project management processes and procedures

3.Q.1.8 Provides resource requirement planning

3.Q.1.9 Identifies issues and recommends alternate solutions

3.Q.1.10 Perform small-scale project management needs assessments

3.Q.1.11 Uses Customer methodologies to develop project plans

3.Q.1.12 Skilled defining project scope and requirements with the Customer

3.Q.1.13 In the case of Test Leads, Performing complex functional, application, regression and performance testing

Job Qualifications

3.Q.1.14 Effective oral and written communication skills

3.Q.1.15 High level of interpersonal skills to work effectively and motivate team members

3.Q.1.16 High degree of professionalism and integrity

3.Q.1.17 Ability to understand and translate Customer business requirements

3.Q.1.18 Analytical and creative ability where problems are extremely complex

3.Q.1.19 Typically has knowledge of 3 or more technical skill sets

3.Q.1.20 Knowledge of client's environment/needs and ability

- 3.Q.1.21 Ability to adapt to changing priorities, procedures or assignments. Ability to work efficiently without compromising quality
- 3.Q.1.22 Experience leading and motivating teams
- 3.Q.1.23 Capable of gaining a detailed understanding of the system being supported
- 3.Q.1.24 In the case of Test Leads, thorough understanding of testing processes, expertise in commonly used testing tools and extensive experience with testing complex applications

Education and Experience

- 3.Q.1.25 Bachelor's degree and/or five (5) years' equivalent work experience
- 3.Q.1.26 Three to five (3 to 5) years of Project Management and/or business experience
- 3.Q.1.27 Minimum of three (3) years' experience in Project Management
- 3.Q.1.28 Minimum of two (2) years' experience with Project Management systems/applications
- 3.Q.1.29 In the case of Test Leads, minimum of one (1) year experience as a test lead

R. Database Analyst

Job Description

- 3.R.1.1 Assesses future information requirements to develop long-range comprehensive database plans
- 3.R.1.2 Develops policies and procedures designed to ensure the integrity of the database environment
- 3.R.1.3 Develops and maintains routines to facilitate database use
- 3.R.1.4 Coordinates and supports migration to new data management system software levels
- 3.R.1.5 Assures that appropriate database management software is available and effectively used
- 3.R.1.6 Determines, implements, and enhances standards on database security
- 3.R.1.7 Educates applications programmers about database concepts and efficient access techniques, and assists them in analysis and problem resolutions pertaining to database
- 3.R.1.8 Performs database performance monitoring and implements efficiency improvements
- 3.R.1.9 Designs and implements the procedures necessary to save and recover databases from hardware and software failures
- 3.R.1.10 Supervises the design and maintenance of database structures
- 3.R.1.11 Analyzes, designs, and implements databases
- 3.R.1.12 Determines database storage requirements
- 3.R.1.13 Develops and maintains data dictionary ensuring uniformity of definitions and sets standards for use of data dictionary
- 3.R.1.14 Establishes and controls necessary database security
- 3.R.1.15 Performs database performance monitoring and implements efficiency improvements

- 3.R.1.16 Develops and maintains database access and update procedures to ensure the proper control of the databases
- 3.R.1.17 Provides technical assistance to other systems personnel
- 3.R.1.18 Recommends and executes the procedures necessary to save, retrieve, and recover databases from hardware and software failures within established procedures

Job Qualifications

- 3.R.1.19 Knowledge of the principles, practices, and techniques of computer programming and systems design; of computer operations, systems, and procedures; of project control and cost estimating techniques; of computer programming languages; of data processing flowcharting techniques; of database structures and theories; of current database technologies; of data analysis techniques.
- 3.R.1.20 Ability to use data base access tools for application delivery
- 3.R.1.21 Strong familiarity with analysis, planning and management reporting functions
- 3.R.1.22 Well-developed oral and written communications skills
- 3.R.1.23 Strong teamwork and interpersonal skills
- 3.R.1.24 High level of analytical ability where problems are very unusual and extremely difficult

Education and Experience

- 3.R.1.25 Bachelor's Degree and four (4) plus years of experience or equivalent.

S. Programmer

Job Description

- 3.S.1.1 Knowledgeable about various SDLC methodologies and programming languages
- 3.S.1.2 Responsible for coding of modules, ensure code developed meets coding standards and meets the identified requirements
- 3.S.1.3 Helps in defining coding standards
- 3.S.1.4 Assists junior programmers with their tasks and provides necessary coaching and guidance
- 3.S.1.5 Responsible for designing, developing, troubleshooting, debugging, and implementing software code (such as HTML, CGI, and Javascripts) for a component of the website
- 3.S.1.6 Working with graphic designers and other members of a project team to develop the site concept, interface design, and architecture of the website
- 3.S.1.7 Responsible for the interface implementation

Job Qualifications

- 3.S.1.8 Shows capabilities of performing team leader functions
- 3.S.1.9 Develops and/or leads the development of prototypes
- 3.S.1.10 Familiar with data modeling design and database concepts
- 3.S.1.11 Familiarity with relational database technologies and capabilities
- 3.S.1.12 Software knowledge, such as: Microsoft Visual InterDev, Adobe PhotoShop, Macromedia Fireworks, Microsoft Gif Animator, etc.
- 3.S.1.13 Working knowledge with programming languages
- 3.S.1.14 Working knowledge of web technology standards

Education and Experience

- 3.S.1.15 Bachelor's Degree and four (4) plus years of programming experience or equivalent.

T. Senior Systems Engineer

Job Description

- 3.T.1.1 Leads and develops technical and business systems related activities of major significance to the Customer
- 3.T.1.2 Coaches and counsels project managers and Customer on technical solutions
- 3.T.1.3 Responsible for assisting in the business proposal process
- 3.T.1.4 Develops principles and concepts and innovative solutions for the Customer enterprise
- 3.T.1.5 Develops/maintains depth and breadth across lines of business
- 3.T.1.6 Regularly interacts with senior management/major Customer
- 3.T.1.7 Interactions normally involve complex situations and/or influencing and persuading other strategic level managers

Major Duties and Responsibilities

- 3.T.1.8 Supervises a group of consultants/analysts engaged in specialized activities & services
- 3.T.1.9 Sets technical direction for the project/application
- 3.T.1.10 Provides program/project leadership for Customer solutions
- 3.T.1.11 Engages in business development
- 3.T.1.12 Develops communication plans for projects based on a systems view
- 3.T.1.13 Teams with Customer to assess concerns/requirements and develops specific strategies
- 3.T.1.14 Integrates interrelated projects and manages projects
- 3.T.1.15 Leads technical planning process
- 3.T.1.16 Defines consistent project management standards and procedures across the organization
- 3.T.1.17 Employs consistent measurement techniques

- 3.T.1.18 Informs Customer about emerging technologies and business implications based on the project and their overall business
- 3.T.1.19 Develops intermediate and detailed schedules that support the high-level master schedule and understands the interrelationships among the various levels of schedules
- 3.T.1.20 Develops alternative proposed project plans to support new business opportunities
- 3.T.1.21 Develops project management deliverables required to support a request for proposal or quotation
- 3.T.1.22 Evaluates Customer business, technical architecture processes, and objectives using the business enterprise models
- 3.T.1.23 Leads in the application of the organizational change management process to facilitate a smooth Customer implementation

Skills and Abilities

- 3.T.1.24 Provides leadership and guidance to others when working with the Customer
- 3.T.1.25 Understands the Customer's industry and is familiar with related industries
- 3.T.1.26 Handles diverse, complex assignments concurrently
- 3.T.1.27 Reviews project plans prepared by others in the organization
- 3.T.1.28 Applies broad-based knowledge and experience to identify, evaluate and recommend new processes and tools
- 3.T.1.29 Recommends appropriate technology for project tool selection

Education and/or Experience

- 3.T.1.30 BA, BS, MS, MBA related degrees or equivalent experience
- 3.T.1.31 Bachelor's degree and at least three (3) years of consulting experience, plus expertise with highly complex systems

U. Project Manager II / Test Manager

Job Description

- 3.U.1.1 Responsible for project planning, project tracking, scope management, change control management, risk management, and quality assurance of the development project team.
- 3.U.1.2 Develop complex program Work Breakdown Structure (WBS)
- 3.U.1.3 Establishes organization-wide project management strategies
- 3.U.1.4 Conducts complex program and project management assessments
- 3.U.1.5 Exhibits strong leadership skills and leads project teams
- 3.U.1.6 Manages the integration of project management within an organization resulting in culture change
- 3.U.1.7 Develops project management training classes and programs
- 3.U.1.8 Identifies new business opportunities

- 3.U.1.9 Acquires Customer product and business process knowledge from domain experts and use the information in every aspect of leading analysis, design and implementation efforts.
- 3.U.1.10 Specifies requirements, scope level of effort, assess team member strengths and give work assignments with delivery dates in mind

Job Qualifications

- 3.U.1.11 Proficient written and oral communication skills
- 3.U.1.12 Identifies and recommends project management tools
- 3.U.1.13 Identifies risk, provides analysis and contingency planning
- 3.U.1.14 Creates detailed plans for consulting projects
- 3.U.1.15 Writes design documents and specifications
- 3.U.1.16 Technical mentoring and leadership skills
- 3.U.1.17 Facilitates requirements definition sessions
- 3.U.1.18 In the case of test manager, should have managed complex testing engagements

Education and Experience

- 3.U.1.19 Bachelor's degree and at least three (3) years of experience in project management
- 3.U.1.20 PMI Project Management Professional (PMP) certification preferred
- 3.U.1.21 Minimum of three (3) years' experience with Project Management Systems/Applications
- 3.U.1.22 Minimum of three (3) years' experience in information technology
- 3.U.1.23 In the case of test manager, minimum one (1) year of experience managing testing engagement

V. Business Process Engineer

Job Description

- 3.V.1.1 Directs/coordinates/supervises a group of employees engaged in consulting activities
- 3.V.1.2 Identifies opportunities for business process improvement
- 3.V.1.3 Investigates and evaluates potential business process improvement solutions
- 3.V.1.4 Assists in defining business process improvement solutions while ensuring compliance with Customer's IT standards
- 3.V.1.5 Participates in implementing business process improvement recommendations that increase the use of shared common data and facilitates common processes across departments
- 3.V.1.6 Works with other Customer process engineers to ensure integration of all processes
- 3.V.1.7 Assists in identifying IT cost reduction opportunities associated with IT projects and/or support services
- 3.V.1.8 Communicates to all business process stakeholders

- 3.V.1.9 Consults regarding business process engineering, process measurements, change management, education and training
- 3.V.1.10 Facilitates the definition of best in class business processes
- 3.V.1.11 Assists in the implementation of cross function and/or cross sector business processes
- 3.V.1.12 Incorporates a common process methodology in all re-engineering activity
- 3.V.1.13 Maintains common process implementation metrics
- 3.V.1.14 Assists in the management of outsourced projects/outsourcer; ensures compliance to quality standards (cost, performance, time, and defects)

Job Qualifications

- 3.V.1.15 Highly developed oral and written communications skills
- 3.V.1.16 Very high level of interpersonal skills to work effectively with others. Must have ability to bring large, diverse groups to consensus
- 3.V.1.17 Strong analytical ability
- 3.V.1.18 Creative problem solver in a team environment
- 3.V.1.19 Sound business and technical judgment to advise the company on the risks and benefits associated with specific projects
- 3.V.1.20 Familiarity with information systems and infrastructure in support of engineering, manufacturing, and general business processes
- 3.V.1.21 Knowledge and understanding of IT industry trends, directions and market experience; ability to relate them to organization
- 3.V.1.22 Knowledge of architectural concepts, principles and tools relevant to infrastructure, information, Applications, organizational structure, etc
- 3.V.1.23 Ability to establish, use and support integration and communications among applications, databases and technology platforms
- 3.V.1.24 Knowledge of activities, tasks, practices and tools associated with analysis of a variety of work processes and associated document and information flow
- 3.V.1.25 Knowledge of process for evaluation and selection of products, tools, services and infrastructure components in line with company's business needs and architectural principles

Education and Experience

- 3.V.1.26 Advanced degree with at least five (5) years of consulting experience, or a bachelor's degree and at least eight (8) years consulting experience
- 3.V.1.27 Minimum of two (2) to three (3) years of IT experience and participation in major complex, process improvement activities
- 3.V.1.28 Background in applying business process management techniques to re-engineer business processes

3.V.1.29 MBA or advanced degree in MIS or Computer Science preferred

W. Web Master

Job Description

- 3.W.1.1 Maintains web systems, messaging and other distributed web systems
- 3.W.1.2 Responsible for communication between legacy, development and production servers
- 3.W.1.3 Performs usage monitoring and reporting
- 3.W.1.4 Implements code/change management policies and procedures
- 3.W.1.5 Provides construction, testing, implementation, and operations of web infrastructure systems based on defined technical architectures and solutions
- 3.W.1.6 Assist in the evaluation and testing of hardware, software, and network configurations based on Customer needs
- 3.W.1.7 Identifies, analyzes, and devises solutions to infrastructure system problems
- 3.W.1.8 Establish and maintain security and integrity standards and controls
- 3.W.1.9 Participates in web infrastructure implementations, upgrades, and conversions
- 3.W.1.10 Monitors web server load balancing and fault tolerance
- 3.W.1.11 Applies operational knowledge of web standards, web software and web applications framework

Job Qualifications

- 3.W.1.12 Experience with web based standards and network technologies
- 3.W.1.13 Experience with maintenance of both legacy client servers and web servers
- 3.W.1.14 Experience in statistical web tools
- 3.W.1.15 Hardware knowledge: Cisco Routers, Cisco LocalDirector, Wintel servers, AS400 based hardware, Cisco switches, etc
- 3.W.1.16 Programming language familiarity: C, Perl, Visual Basic, CFML, SQL, etc.
- 3.W.1.17 Expert understanding of web based technologies
- 3.W.1.18 A working, thorough knowledge of HTML & XML, PhotoShop, Illustrator, and/or other design related applications, etc.

Education and Experience:

- 3.W.1.19 Associate's degree and three (3) plus years of experience with web based information management

X. Web Security Administrator

Job Description

- 3.X.1.1 Under limited supervision, performs all procedures necessary to ensure the safety of the organization's website and transactions across the internet
- 3.X.1.2 Applies Internet firewall technologies to maintain security
- 3.X.1.3 Ensures that the user community understands and adheres to necessary procedures to maintain security

Job Qualifications

- 3.X.1.4 Excellent planning skills
- 3.X.1.5 Expert knowledge of distributed system security software and web based technology
- 3.X.1.6 Expert knowledge of encryption, firewall and access control technology and software

Education and Experience:

- 3.X.1.7 Associate's degree and three (3) plus years' experience or equivalent

Y. Web Software Developer

Job Description

- 3.Y.1.1 Designs, develops, troubleshoots, debugs, and implements software code (such as HTML, XML, CGI, Javascripts, etc) for a component of the website
- 3.Y.1.2 Works with graphic designers and other members of a project team to develop the site concept, interface design, and architecture of the website
- 3.Y.1.3 Responsible for the interface implementation
- 3.Y.1.4 Complex knowledge and utilization of one (1) or more word processing tools

Job Qualifications

- 3.Y.1.5 Strong navigation and site design skills
- 3.Y.1.6 Expert understanding of web based technologies

Education and Experience

- 3.Y.1.7 Bachelor's degree in computer science and two (2) years of developmental experience in web based languages.

Z. Senior Business Systems Analyst

Job Description

- 3.Z.1.1 Manages the integration and communications among applications, databases and technology platforms
- 3.Z.1.2 Administers company technology practices, standards and procedures
- 3.Z.1.3 Manages an inventory of technology related assets hardware, software, application systems, databases, licenses, products
- 3.Z.1.4 Makes decisions based on documented business opportunities, benefits, risks, and success factors of potential applications
- 3.Z.1.5 Has budget to make decisions based on documented Customer needs and associated requirements
- 3.Z.1.6 May manage a portfolio of developments with implication to cost reduction initiatives
- 3.Z.1.7 Analyzes a variety of work processes and associated document and information flow for strategic recommendation to leadership
- 3.Z.1.8 Oversees group that defines and implements new or enhanced applications into a production environment
- 3.Z.1.9 Manages Third Party relationships with software integrators

Job Qualifications

- 3.Z.1.10 Extremely high level of sound logic and analytical ability where problems are very unusual and difficult
- 3.Z.1.11 Highly developed oral and written communication skills
- 3.Z.1.12 Very high level of interpersonal skills to work effectively with others, motivates employees, and elicits work output
- 3.Z.1.13 Ability to lead, manage, plan, and direct the work of business systems analysis personnel
- 3.Z.1.14 Knowledge and understanding of Information Technology industry trends, directions and market experience; ability to relate them to own organization
- 3.Z.1.15 Knowledge of architectural concepts, principles, and tools relevant to infrastructure, information, Applications, organizational structure, etc
- 3.Z.1.16 Familiarity with company's information architecture and information management methodologies

Education and Experience

3.Z.1.17 Advanced degree with at least five (5) years of consulting experience, or a bachelor's degree and at least eight (8) years of consulting experience, plus expertise in complex systems.

3.Z.1.18 Training in college level computer systems preferred

3.Z.1.19 MBA or equivalent training preferred

3.Z.1.20 Project Management Certification preferred

AA. Infrastructure Architect

Job Description

3.AA.1.1 Ensures implementation of hardware and software meets the company's technology infrastructure design and architecture

- 3.AA.1.2 Ensure Customer's infrastructure architecture for wide area, campus, and local area networks is adhered to
- 3.AA.1.3 Defines requirements for products that support applications and the infrastructure consistent with Customer provided guidelines
- 3.AA.1.4 Manages process to ensure product release, applications, and corporate block point cycles are synchronized
- 3.AA.1.5 Provides interface for strategy and direction with technology providers
- 3.AA.1.6 Evaluates emerging technologies and standards for impact on Customer
- 3.AA.1.7 Plans and executes software and hardware platform changes with minimal disruption in service to the Customer
- 3.AA.1.8 Defines performance metrics and measurement tools
- 3.AA.1.9 Manages network management architecture activities
- 3.AA.1.10 Performs technology benchmarking
- 3.AA.1.11 Follows corporate level guideline documentation and provides input on their upkeep

Skills and Abilities

- 3.AA.1.12 Well-developed oral and written communications skills
- 3.AA.1.13 Strong teamwork and interpersonal skills
- 3.AA.1.14 Demonstrated ability to work independently and with others
- 3.AA.1.15 High level of creativity and innovation in problem solving
- 3.AA.1.16 Extremely high level of analytical ability where problems are very unusual and extremely difficult
- 3.AA.1.17 Understanding of benchmarking processes and techniques
- 3.AA.1.18 Ability to effectively manage changes to the production environment and technology based assets of the project (i.e. applications software, production databases, operating systems hardware and software, etc.)

Education and/or Training

3.AA.1.19 Undergraduate degree required in math, computer science, engineering, or related discipline with an information technology focus (preferred)

3.AA.1.20 MBA or advanced degree in MIS or Computer Science preferred

BB. Database Administrator

Job Description

3.BB.1.1 Assesses future information requirements to develop long-range, comprehensive database plans

3.BB.1.2 Develops policies and procedures designed to ensure the integrity of the database environment

3.BB.1.3 Develops and maintains routines to facilitate database use

3.BB.1.4 Keeps informed on latest developments in the database management field

3.BB.1.5 Plans and coordinates migration to new data management system software levels

3.BB.1.6 Assures that appropriate database management software is available and effectively used

3.BB.1.7 Determines, implements, and enhances standards on database security

3.BB.1.8 Promotes and recommends appropriate database software for new application systems

3.BB.1.9 Educates applications programmers about database concepts and efficient access techniques, and assists them in analysis and problem resolutions pertaining to database

3.BB.1.10 Performs database performance monitoring and implements efficiency improvements

3.BB.1.11 Designs or supervises the designing of the procedures necessary to save and recover databases from hardware and software failures

3.BB.1.12 Supervises the design and maintenance of database structures

3.BB.1.13 May supervise or train staff

3.BB.1.14 Performs related work as assigned

Job Qualifications

- 3.BB.1.15 Strong knowledge of database management systems, as well as data warehouse management and decision support tools
- 3.BB.1.16 Extensive experience in the development, implementation and maintenance of data warehouses and data marts is desired
- 3.BB.1.17 Ability to use data base access tools for application delivery
- 3.BB.1.18 Strong familiarity with analysis, planning and management reporting functions
- 3.BB.1.19 Well-developed oral and written communications skills
- 3.BB.1.20 Demonstrated leadership skills
- 3.BB.1.21 Strong teamwork and interpersonal skills
- 3.BB.1.22 Demonstrated ability to work independently and with others
- 3.BB.1.23 High level of creativity and innovation in problem solving
- 3.BB.1.24 Extremely high level of analytical ability where problems are very unusual and extremely difficult
- 3.BB.1.25 Understanding of benchmarking processes and techniques
- 3.BB.1.26 Very high level of interpersonal skills to work effectively with others, motivate employees, and elicit work output

Education and Experience

- 3.BB.1.27 Undergraduate degree required in math, computer science, engineering, or related discipline with an information technology focus (preferred)
- 3.BB.1.28 MBA or advanced degree in MIS or Computer Science preferred
- 3.BB.1.29 Minimum ten (10) years of experience

CC. Project Manager III/Test Program Manager

Job Description

- 3.CC.1.1 Responsible for program oversight, planning, program tracking, scope management, change control management, risk management, and quality assurance of the development project team
- 3.CC.1.2 Assist in development and support of the vision and business objectives of the organization
- 3.CC.1.3 Direct the activities of resources in line with business objectives of the organization
- 3.CC.1.4 Ensure quality and timely delivery of critical path products and services
- 3.CC.1.5 Establish and maintain quality metrics and guidelines
- 3.CC.1.6 Implement process and system improvements including integration with other functional areas
- 3.CC.1.7 Translate organization's business requirements into effective business solutions

Job Qualifications

- 3.CC.1.8 Develops and maintains long-term relationships with strategic Customer and industry leaders
- 3.CC.1.9 Adept at the development of schedule, cost, and risk management strategies
- 3.CC.1.10 Experienced implementing project management within various Customer organizations and environments
- 3.CC.1.11 In the case Test Program Manager, should have managed complex testing engagements

Education and Experience

- 3.CC.1.12 Individual must have a bachelor’s degree and at least twelve (12) years of experience and experience in implementing global projects, OR
- 3.CC.1.13 An advanced degree with at least ten (10) years of consulting experience and experience in implementing global projects in IT industry-
- 3.CC.1.14 PMI Project Management Professional (PMP) certification preferred
- 3.CC.1.15 Minimum of seven (7) years of business/industry knowledge
- 3.CC.1.16 Minimum of five (5) years of experience with Project Management systems/Applications
- 3.CC.1.17 Minimum of five (5) years of experience in Information Technology

DD. Senior Business Process Engineer

Job Description

- 3.DD.1.1 Identifies opportunities for business process improvement
- 3.DD.1.2 Drives business process innovation
- 3.DD.1.3 Investigates and evaluates potential business process improvement solutions
- 3.DD.1.4 Justifies expenditures in support of business process improvement solutions
- 3.DD.1.5 Defines business process improvement solutions while ensuring compliance with Customer IT standards
- 3.DD.1.6 Directs and implements business process improvement recommendations that increase the use of shared common data and facilitates common processes departments
- 3.DD.1.7 Works with process engineers to ensure integration of all processes
- 3.DD.1.8 Identifies IT cost reduction opportunities associated with IT projects and/or support services
- 3.DD.1.9 Communicates to all business process stakeholders
- 3.DD.1.10 Consults regarding business process engineering, process measurements, change management, education and training
- 3.DD.1.11 Facilitates the definition of best in class business processes

- 3.DD.1.12 Assists in the implementation of cross function and/or cross sector business processes
- 3.DD.1.13 Incorporates a common process methodology in all re-engineering activity
- 3.DD.1.14 Develops common process implementation metrics
- 3.DD.1.15 Directs the management of outsourced projects/outsourcer; ensures compliance to quality standards (cost, performance, time, and defects)

Job Qualifications

- 3.DD.1.16 Highly developed oral and written communications skills
- 3.DD.1.17 Very high level of interpersonal skills to work effectively with others. Must have ability to bring large, diverse groups to consensus
- 3.DD.1.18 Demonstrated logic and analytical ability
- 3.DD.1.19 High level of creativity and innovation in problem solving in a team environment
- 3.DD.1.20 Seasoned business and technical judgment to advise the company on the risks and benefits associated with specific projects
- 3.DD.1.21 Familiarity with information systems and infrastructure in support of engineering, manufacturing, and general business processes
- 3.DD.1.22 Knowledge and understanding of IT industry trends, directions and market experience; ability to relate them to organization
- 3.DD.1.23 Knowledge of architectural concepts, principles and tools relevant to infrastructure, information, Applications, organizational structure, etc
- 3.DD.1.24 Knowledge of emerging technologies (new to company systems as well as those that are new to the information systems industry)
- 3.DD.1.25 Ability to establish, use and support integration and communications among applications, databases and technology platforms
- 3.DD.1.26 Knowledge of activities, tasks, practices and tools associated with analysis of a variety of work processes and associated document and information flow
- 3.DD.1.27 Knowledge of process for evaluation and selection of products, tools, services and infrastructure components in line with company's business needs and architectural principles

Education and Experience

- 3.DD.1.28 Advanced degree with at least six (6) years' consulting experience, or a bachelor's degree and at least eight (8) years' consulting experience, plus expertise in highly complex system(s).

EE.Data Analyst

Job Description

- 3.EE.1.1 Consults with internal and external customers to identify user needs

- 3.EE.1.2 Analyzes data using standard statistical tools, methods, and techniques
- 3.EE.1.3 Identifies data gaps, errors, anomalies, inconsistencies, and redundancies by analyzing the content, structure, and relationships within data
- 3.EE.1.4 Identifies and interprets data patterns and trends and assesses data quality
- 3.EE.1.5 Cleans and prunes data to discard irrelevant information
- 3.EE.1.6 Prepares concise, comprehensive technical reports to present and interpret data, identify alternatives, and make and justify recommendations on data revisions

Job Qualifications

- 3.EE.1.7 Knowledge of statistics and analyzing data sets
- 3.EE.1.8 Knowledge of running queries, report writing, and presenting findings
- 3.EE.1.9 Knowledge of data models, database design development, data mining, and segmentation techniques
- 3.EE.1.10 Knowledge of record keeping, including security procedures for handling, protecting and distribution confidential data

Education and Experience

- 3.EE.1.11 Experience in data analysis, research, compilation, and/or reporting work.
- 3.EE.1.12 Graduation from an accredited four-year college or university with major coursework in data science, business analytics, computer science, computer information systems, management information systems, accounting, finance, mathematics, statistics, economics, or a related field is generally preferred.

FF. Application Architect

Job Description

- 3.FF.1.1 Responsible for acting as a recognized expert in translating operational business needs through developing and implementing the information technology architecture and design for a system, with specialty in a complex system(s).
- 3.FF.1.2 Developing physical system architecture that provides the foundation for design, construction, testing, and deployment
- 3.FF.1.3 Utilized Customer provided architecture guidelines and strategies to transform logical models into physical architectures and designs
- 3.FF.1.4 Designing and addressing key architecture considerations for the system
- 3.FF.1.5 Developing physical models that balance and integrate the data, processing, and technology aspects of the architecture
- 3.FF.1.6 Resolving issues regarding technology components responsible for performing functional capabilities, or determining how technologies will communicate when responsibility must be shared across technologies
- 3.FF.1.7 Publishing, updating and ensuring that the architecture models meet business requirements and architecture standards.

Job Qualifications

- 3.FF.1.8 Familiar with systems development processes and methodologies
- 3.FF.1.9 Ability to lead and facilitate cross-functional, multi-Service Provider work teams
- 3.FF.1.10 Familiarity with relational database technologies and capabilities
- 3.FF.1.11 Knowledge of the company's industry group, trends, directions, major issues, regulatory considerations and trendsetters
- 3.FF.1.12 Ability to justify project, equipment or staffing expenditures by identifying, cost, benefits and associated risks
- 3.FF.1.13 Knowledge of internet/intranet based opportunities and challenges
- 3.FF.1.14 Ability to work with others in a constructive and collaborative manner
- 3.FF.1.15 Ability to think critically; to recognize and anticipate a problem (technical, operational, process, organizational) and to identify and implement the best solution in a timely manner
- 3.FF.1.16 Excellent written and oral presentation skills
- 3.FF.1.17 Knowledge and understanding of marketplace experience, developments and trends related to the Information Technology function
- 3.FF.1.18 Knowledge of emerging technologies (new to company systems as well as those that are new to the information systems industry)
- 3.FF.1.19 Familiarity with company's information architecture and information management methodologies
- 3.FF.1.20 Experience with scalability and performance issues related data bases

Education and Experience

- 3.FF.1.21 Undergraduate degree required in math, computer science, engineering, or related discipline with an information technology focus (preferred)
- 3.FF.1.22 MBA or advanced degree in MIS or computer science preferred
- 3.FF.1.23 Industry Certifications in an area of expertise preferred

GG. Senior Manager

Job Description

- 3.GG.1.1 Identifies and communicates opportunities for business process improvement
- 3.GG.1.2 Drives business process innovation
- 3.GG.1.3 Investigates and evaluates potential business process improvement solutions
- 3.GG.1.4 Justifies expenditures in support of business process improvement solutions
- 3.GG.1.5 Defines business process improvement solutions while ensuring compliance with Customer IT standards

- 3.GG.1.6 Directs and implements business process improvement recommendations that increase the use of shared common data and facilitates common processes departments
- 3.GG.1.7 Identifies IT cost reduction opportunities associated with IT projects and/or support services
- 3.GG.1.8 Communicates to all business process stakeholders
- 3.GG.1.9 Consults regarding business process engineering, process measurements, change management, education and training
- 3.GG.1.10 Facilitates the definition of best in class business processes
- 3.GG.1.11 Assists in the implementation of cross function and/or cross sector business processes
- 3.GG.1.12 Incorporates a common process methodology in all re engineering activity
- 3.GG.1.13 Directs the management of outsourced projects/outsourcer; ensures compliance to quality standards (cost, performance, time, and defects)

Job Qualifications

- 3.GG.1.14 Highly developed oral and written communications skills
- 3.GG.1.15 Very high level of interpersonal skills to work effectively with others. Must have ability to bring large, diverse groups to consensus
- 3.GG.1.16 Demonstrated logic and analytical ability
- 3.GG.1.17 High level of creativity and innovation in problem solving in a team environment
- 3.GG.1.18 Seasoned business and technical judgment to advise the company on the risks and benefits associated with specific projects
- 3.GG.1.19 Familiarity with information systems and infrastructure in support of engineering, manufacturing, and general business processes
- 3.GG.1.20 Knowledge and understanding of IT industry trends, directions and market experience; ability to relate them to organization
- 3.GG.1.21 Knowledge of architectural concepts, principles and tools relevant to infrastructure, information, Applications, organizational structure, etc
- 3.GG.1.22 Knowledge of emerging technologies (new to company systems as well as those that are new to the information systems industry)
- 3.GG.1.23 Ability to establish, use and support integration and communications among applications, databases and technology platforms
- 3.GG.1.24 Knowledge of activities, tasks, practices and tools associated with analysis of a variety of work processes and associated document and information flow
- 3.GG.1.25 Knowledge of process for evaluation and selection of products, tools, services and infrastructure components in line with company's business needs and architectural principles

Education and Experience

- 3.GG.1.26 Advanced degree with at least eight (8) years of consulting experience, or a bachelor's degree and at least ten (10) years' consulting experience, and experience in implementing global projects in the retail and or healthcare industry

HH. Senior Web Architect

Job Description

- 3.HH.1.1 Analyzes Customer business objectives, processes and architecture and recommends strategic architecture direction consistent with Customer provided guidelines.
- 3.HH.1.2 Provides direction on business object and component framework architecture
- 3.HH.1.3 Provides top level strategic input in relation to on-line implementation, industry, and market analysis
- 3.HH.1.4 Provides framework and assists in business impact analysis and business case development
- 3.HH.1.5 Provides framework and assists in product selections
- 3.HH.1.6 Provides enterprise architecture guidance and relations in a multi-Service Provider environment
- 3.HH.1.7 Applies experience with electronic commerce (Internet based business) and impact of the Internet on traditional business

Job Qualifications

- 3.HH.1.8 Demonstrated experience with market analysis, ROI, ROA, electronic commerce, (Internet based business) and impact of the Internet on traditional business
- 3.HH.1.9 Knowledge of retail and/or healthcare industry, supply chain, and consumer issues and trends
- 3.HH.1.10 Experience defining business issues and opportunities as well as developing on-line business strategies, plans, and processes
- 3.HH.1.11 Understanding of business object and component framework architecture
- 3.HH.1.12 Experience leading and facilitating web strategy and planning
- 3.HH.1.13 At least two enterprise enabling projects
- 3.HH.1.14 End-to-end comprehension of web standards, software and web applications framework.

Education and Experience

- 3.HH.1.15 Bachelor's degree and six (6) plus years of experience or equivalent
- 3.HH.1.16 Four (4) years of experience developing technology/creative business cases
- 3.HH.1.17 Two (2) years of experience in online business case analysis and development

II. Data Engineer

Job Description

- 3.II.1.1 Develop, construct, test and maintain architectures, such as databases and large-scale processing systems
- 3.II.1.2 Recommend and implement mechanisms to improve data reliability, efficiency, and quality
- 3.II.1.3 Enable the unification of disparate data sets through various languages and tools in preparation for information correlation by data scientists
- 3.II.1.4 Provide effective data architectures to support the needs of data scientists, stakeholders and business environments
- 3.II.1.5 Enable integration capabilities for external tools to perform ingestion, compilation, analytics and visualization

Job Qualifications

- 3.II.1.6 Ability to define and manage data flows and data pipelines with related scripting knowledge for importing
- 3.II.1.7 Strong data modeling capabilities
- 3.II.1.8 Ability to identify and implement the most appropriate data management system
- 3.II.1.9 Provide high quality clean and usable data from data sets of varying states of disorder
- 3.II.1.10 Data/Query validation proficiency
- 3.II.1.11 Demonstrate a wide range of technical competencies including: SAP, Oracle, Cassandra, MySQL, Redis, Riak, PostgreSQL, MongoDB, neo4j, Hive, and Sqoop

Education and Experience

- 3.II.1.12 Bachelor's degree in statistics, math, computer science, or engineering; and
- 3.II.1.13 Five (5) to seven (7) years of Data Engineering or related technical experience.

JJ. Senior Application Architect**Job Description**

- 3.JJ.1.1 Assess business requirements
- 3.JJ.1.2 Analyze and design technology approaches and develop global architectures and technology solutions.
- 3.JJ.1.3 Research, assess, analyze and recommend Customer Enterprise Architecture standards and ensure their use (ie. web search engines, trend analysis and forecasting tools, content management systems, document management systems, application development tools, business and object modeling tools, application servers)
- 3.JJ.1.4 Provides interface for strategy and direction with technology providers
- 3.JJ.1.5 Evaluates emerging technologies and standards for impact on Customer
- 3.JJ.1.6 Performs the role of technical lead for large application development projects

- 3.JJ.1.7 Manage iterative software development processes with a focus on application and infrastructure architecture
- 3.JJ.1.8 Provide guidance and technical direction to team members, including training materials and presentations on relevant products and/or technologies consistent with Customer provided guidelines
- 3.JJ.1.9 Review, recommend, and provide corrective action plans as required from a technical perspective
- 3.JJ.1.10 Review and approve Service Provider designed technical solutions against defined Customer standards

Job Qualifications

- 3.JJ.1.11 Knowledge of the company's industry group, trends, directions, major issues, and regulatory considerations preferred
- 3.JJ.1.12 Ability to justify project, equipment or staffing expenditures by identifying cost, benefits and associated risks
- 3.JJ.1.13 Knowledge of internet/intranet based opportunities and challenges
- 3.JJ.1.14 Competency in multiple internet/intranet technologies
- 3.JJ.1.15 Ability to work with others in a constructive and collaborative manner
- 3.JJ.1.16 Ability to think critically; to recognize and anticipate a problem (technical, operational, process, organizational) and to identify and implement the best solution in a timely manner
- 3.JJ.1.17 Excellent written and oral presentation skills
- 3.JJ.1.18 Ability to work effectively as part of a team
- 3.JJ.1.19 Ability to lead multiple Service Provider teams to a technical solution
- 3.JJ.1.20 Knowledge and understanding of marketplace experience, developments and trends related to the Information Technology function
- 3.JJ.1.21 Knowledge of mainstream technologies and architectures
- 3.JJ.1.22 Knowledge of emerging technologies (new to company systems as well as those that are new to the information systems industry)
- 3.JJ.1.23 Competency in core technologies, including open standards, database, and integration technologies
- 3.JJ.1.24 Competency in one or more emerging technologies
- 3.JJ.1.25 Familiarity with company's information architecture and information management methodologies

Education and Experience

- 3.JJ.1.26 Advanced degree with at least ten (10) years of consulting experience, or a bachelor's degree and at least twelve (12) years consulting experience, and experience in implementing global projects in the retail and/or healthcare industries

KK. Creative Director**Job Description**

- 3.KK.1.1 Creative direction and management of Site and/or Authorized User interface
- 3.KK.1.2 Performing creative planning, developing, strategy, and execution on projects
- 3.KK.1.3 Overseeing graphic production and brand character
- 3.KK.1.4 Developing and working with Customer to portray appropriate design of the project to communicate with target audience
- 3.KK.1.5 Provides creative direction, management, workflow and project plan development
- 3.KK.1.6 Coordinates the overall creative direction of the web site in conjunction with the Customer's business and technical objectives
- 3.KK.1.7 Ensures adherence to project metrics for tracking and improvement

Job Qualifications

- 3.KK.1.8 Is proficient in multimedia tools and techniques as well as in traditional creative techniques
- 3.KK.1.9 Understands web based capabilities and limitations
- 3.KK.1.10 Has demonstrated experience in project and departmental management

Education and Experience

- 3.KK.1.11 Bachelor of Arts degree or higher in fine arts
- 3.KK.1.12 Software knowledge: Adobe PhotoShop, Adobe Illustrator, Adobe Acrobat, Adobe Premiere, Adobe After Effects, Macromedia Fireworks, QuarkXpress/ PageMaker, and project management software (MS Project)

Experience

- 3.KK.1.13 Four (4) years in creative management and project development
- 3.KK.1.14 Two (2) years in web based creative project management

LL. Data Scientist**Job Description**

- 3.LL.1.1 Identifying the data-analytics problems that offer the greatest opportunities to the organization
- 3.LL.1.2 Determining the correct data sets and variables
- 3.LL.1.3 Collecting large sets of structured and unstructured data from disparate sources
- 3.LL.1.4 Cleaning and validating the data to ensure accuracy, completeness, and uniformity
- 3.LL.1.5 Devising and applying models and algorithms to mine the stores of big data
- 3.LL.1.6 Analyzing the data to identify patterns and trends
- 3.LL.1.7 Interpreting the data to discover solutions and opportunities

3.LL.1.8 Communicating findings to stakeholders using visualization and other means

Job Qualifications

3.LL.1.9 Utilize analytical, statistical, and programming skills to collect, analyze, and interpret large data sets

3.LL.1.10 Use related information to develop data-driven solutions to difficult business challenges

3.LL.1.11 Understand and implement statistical models

3.LL.1.12 Data/Query Validation proficiency

3.LL.1.13 Demonstrate a wide range of technical competencies including: statistics and machine learning, coding languages, databases, machine learning, and reporting technologies

Education and Experience

3.LL.1.14 Bachelor's degree in statistics, math, computer science, or economics or similar

3.LL.1.15 Five (5) to seven (7) years of Data Science or related technical experience.

MM. Business Consultant

Job Description

3.MM.1.1 Devise approach to solving complex problems.

3.MM.1.2 Manage conflicting stakeholder expectations.

3.MM.1.3 Manage project scope

3.MM.1.4 Refocus efforts as issues/problems dynamically change in Customer environment

3.MM.1.5 Design and conduct workshops

3.MM.1.6 Identify the appropriate approach, tools and methodologies to perform analysis and draw conclusions

3.MM.1.7 Full leadership for managing delegated end-to-end creation of project deliverables

3.MM.1.8 Help team to develop new insights from the analysis

3.MM.1.9 Prioritize the recommendations based on ease of implementation and impact

3.MM.1.10 Provide ongoing updates to Customer on engagement status

3.MM.1.11 Solicit feedback on interim deliverables

3.MM.1.12 Manage project escalations

3.MM.1.13 Manage engagement financials - revenue and profitability

3.MM.1.14 Provide subject matter expertise on a specific area within a domain/technology/service

3.MM.1.15 Exhibit high level of skills in data aggregation and analysis leading to development of value proposition in solution development

Job Qualifications

- 3.MM.1.16 Expertise in communications domain
- 3.MM.1.17 Expertise in identifying and defining problems, analysis and developing recommendations
- 3.MM.1.18 Extensive experience managing consulting engagements
- 3.MM.1.19 Specialist in managing the engagement financials & operations
- 3.MM.1.20 High level of ethics, judgment, communication and people skills

Education and Experience

- 3.MM.1.21 Three (3) to six (6) years of management and technology consulting experience

NN. Business Intelligence Analyst

Job Description

- 3.NN.1.1 Use comprehension of data gathering and analytics to develop knowledge with relevant business intelligence
- 3.NN.1.2 Enable complex reporting based on existing data
- 3.NN.1.3 Use resulting information to identify and develop opportunities for new services and solutions
- 3.NN.1.4 Interact with business leadership to help guide the growth and maturity of business capabilities
- 3.NN.1.5 Adapt the presentation of data to most effectively communicate the pointed value and change for business improvement

Job Qualifications

- 3.NN.1.6 Highly developed oral and written communication skills
- 3.NN.1.7 Very high level of interpersonal skills to work effectively with others, motivates employees, and elicits work output
- 3.NN.1.8 Ability to lead, manage, plan, and direct the work of business systems analysis personnel
- 3.NN.1.9 Understanding of statistical models
- 3.NN.1.10 Data/Query Validation proficiency
- 3.NN.1.11 Ability to quickly develop a deep understanding of multiple, major components of the business enterprise
- 3.NN.1.12 Ability to direct and coordinate the development and implementation of process-based solutions that cross organizational lines
- 3.NN.1.13 Creates business case for investments in process and technological enhancements. Sets clear explanations for the integration and alignment of technology and business functions, focusing on the strategic value provided

Education and Experience

- 3.NN.1.14 Bachelor's degree in business, management, accounting, economics, statistics, information science or similar. Master's degree in business administration (MBA) preferred.
- 3.NN.1.15 Five (5) to seven (7) years of Business Analysis or related technical experience.

OO. Senior Business Consultant

Job Description

- 3.OO.1.1 Gain deep insights into Customer issues and potential risks based on subject matter expertise.
- 3.OO.1.2 Devise approach to solving complex problems.
- 3.OO.1.3 Exhibit intellectual leadership to the problem-solving effort
- 3.OO.1.4 Manage conflicting stakeholder expectations
- 3.OO.1.5 Leverage experience/ learning from similar engagements.
- 3.OO.1.6 Administer and monitor client feedback survey.
- 3.OO.1.7 Represent Service Provider in external forums
- 3.OO.1.8 Champion Knowledge asset creation within the Consulting organization by creating a participative environment.
- 3.OO.1.9 Forge Partnerships with external sources for Knowledge acquisition
- 3.OO.1.10 Provide thought leadership in project
- 3.OO.1.11 Validate and ensure the recommendations are high impact and reflect deep insight.
- 3.OO.1.12 Manage project scope
- 3.OO.1.13 Refocus efforts as issues/problems dynamically change in client environment
- 3.OO.1.14 Conduct training sessions on consulting, functional area, key trend etc
- 3.OO.1.15 Design and conduct workshops
- 3.OO.1.16 Identify the appropriate approach, tools and methodologies to perform analysis and draw conclusions
- 3.OO.1.17 Full leadership for managing delegated end-to-end creation of project deliverables
- 3.OO.1.18 Help team to develop new insights from the analysis
- 3.OO.1.19 Prioritize the recommendations based on ease of implementation and impact
- 3.OO.1.20 Provide ongoing updates to Customer on engagement status
- 3.OO.1.21 Solicit feedback on interim deliverables
- 3.OO.1.22 Manage project escalations
- 3.OO.1.23 Manage engagement financials - revenue and profitability

3.OO.1.24 Provide subject matter expertise on a specific area within the domain/technology/service

3.OO.1.25 Exhibit high level of skills in data aggregation and analysis leading to development of value proposition in solution development

Skills and Abilities

3.OO.1.26 High level of expertise in communications domain

3.OO.1.27 Expertise in identifying and defining problems, analysis and developing recommendations

3.OO.1.28 Extensive experience managing consulting engagements

3.OO.1.29 Specialist in managing the engagement financials & operations

3.OO.1.30 High level of ethics, judgment, communication and people skills

Experience

3.OO.1.31 Six(6) to nine (9) years of management and technology consulting experience

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**TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS**

PART 1. INTRODUCTION

1.01 GENERAL: These Terms and Conditions apply to the solicitation for goods and/or services [whether a Request for Quote (RFQ), Invitation for Bid (IFB), Request for Offer (RFO) or Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT) (“solicitation”) and any contract issued by TxDOT resulting from the solicitation (“purchase order” or “contract”). The term “response” or “bid” means the proposal, quote, bid, or offer made to TxDOT in response to the solicitation. The term “respondent” or “bidder” means the party who submits the response to the solicitation, including the vendor. The term “vendor” or “contractor” means the party listed as vendor in the contract.

1.02 STATUTORY AUTHORITY: The solicitation and contract are authorized by Government Code Title 10, Subtitle D (the “Purchasing Act”). The solicitation and contract are subject to all applicable requirements of the Purchasing Act [in particular, Government Code Chapter 2151 (General Provisions), Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2157 (Purchasing: Purchase of Automated Information Systems) and Chapter 2161 (Historically Underutilized Businesses, “HUBs”)] and those requirements established by rule of the Texas Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD), as contained in Title 34, Chapter 20 of the Texas Administrative Code (“TAC”), and to other applicable Federal and State statutes and rules herein cited. Any references in this contract to the “Government Code” mean the Texas Government Code.

1.03 TITLE VI ASSURANCE: TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and 49 C.F.R. Part 21 and 28 CFR Section 50.3 (for purposes of this Section and Section 6.10 only, the “Acts” and the “Regulations,” respectively), hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Nondiscrimination programs require that federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all their programs and activities, whether those programs and activities are federally-funded or not.

1.04 ENVIRONMENTAL IMPACT: It is TxDOT’s intent to purchase goods, equipment, and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economic considerations in accordance with 34 TAC §20.306 and 20.307.

1.05 COMPLIANCE WITH LAWS: Vendor must comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting contract performance, including, if applicable, laws and regulations regarding workers’ compensation, minimum and maximum salaries and wages, prompt payment, and licensing. Vendor must maintain all licenses and certifications required by law or by the contract throughout the term of the contract. When required, vendor must furnish TxDOT with satisfactory proof of its compliance.

PART 2. GENERAL INSTRUCTIONS

2.01 SPECIFICATIONS

- (a) Respondent must carefully examine the solicitation. Respondent is responsible for securing any additional information from the TxDOT purchaser needed to gain a clear and full understanding of TxDOT’s requirements.

- (b) TxDOT will not be bound by any oral statement or representation contrary to the written specifications of the solicitation. Any revision, clarification, or interpretation pertaining to the solicitation will be in writing and issued by TxDOT as an addendum. Any change or interpretation not in an addendum will not legally bind TxDOT. Any addendum must be issued through TxDOT's Procurement Division.
- (c) The goods furnished or services performed shall be in accordance with the specifications set forth in the solicitation and with these Terms and Conditions. TxDOT will provide clarification of the specifications and determine the quality and acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will determine the manner of performance, the rate of progress of the work, and whether vendor's performance of the service is acceptable.
- (d) Any catalog, brand name, or manufacturer's reference used in the solicitation is descriptive only (not restrictive) and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Government Code Section 2155.067. Respondent must show manufacturer, brand or trade name, and other description of the product offered in response to the solicitation. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, vendor will be required to furnish brand names, numbers, etc., as specified.
- (e) Unless otherwise specified, all goods offered must be new and in first-class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- (f) Manufacturer's standard warranty must apply unless otherwise stated in this solicitation.
- (g) All electrical items must meet all applicable OSHA standards and regulations and bear the appropriate listing from UL, FMRC, or NEMA.
- (h) Any iron or steel product produced through a manufacturing process and used in the project must be produced in the United States, to the extent required by Government Code Chapter 2252, Subchapter F. That Subchapter generally applies to contracts to (A) construct, remodel, or alter a building, a structure, or infrastructure; (B) supply a material for a project described by subsection (A); or (C) finance, refinance, or provide money from funds administered by a governmental entity for a project described by subsection (A).

2.02 RESPONSE SUBMISSIONS

- (a) Response must be submitted in the format and quantity noted in the solicitation. If submitting multiple responses, each response must be placed in a separate envelope or on a separate flash drive and correctly identified with the solicitation number and opening date.
- (b) Response must be time stamped in TxDOT's mail room or hand-delivered to the address on the solicitation before the hour and date specified for the solicitation opening. Late responses will not be considered under any circumstances and will be returned unopened to respondent.
- (c) Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- (d) Failure to sign the solicitation manually will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response must include an Employer Identification Number (EIN), full firm name and address. The EIN should be entered in the space provided on the solicitation.

- (e) Facsimile (FAX) responses may be submitted to the FAX number provided in the solicitation for procurements less than \$25,000, unless otherwise stated in the solicitation. For procurements \$25,000 and greater, FAX responses will not be considered unless otherwise stated in the solicitation. Fax responses must be received before the hour and date specified for the solicitation opening. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.
- (f) Email responses may be accepted if stated on the solicitation. Email responses must be received before the hour and date specified for the solicitation opening and be in Portable Document Format (pdf) (except for pricing schedules, which must be submitted in Excel format using the pricing spreadsheet developed by the department), all attached documents together must not exceed a total of 20 MB, signed by respondent, and attached to the email to be considered for award. TxDOT will not be responsible for failure of electronic equipment, operator error, or system delays or outages. Responses that are late, illegible, incomplete, file-corrupted, flagged as a virus, or otherwise non-responsive will not be considered.
- (g) **RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES:** Exceptions taken by respondent to TxDOT's Terms and Conditions or respondent's Terms and Conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response, including without limitations, exceptions related to software maintenance and usage or equipment maintenance services. TxDOT may reject a response that takes exception to TxDOT's Terms and Conditions.
- (h) TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities, and make an award to best serve the interests of the State. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- (i) Response should indicate number of days required to deliver goods, or begin service (if required), at TxDOT's designated location. Failure to indicate delivery time obligates vendor to complete delivery in fourteen (14) calendar days.
- (j) Samples, when requested must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at respondent's expense. Each sample must be marked with respondent's name and address and TxDOT solicitation number. Samples must not be enclosed or attached to a response unless specified in the solicitation.
- (k) The response, including price, is irrevocable for 120 calendar days following the hour and date specified for the solicitation opening. TxDOT may extend this period with respondent's written agreement.

2.03 PRICING

- (a) TxDOT's automated purchasing system requires pricing to be submitted per unit, and extended by multiplying the submitted price by the quantity. Unit prices govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions should be shown.
- (b) All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.
- (c) Vendor must not increase price(s) during the term of the contract unless otherwise stated in the contract. Vendor must give price reductions to TxDOT that result from reduced cost to vendor during the term of the contract.
- (d) All prices must be F.O.B. destination, freight prepaid and allowed. This means vendor must prepay the freight charges and include them in the unit price.
- (e) Purchases made for State use are exempt from State and Local Sales tax and Federal Excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales Tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.

- (f) The contract may contain a “Total Cost Not to Exceed” statement. Vendor must not perform any work that may exceed either the contract total or the not-to-exceed total without prior written authorization from TxDOT.
- (g) Consistent and continued tie response pricing may lead to rejection of the responses by TxDOT and investigation for antitrust violations.

2.04 ADA CONSIDERATIONS AND NOTIFICATION: Persons with special needs or disabilities who plan to attend any pre-response conference or bid opening and who require auxiliary aids or service should contact the purchaser noted on the solicitation as the point of contact a minimum of three (3) business days prior to the meeting so arrangements can be made.

2.05 RESPONSE OPENINGS AND DISCLOSURE OF INFORMATION

- (a) At the time of opening for RFOs or RFPs, only the names of respondents will be announced. Prices will not be disclosed.
- (b) At the time of opening for RFQs and IFBs, names of respondents will be announced and pricing disclosed.
- (c) Information submitted in an accepted response will not be returned to respondent. Government Code Chapter 552 (the “Public Information Act”) allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, respondent must clearly identify in the response any confidential or proprietary information. Proprietary information identified by respondent in the response will be kept confidential by TxDOT to the extent permitted by state law. TxDOT will use best efforts to give respondent or vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES

- (a) Any alterations to a response made before the opening date and time must be initialed by respondent or authorized agent. Response cannot be altered or amended after the opening date and time.
- (b) A response may be withdrawn if requested in writing prior to the opening or closing date and time. A response may be withdrawn from consideration after the opening date only with the approval of TxDOT based on respondent’s written, acceptable reason. The response will not be considered for award but will be retained by TxDOT according to the response information confidentiality provision referenced in Section 2.05 (c).

2.07 DETERMINING AWARD: A response to a solicitation is an offer to contract with TxDOT based upon the terms, conditions, and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TxDOT designee by issuance of a contract. In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations, unless otherwise stated in the solicitation.

- (a) **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES:** When specified in the solicitation, the factors listed in Government Code Section 2155.074 will be considered in making a best value award. This section allows TxDOT to apply best value criteria to obtain goods and services that provide the best value for TxDOT. Under these guidelines, a respondent is not automatically awarded a contract if they submit the lowest bid response. TxDOT will be the sole judge as to which response is the most advantageous and in the best interest of TxDOT.

Factors, other than price, that may be considered in making an award are:

- (1) Life cycle costs.
- (2) Quality and reliability of goods and services.
- (3) Delivery terms.
- (4) Indicators of probable vendor performance.

- (5) Cost of employee training associated with a purchase.
 - (6) The effect of a purchase on agency productivity.
 - (7) Other factors relevant to determining best value for the state set forth in the solicitation.
- (b) **ADDITIONAL BEST VALUE CRITERIA FOR RFO PURCHASES:** Additional best value criteria will be used on all information technology equipment or service purchases including but not limited to:
- (1) Compatibility to facilitate exchange of existing data.
 - (2) Capacity for expansion and upgrading to more advanced levels of technology.
 - (3) Quantitative reliability factors.
 - (4) Level of training required to bring end-users to a stated level of proficiency.
 - (5) Technical support requirements for maintenance of data across a network platform and management of the network hardware and software.
 - (6) Items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product or service but are not specifically required within the solicitation.
- (c) **NEGOTIATIONS FOR RFO AND RFP PURCHASES:** TxDOT reserves the right to conduct formal negotiations with respondent(s) judged to have the best offer pertaining to price, goods, services, and terms.
- (d) TxDOT reserves the right to reject a response from a respondent whose goods or services to TxDOT or other state agencies have been documented as unsatisfactory in providing the same goods or services.
- (e) **TIE RESPONSES:** In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.306 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences will be made by drawing lots.

2.08 PREFERENCES: A respondent may claim a preference under 34 TAC §20.306. To claim a preference, a respondent must identify the preference on the solicitation or on the response to the solicitation. If the appropriate area on the solicitation or response is not marked, a preference will not be granted unless other documents included in the response show a right to the preference.

2.09 DELIVERY: No substitutions or cancellations will be permitted without written approval from TxDOT. Approval must be issued in the form of a purchase order change notice issued by TxDOT's Procurement Division.

- (a) If delay is foreseen, vendor must promptly give written notice to TxDOT. TxDOT has the right to extend delivery or service date if reasons appear valid. Vendor must keep TxDOT advised at all times of the status of the order. Default in promised delivery or service date (unless vendor has received a written extension of the delivery or service date which has been signed by TxDOT) or failure to meet specifications authorizes TxDOT to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor.
- (b) Delivery must be made between 8 AM and 4 PM Monday through Friday except on regularly-observed state or federal holidays, unless prior approval has been obtained from TxDOT or otherwise stated in the solicitation.
- (c) Receipt of goods or services does not constitute acceptance.
- (d) Goods and materials must be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to vendor at no cost to TxDOT. TxDOT reserves the right to inspect goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

2.10 INSPECTIONS AND TESTS: TxDOT may test and inspect goods and services purchased under the contract to ensure compliance with the specifications of the contract. TxDOT may also test and inspect goods and services before they are purchased under the contract. Goods and services will be subject to inspection and testing by TxDOT to the extent practicable at all times and places, including, without limitation, vendor's place of business. To the extent practical, the inspections will not disrupt vendor's daily operations. Tests will be performed on samples taken from regular shipments. In the event samples tested fail to meet all conditions and requirements of the specification, TxDOT may, at its option, reject the goods in whole or in part. The cost of the sample used and the cost of the testing shall be borne by vendor. Goods which have been delivered and rejected in whole or in part may, at TxDOT's option, be returned to vendor or held for disposition at vendor's risk and expense. Latent defects may result in cancellation of the contract at no expense to TxDOT. Acceptance of services will be based on attainment of performance in accordance with specifications and the contract.

2.11 VENDOR PERFORMANCE: State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the CPA/SPD or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D, or a purchase exempt from CPA/SPD procurement rules and procedures.

Past Performance: A respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Government Code Sections §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- (a) A letter grade score below 'C' in the Vendor Performance System, or a score of "legacy unsatisfactory" for historic reports submitted prior to the implementation of the current rating system.
- (b) Being currently under a Corrective Action Plan through the CPA.
- (c) Having repeated negative Vendor Performance Reports for the same reason
- (d) Having purchase orders that have been cancelled or terminated in the previous twelve (12) months for non-performance (i.e., late delivery, etc.).

Vendor performance information is located on the CPA website at <http://www.txsmartbuy.com/vpts>.

TxDOT may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 TAC §20.115) TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations will be at the sole discretion of TxDOT and any negative findings, as determined by TxDOT, may result in non-award to respondent.

PART 3. RESPONDENT AFFIRMATIONS

3.01 FALSE STATEMENTS: Respondent represents and warrants that all statements and information in its submitted response are current, complete, true, and accurate. Submitting a response to the solicitation with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract, and may result in removal of respondent from the Centralized Master Bidders List.

3.02 REPRESENTATIONS, WARRANTIES, AND COVENANTS: Respondent represents, warrants, and covenants that:

- (a) Personnel must be competent, knowledgeable, and experienced in the types of services to be provided under the contract and perform such services in a professional and workmanlike manner consistent with industry standards. Services must meet all specifications set forth in the contract provided, however, that where the contract specifies a particular standard or criteria for performance more particular than the foregoing, this warranty is not intended to and does not diminish that standard or criteria for performance. Further, in any case where detailed requirements for a service are not mutually agreed upon or set forth in the contract, such services shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, such contract; and
- (b) All goods and services furnished in connection with the contract must be of good and merchantable quality, strictly conform in all respects to the terms of the contract, including any drawings, specifications, or standards incorporated herein, and be free from any defects (latent or otherwise) in materials, workmanship, and design. In addition, respondent warrants that goods and services are suitable and sufficient for, and will perform in accordance with, the purposes for which they are intended.

3.03 GRATUITIES: Respondent 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 respondent's submitted response.

3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED: Under Government Code Section 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or solicitation on which the bid or contract is based. If respondent is not eligible, then any contract resulting from the solicitation will be immediately terminated. Under Government Code Section 2155.004, respondent certifies that the individual or business entity named in the bid or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.05 ANTITRUST LAWS: Respondent represents and warrants that, in accordance with Government Code Section 2155.005, neither respondent nor the firm, corporation, partnership, or institution represented by respondent, or anyone acting for such firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15, of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated the contents of the response directly or indirectly to any competitor or any other person engaged in the same line of business as respondent.

3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES: Respondent represents and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17 or the subject of allegations of any unfair business practice in any administrative hearing or court suit, and that respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practices violations or the subject of allegations of any unfair business practices in an administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

3.07 COLLUSION: Respondent has not colluded with, nor received any assistance from, any person who was paid by TxDOT to prepare specifications or a solicitation on which a respondent's bid is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.

3.08 INELIGIBILITY UNDER FAMILY CODE: Under Section 231.006, Family Code, respondent certifies that respondent and any other individual or business entity named in the contract, bid, or application are eligible to receive the specified grant, loan, or payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Any respondent subject to Section 231.006 must include in the response the names and social security numbers of each person holding at least a 25% ownership interest in the business entity submitting the response.

3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR: Under Government Code Section 669.003, respondent certifies that:

- (a) All the following are true:
 - (1) Respondent is not the executive director of TxDOT;
 - (2) Respondent was not the executive director of TxDOT at any time during the past four years; and
 - (3) Respondent does not employ a current or former executive director of TxDOT.

OR

- (b) Respondent has disclosed its employment of any former executive director of TxDOT in its response.

Respondent acknowledges that the contract can be terminated at any time, and payments withheld, if this certification is false. If Section 669.003 applies, respondent must provide the following information as an attachment to the solicitation response: Name of former TxDOT executive director, date of separation from TxDOT, position with respondent, and date of employment with respondent.

3.10 DEBT TO THE STATE: Respondent agrees that any payments due under the contract will be applied toward any debt or delinquency that is owed to the State of Texas.

3.11 RESPONDENT ELIGIBILITY

- (a) Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
- (b) Respondent certifies that respondent is in compliance with the State of Texas statutes and rules relating to procurement.
- (c) Respondent certifies that respondent is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- (d) Under Government Code Section [2155.006](#), respondent certifies that the individual or business entity named in the bid or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- (e) Respondent certifies that respondent is not an abortion provider or an affiliate of an abortion provider under Government Code 2272.003.
- (f) Respondent certifies that it is not:
 - (1) A person required to register as a lobbyist under Government Code Chapter 305.
 - (2) A public-relations firm.
 - (3) A government consultant.

3.12 NEPOTISM DISCLOSURE

- (a) In this section, the term "relative" means:
 - (1) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild; or
 - (2) The grandparent, parent, sibling, child, or grandchild of the person's spouse.

- (b) A notification required by this section must be submitted in writing to the person designated to receive official notices under the contract and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The notice must specify vendor's firm name, the name of the person who submitted the notification, the purchase order number, the district, division, office or regional service center of TxDOT that is principally responsible for the contract, the name of the relevant vendor employee, the expected role of the vendor employee on the project, the name of the TxDOT employee who is a relative of the vendor employee, the title of the TxDOT employee, and the work location of the TxDOT employee.
- (c) By signing the solicitation, respondent is certifying that respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under the contract has a relative who is employed by TxDOT unless respondent has notified TxDOT of each instance as required by subsection (b).
- (d) If vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under the contract have a relative who is employed by TxDOT, vendor must notify TxDOT under subsection (b) of each instance within thirty (30) calendar days of obtaining that knowledge.
- (e) If vendor violates this section, TxDOT may terminate the contract immediately for cause, impose any sanction permitted by law, and pursue any other remedy permitted by law.

3.13 BOYCOTTING ISRAEL: Pursuant to Government Code Section 2271.002, respondent certifies that either (i) respondent meets an exemption criteria under Section 2271.002, or (ii) respondent does not boycott Israel and will not boycott Israel during the term of the contract. Respondent must state any facts that make it exempt from the boycott certification in its response.

3.14 DISCLOSURE OF RESTRICTED EMPLOYMENT: Respondent acknowledges that under Government Code Section 572.069, a former state officer or employee of a state agency who, during the period of state service or employment, participated in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

3.15 ANTI-TERRORISM OR TERRORIST ORGANIZATION PROHIBITED: Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code Section 2252.152.

3.16 CONTRACTING INFORMATION RESPONSIBILITIES: Respondent represents and warrants that it will comply with the requirements of Government Code Section 552.372(a). Except as provided by Government Code Section 552.374(c), the requirements of Subchapter J, Chapter 552, of the Government Code may apply to the contract, and respondent agrees that the contract can be terminated if respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

3.17 HUMAN TRAFFICKING PROHIBITION: Under Government Code Section 2155.0061, respondent certifies that the individual or business entity named in the response or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.18 NO CONFLICTS OF INTEREST: Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

PART 4. GENERAL TERMS AND CONDITIONS

4.01 CONTRACTS

- (a) Only authorized TxDOT purchasers have the authority to issue contracts for goods and services. Contracts must be issued by a TxDOT purchaser prior to vendor providing the goods or services. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the TxDOT Procurement Division will confirm such orders with a signed contract.

- (b) Vendor acceptance of a purchase order and delivery of goods or services without an approved purchase order number or release number issued by TxDOT may result in the rejection of delivery, return of goods at vendor's cost, and non-payment.

4.02 FUNDING: Any contract resulting from the solicitation is contingent upon the continued availability of state funds and is subject to termination without penalty, either in whole or in part, if funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations. In the event of a termination under this section, TxDOT will not be liable to respondent for any damages that are caused or associated with such termination, and TxDOT will not be required to give prior notice.

4.03 INVOICING

- (a) Invoices must be submitted not later than the 15th day of the month after the goods have been delivered or services have been provided, or as otherwise stated on the contract. No payment will be made under the contract without the prior submission of detailed and correct invoices which comply with the requirements set forth in this Section 4.03. Invoices must be sent to the address shown on the purchase order. Vendor may receive more detailed instructions on invoicing after award.
- (b) The invoice must, at a minimum, show the following:
 - (1) Vendor name as it appears on the purchase order.
 - (2) Remit-to address.
 - (3) Employer Identification Number (EIN) Federal Tax I.D or Texas Identification Number (TIN).
 - (4) Complete PO number.
 - (5) Telephone number.
 - (6) Description of item or services as it appears on the PO in the same order as listed on purchase order. Item numbers must correspond with the item numbers on the PO.
 - (7) Quantity, Unit of measure, unit price, and extended price of each line item.
 - (8) Grand total.
 - (9) Shipment date of merchandise or date of service, if lease, include the payment number (e.g., 1 of 36).
 - (10) Any additional requirements as stated in the solicitation or specification.

4.04 PAYMENT: Payment for goods or services purchased with state funds is made by warrants or by direct deposit. Direct deposit is the preferred method of payment. No penalty for late payment will be incurred by TxDOT if payment is made in thirty (30) days or less from receipt of goods, services, or a correct invoice, whichever is later. Payments under this contract are subject to the availability of funds.

Additional information and a Direct Deposit Authorization application may be found at <https://comptroller.texas.gov/programs/systems/direct-deposit/>.

Payment will be made in accordance with Government Code Chapter 2251:

- (a) On a monthly basis and within thirty (30) days from receipt of a correct invoice for TxDOT-accepted goods or services.

OR

- (b) The service was completed to the satisfaction of TxDOT, and within thirty (30) days from receipt of a correct invoice or billing statement.

OR

- (c) As otherwise stated in the solicitation.

NOTE: Texas Department of Transportation (TxDOT) offers an opportunity to participate in its Early Payment Program to accelerate payments in exchange for a discount. Additional information may be found at the following website: <http://www.txdot.gov/business/vendors/epp.html> or the Priority Invoice and Early Payment Program form (Appendix B).

4.05 INTELLECTUAL PROPERTY

- (a) All intellectual property developed and created in the course of the services rendered pursuant to the contract are works for hire, and all intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents, and trade secrets to all products and materials developed and created pursuant to the contract shall be exclusively owned by TxDOT. Vendor must provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the contract. To the extent that title to any work created under the contract is held by operation of law to not vest exclusively in TxDOT, such work is hereby irrevocably assigned to TxDOT.
- (b) Vendor must ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents, and trade secrets, are secured from all suppliers, contractors, and subcontractors.
- (c) When applicable, each vendor must obtain necessary licenses, copyrights, trademarks, or patents for TxDOT's use.
- (d) Vendor must not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets, or patents for any intellectual property developed in performance of the services authorized.
- (e) VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 4.14 BELOW.

4.06 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS: As required by 1 TAC Chapter 213:

- (a) Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.
- (b) Vendor must provide Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product or service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Texas Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

4.07 CYBER SECURITY TRAINING: In accordance with Section 2054.5192 of the Texas Government Code, each vendor personnel that will access a TxDOT computer system or database must complete a TxDOT approved cyber security training program that is certified under Section 2054.5192 of the Texas Government Code. The training program must be completed by each vendor during the term of the purchase order and during any renewal period. The vendor must provide verification of completion of the cyber security training program in a method designated by TxDOT.

4.08 SITE VISITS: Prior to and after award of the contract, designated TxDOT representatives may conduct unannounced visits to inspect vendor's and its subcontractor's facilities during normal business hours to monitor compliance in accordance with TxDOT specifications or carry out performance audits of the service.

4.09 NON-WAIVER OF RIGHTS: Nothing in this contract shall be construed as a waiver of the state's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this contract or by its conduct prior to or subsequent to entering into this contract.

4.10 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS: Vendor has no authority to act for or on behalf of TxDOT or the State of Texas except as expressly provided for in this contract. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TxDOT.

4.11 VENUE AND JURISDICTION; APPLICABLE LAW: Venue for any suit concerning the solicitation and any resulting contract is fixed in any court of competent jurisdiction in Travis County, Texas. The solicitation and any resulting contract shall be governed by and construed in accordance with the laws of the State of Texas.

4.12 VENDOR ASSIGNMENTS: Vendor hereby assigns TxDOT any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States (15 U.S.C.A. Chapter 1), and which arise under the antitrust laws of the State of Texas (Business & Commerce Code, Title 2, Chapter 15).

4.13 FORCE MAJEURE: TxDOT may grant relief for time only from performance of the contract if vendor is 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 vendor (any such event or cause referred to herein as "force majeure"). The burden of proof for the need of such relief rests upon vendor. To obtain relief based on force majeure, vendor must file a written request with TxDOT describing the events, dates and effect of the events on vendor's ability to perform according to the contract. Vendor must inform TxDOT in writing within three (3) business days of the existence of such force majeure; failure to do so will waive the defense provided in this Section 4.12. Upon an event of force majeure, Vendor must use commercially reasonable efforts to commence performance whenever and to whatever extent possible without delay.

4.14 RIGHT TO AUDIT

- (a) The state auditor may conduct an audit or investigation of vendor or any other entity or person receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, vendor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
- (b) TxDOT's internal auditors may conduct an audit or investigation of vendor or any other person receiving funds directly under the contract or indirectly through a subcontract under the contract. TxDOT has the right to audit vendor's books and records pertaining to the service during normal work hours. Vendor or any other entity that is the subject of an audit or investigation by TxDOT must provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.

- (c) Vendor will ensure that this section concerning the authority of the state auditor and TxDOT to audit funds received indirectly by subcontractors through vendor and the requirement to cooperate is included in any subcontract it awards.

4.15 INDEMNIFICATION: Acts or Omissions

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, 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 VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringement:

- (A) VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS INVOLVING VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE AND SERVICE MARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT; AND/OR (3) TXDOT'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDOT BY VENDOR OR OTHERWISE TO WHICH TXDOT HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, VENDOR WILL REIMBURSE TXDOT AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING FROM ANY SUCH CLAIM. IF TXDOT DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TXDOT IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDOT WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TXDOT'S COUNSEL.
- (b) Vendor will have no liability under this section if the alleged infringement is caused in whole or in part by:
 - (1) Any intellectual property right owned by or licensed to TxDOT, or
 - (2) Any use of the product or service by TxDOT that is not in conformity with the terms of any applicable license agreement between vendor and TxDOT.
- (c) If vendor becomes aware of an actual or potential claim, or TxDOT provides vendor with notice of an actual or potential claim, vendor may (or in the case of an injunction against TxDOT, must), at vendor's sole option and expense:

- (1) Procure for TxDOT the right to continue to use the affected portion of the product or service, or
- (2) Modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TxDOT's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- (a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO VENDOR, 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.
- (b) VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4.16 DAMAGE TO TXDOT PROPERTY: Vendor shall be liable for damage to TxDOT's equipment, workplace, and its contents resulting from vendor's or vendor's subcontractors work or negligence in performance of the work by vendor's or subcontractor's personnel or equipment.

4.17 PUBLIC INFORMATION ACT AND CONFIDENTIALITY: Information, documentation, and other material in connection with the solicitation or any resulting contract may be subject to public disclosure pursuant to the Public Information Act. All information created by or accessible to a vendor while providing a good or service for TxDOT shall be treated by vendor as confidential. If applicable to a service, upon award of the contract, vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Vendor, its employees or subcontractors must not divulge any information related to TxDOT business at any time to a third party without the prior written approval of TxDOT. Vendor will notify TxDOT within 24 hours of receipt of any third-party requests for information that was provided by TxDOT for use in performing the contract, including the contract itself. Vendor is required to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Upon request by TxDOT, vendor agrees to promptly provide any information created or exchanged with the state pursuant to the contract to TxDOT in any format reasonably required by TxDOT, including without limitation portable document format (PDF) and HTML.

4.18 BUY TEXAS: In accordance with Government Code Section 2155.4441, vendor agrees that during the performance of a contract for services, vendor shall purchase products and materials produced in the State of Texas when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside the state.

4.19 COMPETENCE OF VENDOR: To be entitled to consideration, vendor must have available the necessary organization and facilities to fulfill all the requirements under the contract. Only personnel trained to perform the solicited services or, if applicable, licensed to perform such services must be employed under and for the contract. Vendor must, at its own cost, obtain any licenses, certifications and permits required for the performance of the service.

4.20 CHANGES IN WORK: If TxDOT determines it necessary to require corrections to completed work due to errors made by vendor, vendor must correct the work at no additional cost to TxDOT. For negotiated contracts, if TxDOT requires changes in previously-approved and completed work, vendor must make such changes as directed by TxDOT and will be compensated for such at the same rates established by vendor's hourly rates. Any changes must be approved in advance in writing through a purchase order change notice issued by TxDOT's Procurement Division.

4.21 IT SERVICE CONTRACTS SECURITY: Vendor will implement appropriate administrative, physical, and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. Vendor will immediately report to TxDOT any security incident of which it becomes aware. Vendor will submit for approval by TxDOT and conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's information resources security program pursuant to 1 TAC § 202.

4.22 NOTICES: Any notices required under the contract will be in writing and sent by hand delivery or by U.S. Mail, certified, return receipt requested to vendor at vendor's address specified on Page 1 of the purchase order; to TxDOT at 125 E. 11th Street, Austin, TX 78701-2483. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this section by written notification to the other party.

4.23 PUBLIC DISCLOSURE: No public disclosures or news releases pertaining to this contract shall be made without prior written approval of the Texas Department of Transportation.

4.24 DISASTER RECOVERY PLAN: If required in the solicitation, respondent must provide TxDOT descriptions of its business continuity and disaster recovery plans in accordance with 13 TAC §6.94(a)(9).

PART 5. INSURANCE

5.01 PRIOR TO CONTRACT AWARD: Vendor must provide the required TxDOT insurance form upon written notice from TxDOT. Vendor must not perform services under the contract until this form is received by TxDOT. Failure to provide proof of insurance within the time frame requested by TxDOT may result in vendor's response being declared non-responsive and the contract being awarded to the next responsive, responsible respondent.

5.02 DURING TERM OF CONTRACT: Vendor must maintain all required insurance coverage throughout the term of the contract. Vendor must provide a correct TxDOT insurance form each time its insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and termination of the contract.

5.03 WAIVER OF SUBROGATION ENDORSEMENT: Vendor's Workers' Compensation insurance policy must have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. Vendor must pay the deductible amount.

5.04 WORKERS' COMPENSATION INSURANCE: Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and 28 TAC Chapter 110). Vendor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The state of Texas is not liable to vendor or its employees for any unemployment or workers' compensation coverage or any federal or state withholding requirements.

5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES:

Vendor is responsible for providing Workers' Compensation Insurance for building and construction services. Building or construction includes:

- (a) Erecting, or preparing to erect, a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (b) Remodeling, extending, repairing, or demolishing a structure; or
- (c) Otherwise improving real property or an appurtenance to real property through similar activities.

Vendor must provide workers' compensation insurance for building and construction services in accordance with 28 TAC §110.110(c)(7).

- (a) Definitions (applicable only to this Section 5.05):

- (1) Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84) showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- (2) Duration of the project - includes the time from the beginning of the work on the project until vendor's/person's work on the project has been completed and accepted by the governmental entity.
- (3) Persons providing services on the project ("subcontractor" in Texas Labor Code §406.096) - includes all persons or entities performing all or part of the services vendor has undertaken to perform on the project, regardless of whether that person contracted directly with vendor and regardless of whether that person has employees. This includes, without limitation, independent vendors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (b) Vendor must provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of vendor providing services on the project, for the duration of the project.
- (c) Vendor must provide a certificate of coverage to TxDOT prior to being awarded the contract.
- (d) If the coverage period shown on vendor's current certificate of coverage ends during the duration of the project, vendor must, prior to the end of the coverage period, file a new certificate of coverage with TxDOT showing that coverage has been extended.
- (e) Vendor must obtain from each person providing services on a project, and provide to TxDOT:
 - (1) A certificate of coverage, prior to that person beginning work on the project, so TxDOT will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) No later than seven (7) business days after receipt by vendor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) Vendor must retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) Vendor must notify the governmental entity in writing by certified mail or personal delivery, within ten (10) business days after vendor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- (h) Vendor must post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) Vendor must contractually require each person with whom it contracts to provide services on a project, to:
 - (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all its employees providing services on the project, for the duration of the project;
 - (2) Provide to vendor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) Provide vendor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) Obtain from each other person with whom it contracts, and provide to vendor:
 - (a) A certificate of coverage, prior to the other person beginning work on the project; and
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) Notify TxDOT in writing by certified mail or personal delivery, within ten (10) business days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) Contractually require each person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing the purchase order or providing or causing to be provided a certificate of coverage, vendor is representing to TxDOT that all employees of vendor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject vendor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) Vendor's failure to comply with any of these provisions is a breach of contract by vendor which entitles TxDOT to declare the contract void if vendor does not remedy the breach within ten (10) business days after receipt of notice of breach from the governmental entity.

5.06 COMMERCIAL GENERAL LIABILITY INSURANCE: Bodily Injury/Property Damage. Required coverage must, at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

5.07 COMMERCIAL AUTOMOBILE POLICY: Required coverage must, at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

PART 6. VENDOR PERSONNEL MANAGEMENT

6.01 INDEPENDENT CONTRACTOR: It is expressly understood and agreed to by both parties that TxDOT is contracting with vendor as an independent contractor. As such, vendor understands and agrees that individuals performing services in connection with the contract are not state employees, and that vendor will be responsible and liable for the safety, injury, and health of its and its subcontractor's working personnel while its employees or subcontractor's employees are performing work for TxDOT. Should vendor subcontract any of the services required in the contract, vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any subcontractor of vendor. In no event will this provision relieve vendor of the responsibility for ensuring that all services rendered under all subcontracts are rendered in compliance with the contract.

6.02 WORK HOURS: All work by vendor must be performed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on regularly-observed state or federal holidays unless otherwise specified in the solicitation.

6.03 ALCOHOL, DRUG, AND SMOKE-FREE WORKPLACE: TxDOT is committed to maintaining an alcohol and drug free workplace. Possession, use of, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. If any employee of the vendor violates this requirement TxDOT may terminate the contract for cause, in addition to seeking any other available remedies. Vendor's employees must comply with TxDOT's policy prohibiting smoking in TxDOT buildings.

6.04 REPLACEMENT OF PERSONNEL: If TxDOT determines that an employee or subcontractor of vendor performing any part of vendor's work under this contract is unable to perform the work in accordance with the service requirements or to communicate effectively or is, in the opinion of TxDOT, otherwise objectionable, vendor must immediately remove that employee or subcontractor.

6.05 LABOR/MATERIAL/EQUIPMENT: Vendor must provide all labor, material, and equipment necessary to furnish the goods or perform the service(s) throughout the term of the contract. All employees of vendor must be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children, or other relatives of vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the vendor.

6.06 ENGLISH-SPEAKING STAFF: Vendor must at all times have a minimum of one English speaking employee on the job. All employees must be well-groomed and appropriately dressed when on TxDOT property.

6.07 FELONY CRIMINAL CONVICTIONS: Vendor represents and warrants that neither vendor nor any of vendor's employees have been convicted of a felony criminal offense, or that, if such a conviction has occurred, vendor has fully advised TxDOT as to the facts and circumstances surrounding the conviction and vendor agrees to defend, hold harmless, and indemnify TxDOT from any loss or claim due to any such employees.

6.08 SUBCONTRACTING REQUIREMENTS: In accordance with Government Code Sections 2161.181-182 and pursuant to the CPA Historically Underutilized Business (HUB) Rules, and Transportation DBE/HUB/SBE Rules, (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE) all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable, the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>.

6.09 PAYMENT OF SUBCONTRACTORS: As provided by Government Code Section 2251.022, vendor must pay a subcontractor the appropriate share of any payment vendor receives from TxDOT not later

than the 10th day after the date the vendor receives the payment. The appropriate share is overdue on the 11th day after the date vendor receives the payment.

6.10 VENDOR TITLE VI AFFIRMATIONS: Vendor represents and warrants the following with regard to the work performed by it under the contract:

- (a) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, or disability in the performance of this contract, including without limitation in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.
- (b) In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by vendor of vendor's and subcontractor's obligations under its contract relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (c) During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:
 - (1) Compliance with Regulations: The contractor will comply with the acts and the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the acts and regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the acts and regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (4) Information and Reports: The contractor must provide all information and reports required by the acts, regulations, and directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such acts, regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor must so certify to TxDOT or the FHWA, as appropriate, and must set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b) Cancelling, terminating, or suspending a contract, in whole or in part.

- (6) Incorporation of Provisions: The contractor must include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the acts, the regulations and directives issued pursuant thereto. The contractor must take action with respect to any subcontract or procurement as TxDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if the contractor becomes involved in litigation with, or is threatened with litigation by, a subcontractor or supplier because of such direction, the contractor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
- a) The contractor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.

6.11 E-VERIFY: Pursuant to Executive Order RP-80, vendor certifies and ensures that for all contracts for services, vendor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this agreement to determine the eligibility of:

- (a) All persons employed by vendor during the term of this agreement to perform duties within the State of Texas; and
- (b) All persons, including subcontractors, assigned by vendor to perform work pursuant to this agreement within the United States of America.

Violation of this provision constitutes a material breach of this agreement.

PART 7. DISPUTE RESOLUTION

7.01 DISPUTE RESOLUTION: The dispute resolution process provided for in Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2 will be used by TxDOT and the vendor to resolve disputes arising under the contract. Notwithstanding any provision of the contract to the contrary, unless otherwise agreed in writing by TxDOT, vendor must continue performance and will not be excused from performance during the period of contract claim or dispute is pending; however, vendor may suspend performance during the pendency of such claim or dispute if vendor has complied with all provisions of Government Code Section 2251.051, and such suspension of performance is expressly applicable and authorized under that law.

PART 8. CONTRACT TERMS

8.01 TERM OF CONTRACT: The term of the contract will be as stated on the purchase order.

8.02 ORDER OF PRECEDENCE: In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies will be resolved by reference to the documents in the order specified on the purchase order.

8.03 TERMINATION OF A CONTRACT

- (a) **FOR CAUSE:** If vendor fails to provide a good or service according to the provisions of the contract or fails to comply with any term or condition of the contract, or if any representation or certification made in the contract or any related document is false, incomplete or inaccurate, TxDOT may immediately terminate all or any part of the contract upon written notice to vendor. TxDOT may, at its option, re-solicit or award the contract to the next lowest responsive and responsible respondent. The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. If vendor defaults on the contract, TxDOT may purchase the goods or services elsewhere and charge any increase in cost to the defaulting vendor. TxDOT may impose sanctions, debar or suspend vendor for abandonment or default(s) on the contract. Termination is not an exclusive remedy, but will be in addition to any other remedies TxDOT may have by law, in equity, or under the contract. TxDOT may exercise any other right, remedy or privilege which may be available to it under applicable law or may proceed by appropriate court action to enforce the provisions of the contract. The exercise of any of the foregoing remedies will not constitute a termination of the contract unless TxDOT notifies vendor in writing prior to the exercise of such remedy. Vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of the remedies listed herein.
- (b) **FOR CONVENIENCE:** The contract may be terminated by TxDOT in whole or in part, without cost or penalty, by providing thirty (30) calendar days written notice. In the event of such termination, vendor must, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. TxDOT will be liable only for payments for goods or services ordered before the termination date. With regard to services, TxDOT will pay vendor the contract price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph will not relieve vendor of any obligation or liability that has occurred prior to termination. Vendor must refund any balance of unused prepaid funds.

8.04 SALE OR ASSIGNMENT: Vendor may not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from TxDOT. Any attempted assignment in violation of this provision is void and without effect. Vendor must provide written notification of changes to company name, address, telephone number, and other contact information to TxDOT as soon as possible but not later than thirty (30) calendar days from the date of change.

8.05 RENEWAL OF CONTRACT: The contract may be renewed by TxDOT, in its sole discretion, for up to three additional like periods of time at the same terms and conditions with prior written notice to vendor, or as otherwise stated in the solicitation.

8.06 EXTENSION OF CONTRACTS

- (a) TxDOT reserves the right to extend a contract for time only for a period not to exceed 180 calendar days, past the stated term to allow vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the contract.
- (b) A contract in its final renewal period may be further extended for time and money for a period up to ninety (90) calendar days at the option of TxDOT.
- (c) Vendor may request a time only extension of a contract by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing. An extension will only be effective if it is issued by the TxDOT procurement division in the form of a purchase order change notice.

8.07 SEVERABILITY CLAUSE: In the event that any provision(s) of this contract may later be determined to be invalid, void, or unenforceable, then the remaining provisions of this contract will remain in full force and effect.

8.08 AMENDING THE CONTRACT: All alterations, additions, or deletions to the contract must be in writing and mutually agreed upon by both parties and put into effect with a purchase order change notice issued by TxDOT. Vendor will not be entitled to payment for any additional services, work or products that are not authorized by a properly executed purchase order change notice. All alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without a purchase order change notice, and will become effective on the date designated by such law or by regulation.

8.09. THIRD-PARTY BENEFICIARIES: The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person will have any right, interest or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

8.10 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

- (a) By executing this contract, vendor binds itself, its respective successors and assignees, to the faithful performance of the terms and conditions and provisions of the contract.
- (b) Expiration or termination of the contract for any reason will not release vendor from any liabilities or obligations set forth in the terms and conditions and contract or any work orders that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding warranty, confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification. Upon expiration or termination of the contract for any reason, TxDOT will retain ownership of all associated work products and documentation obtained from or created by vendor under the contract. Vendor must deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.
- (c) The term of service stated on the purchase order is binding on vendor regardless of the term on the originating agency contract.

Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to in this Appendix A as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex).
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are federally funded or not).
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

Appendix B



TxDOT has partnered with Oxygen Finance Americas, Inc. to offer all bidders and active TxDOT vendors the opportunity to enroll in the Early Payment Program (EPP). The EPP gives vendors more flexibility and control of their business and finances. Benefits include:

- Electronic invoice submissions sent to one email address for all TxDOT divisions
- Invoices are time-stamped upon receipt
- Rejection notices are usually sent within 1 business day with instructions on how to revise & resubmit for payment
- Payments are typically made within 10 business days*, providing you cash sooner
- Monthly remittance statements are provided to EPP vendors for reconciliation
- Live supplier support specialists are available to help EPP vendors through all stages of invoicing and payments

Please fill out the information below and return this form with your completed response

Company: _____	Tax ID/EIN: _____
Contact Name: _____	Title: _____
Address: _____	
Email: _____	Phone: _____
Billing Contact: _____	Title: _____
Address: _____	
Email: _____	Phone: _____

OPTIONS (Please check one):

- Yes, I would like to enroll in the EPP with the following terms for all future invoices: _____ % / 10 Days / Net 30 **
Texas State Agencies are allowed to make early payments to vendors, but are required to take a discount in return. (Texas Government Code, Chapter 2155.382). TxDOT allows EPP vendors to determine the invoice discount rate (%) that best suits their business needs.
 - I confirm that I am an authorized representative of this company and that if TxDOT pays any Invoiced Debt owed to the aforementioned company under or in connection with any Contract prior to the date by which such payment would otherwise be required to be made under the terms of that Contract, TxDOT shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, an Early Payment Discount which it will deduct and retain from that Invoiced Debt. These terms will apply to all invoices unpaid as of the date of signature as printed on this form. Early payment discounts are dynamically calculated, with a target payment date of 10 days from the date of invoice acceptance. The final discount taken is proportionate to the number of days the payment is accelerated. A discount is taken ONLY if payment is made before 30 days from the date of invoice acceptance.
 - I confirm that I am an authorized representative of this company and agree to the Oxygen Network Supplier Terms of Use found at <http://ftp.dot.state.tx.us/pub/txdot-info/fin/early-pmt/oxygen-network-terms.pdf>
- I'm interested in the EPP, but would like a supplier support specialist to call me at this number _____
- I am already enrolled in the EPP
- No, I am not interested at this time

Printed Name _____ Signature _____ Date _____

*Please note: Direct deposits post 1-3 business days after the payment date and paper checks could take up to 5 business days to receive

**TxDOT reserves the right to approve or reject any proposed rates.

To learn more about the program and its benefits, visit www.txdot.gov/business/vendors/epp.html

To speak with a supplier support specialist, call 844.893.8837 or email at earlypay@txdot.gov

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