

## TXTAG RETAIL SALES AGREEMENT:

This TxTag Retail Sales Agreement (Agreement) is entered into by and between the Texas Department of Transportation (TxDOT) and [insert name] (Vendor) for the purpose of allowing approved vendors to sell and distribute TxTags. This Agreement is enabled via a TxDOT Purchase Order, and the terms “Agreement” and “Purchase Order” are used interchangeably herein.

### 1. TXTAG RETAIL SALES REQUIREMENTS:

**1.1. Background:** TxDOT is interested in working with vendors who will sell and distribute TxTags through conventional retail locations. The services provided by this Agreement shall be for the distribution and sale of TxTags through retail locations and outlets approved in advance by TxDOT. All services shall be provided at no cost to TxDOT.

#### 1.2. VENDOR REQUIREMENTS: The Vendor shall:

- 1.2.1. Adhere to the TxDOT Terms and Conditions identified in the solicitation documents and this Agreement.
- 1.2.2. Provide all labor, materials and equipment necessary to meet requirements of the specified services throughout the term of the purchase order.
- 1.2.3. Provide a primary point of contact.
- 1.2.4. Have a retail distribution network that can be used to promote, sell, and distribute TxTags.

#### 1.3. Service Requirements: The Vendor shall:

- 1.3.1. Provide a *Sale and Distribution Plan* that outlines how the Vendor will engage retail centers and customers for the sale and distribution of TxTags. The *Sale and Distribution Plan* shall be approved by TxDOT prior to commencement of TxTag sales.
- 1.3.2. Maintain a formal security program in accordance with current industry standards and best practices that are designed to:
  - 1.3.2.1. Ensure the security and integrity of electronic toll collection customer account information and any other information related to TxDOT business (TxTag Data).
  - 1.3.2.2. Protect against threats or hazards to the security or integrity of TxTag Data.
  - 1.3.2.3. Prevent unauthorized access to TxTag Data.
  - 1.3.2.4. Comply with Payment Card Industry (PCI) Payment Application Data Security Standard (“PA-DSS”) and PCI Data Security Standard (“PCI DSS”).
  - 1.3.2.5. Implement industry best practices for protecting all personal or sensitive information processed by TxDOT and its vendors.
- 1.3.3. Provide a copy of the TxTag License and Use Agreement to each customer purchasing a TxTag.
- 1.3.4. Obtain TxDOT approval of all marketing and packaging materials to be used in the sale and distribution of TxTags prior to their use in the retail channel.
- 1.3.5. Comply with the requirements of 43 Texas Administrative Code §27.85, which limits the maximum amount of the customer service charge to \$2.00 per TxTag sold.

#### 1.4. Vendor Deliverables:

- 1.4.1. Sales Reports: The Sales Report shall specify how many TxTags have been requested and sold at each retail location. The Sales Report shall be provided once per quarter of the Vendor’s fiscal year. TxDOT reserves the right to increase the reporting interval to monthly in its sole discretion.
- 1.4.2. Samples: The Vendor shall provide samples of all marketing and packaging materials used in the sale and distribution of TxTags. TxDOT shall approve any marketing and packaging materials prior to use.
- 1.4.3. Other Information: TxDOT reserves the right to require the Vendor to provide other reports, metrics and information from time to time. TxDOT will provide reasonable notice that additional information is required.

- 1.5. **Liability for Toll Fees:** The Vendor is responsible for all tolls and related fees assessed to any TxTag in the Vendor's TxTag inventory, including tolls and fees assessed by other tolling entities accepting TxTags through interoperability agreements with TxDOT. For each TxTag in the Vendor's inventory, the Vendor's liability for payment of tolls and related fees survives until a given TxTag is sold to a retail customer and that customer properly establishes a TxTag account in their own name and registers the TxTag to their account.
- 1.6. **Lost or Stolen TxTags:** If a TxTag is lost, stolen or destroyed, the Vendor shall notify the designated TxDOT representative in writing as soon as practicable after discovery of the loss. Until TxDOT receives this notification, the Vendor is responsible for any incurred tolls and fees assessed to any account(s) associated with the TxTag(s).
- 1.7. **Technical support.** Any issue relating to the procurement of TxTags from TxDOT by the Vendor shall be referred to the designated TxDOT representative. TxDOT will create a trouble ticket and contact the Vendor to resolve the issue.
- 1.8. **Changes to Scope of Work (SOW).** Following the purchase order award, additional services of the same general category that could have been encompassed in the award of the purchase order, and that are not already on the purchase order, may be added. A written notification will be sent to the Vendor requesting a proposal describing how the additional services shall be performed. The Vendor shall submit responses to TxDOT as instructed in the notification. TDOT may accept or reject any proposal(s).
  - 1.8.1. Any proposed changes to work to be performed, whether initiated by TxDOT or the vendor, must receive final written approval in the form of a purchase order change notice signed by the authorized TxDOT purchasing agent.
  - 1.8.2. TxDOT has no financial responsibility for any work performed that is outside the scope of this Agreement, even if that work was requested by TxDOT. The vendor shall notify TxDOT within five business days if the vendor believes that TxDOT has requested work that is outside the scope of this Agreement or that cannot be performed at no cost to TxDOT. The parties shall attempt to resolve the matter informally. If the matter cannot be resolved informally, the Vendor shall not perform the work. The TxDOT representative does not have any express or implied authority to vary the terms of this Agreement, amend this Agreement in any way, or waive strict performance of the terms or conditions of this Agreement.
- 1.9. **Quality Assurance Plan:** The Vendor shall provide a comprehensive, continuous, and measurable quality assurance plan, which shall include the following:
  - 1.9.1. Strategies and processes to promote quality.
  - 1.9.2. Procedures to periodically measure and report quality performance to TxDOT throughout the contract period.
  - 1.9.3. Information regarding how often the Vendor conducts internal audits and engages external audit firms to conduct audits of its operations.
  - 1.9.4. Controls to be used within the project to assure quality and consistency throughout the term of the purchase order.
- 1.10. **Business Continuity Procedures and Disaster Recovery Plan:** The Vendor shall submit a business continuity procedures and disaster recovery plan, limited to one page, which shall include the following:
  - 1.10.1. Business continuity procedures that shall be implemented to fulfill all requirements of the purchase order including, but not limited to: fire, theft, natural disaster, technical difficulty, workforce problems, equipment failure or other disruption of business.
  - 1.10.2. A disaster recovery plan for this service that shall be maintained throughout the term of the purchase order. The vendor shall be responsible for all cost of disaster recovery.

- 1.11. Logo License.** The Vendor will be granted a non-exclusive, limited, royalty-free, license and revocable right to use TxDOT's trademark and service mark known as the "Flying T" (the "Mark"), as provided by TxDOT, only on deliverables prepared under the terms and conditions of this Agreement. The right and license granted by this Agreement automatically terminates on the expiration or termination of this Agreement, or upon the vendor's breach of the terms and conditions of this Agreement.
- 1.12. Compliance.** The Vendor shall comply with all requirements of this Agreement. Failure to do so may result in the termination of the Agreement, or other remedies as provided by law.
- 1.13. Warranty of TxTags.** Vendor will notify the designated TxDOT representative within 30 days from receipt of inventory for any TxTag found or suspected to be damaged. If contacted within 30 days, TxDOT will replace the TxTags at no additional cost to the Vendor.
- 1.14. Warranty and Customer Service Following Sale to a Retail Customer.** Once a customer has purchased a TxTag from the Vendor's TxTag inventory and has properly established a TxTag account and registered the TxTag to the account, TxDOT will be responsible for all warranty and customer service inquiries associated with the customer's new account.
- 1.15. Change in Pricing of TxTags.** TxDOT may at any time increase or decrease the cost of TxTags. Changes in pricing do not apply to TxTags already sold.
- 1.16. Returns.** Return of TxTags is allowable. Returns must be approved in advance and in writing by TxDOT. Only new, never issued TxTags, complete with all original packaging, may be returned. Returns are processed as a reversed charge to the original method of payment.

## 2. GENERAL TERMS AND CONDITIONS

- 2.1. COMPLIANCE WITH LAWS:** The Vendor shall 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 the performance of the Agreement, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. The Vendor shall maintain all required licenses, certifications, etc. throughout the term of the Agreement. When required, the Vendor shall furnish TxDOT with satisfactory proof of its compliance.
- 2.2. NEPOTISM DISCLOSURE:**
- 2.2.1. In this section, the term "relative" means:
- 2.2.1.1. a person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or
- 2.2.1.2. the grandparent, parent, sibling, child, or grandchild of the persons spouse.
- 2.2.2. A notification required by this section shall be submitted in writing to the person designated to receive official notices under this Agreement and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas, 78701. The notice shall specify the Vendor's firm name, the name of the person who submitted the notification, the Agreement number, the district, division, office or regional service center of TxDOT that is principally responsible for the Agreement, 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.
- 2.2.3. If the Vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this Agreement have a relative who is employed by TxDOT, the Vendor shall notify TxDOT under Section 2.2.2 of each instance within thirty days of obtaining that knowledge.

- 2.2.4. If the Vendor violates this section, TxDOT may terminate the Agreement immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.
- 2.3. BOYCOTTING ISRAEL:** The Vendor does not boycott Israel and will not during the term of the Agreement.
- 2.4. ORDERS:** Only authorized TxDOT purchasers have the authority to place orders for goods and services. Purchase Orders must be issued by a TxDOT purchaser prior to a Vendor providing the goods or service. 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 Purchase Order.
- 2.5. INTELLECTUAL PROPERTY:**
- 2.5.1. All intellectual property developed and created in the course of the services rendered pursuant to the Agreement 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 Agreement shall be exclusively owned by TxDOT. Vendor shall 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 Agreement. To the extent that title to any work created under the Agreement is held by operation of law to not vest exclusively in TxDOT, such work shall is hereby irrevocably assigned to TxDOT.
- 2.5.2. Vendor shall 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, vendors and subcontractors.
- 2.5.3. When applicable, each Vendor shall obtain necessary licenses, copyrights, trademarks or patents for TxDOT's use.
- 2.5.4. The Vendor shall 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.
- 2.5.5. THE 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 2.13 BELOW.
- 2.6. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS:** As required by 1 TAC Chapter 213:
- 2.6.1. 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.
- 2.6.2. Vendor shall 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/>.

- 2.7. SITE VISITS:** Prior to and after award of the Agreement, designated TxDOT representatives may conduct unannounced visits to inspect the 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.
- 2.8. NON-WAIVER OF RIGHTS:** Nothing in this Agreement shall be construed as a waiver of the state's sovereign immunity. This Agreement 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 Agreement 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 Agreement or by its conduct prior to or subsequent to entering into this Agreement.
- 2.9. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Vendor shall have no authority to act for or on behalf of TxDOT or the State of Texas except as expressly provided for in this Agreement. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TxDOT.
- 2.10. VENUE AND JURISDICTION; APPLICABLE LAW:** Venue for any suit concerning the solicitation and any resulting Agreement shall be in a court of competent jurisdiction in Travis County, Texas. This Agreement is governed by, construed in accordance with, and interpreted under the laws of the State of Texas.
- 2.11. VENDOR ASSIGNMENTS:** Vendor hereby assigns TxDOT any and all claims for overcharges associated with this Agreement 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).
- 2.12. RIGHT TO AUDIT:**
- 2.12.1. The State Auditor's Office, pursuant to Section 2262.154, ("state auditor") may conduct an audit or investigation of the Vendor or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds 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. Under the direction of the legislative audit committee, the Vendor or any other entity that is the subject of an audit or investigation by the state auditor agrees to provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
  - 2.12.2. TxDOT's internal auditors shall have the right to conduct an audit or investigation of the Vendor or any subcontract under this Agreement. TxDOT has the right to audit the 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 agrees to provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.
  - 2.12.3. Vendor will ensure that this section concerning the authority of the state auditor and TxDOT to audit and the requirement to cooperate is included in any subcontract it awards.
- 2.13. INDEMNIFICATION: Acts or Omissions**
- 2.13.1. VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TxDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, COURT COSTS AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT.

THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE 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 ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

2.13.2. Infringement:

- 2.13.2.1. VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS AGREEMENT. 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 AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE 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 ATTORNEY GENERAL.

- 2.13.2.2. VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY:
- 2.13.2.2.1. ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TXDOT, OR
- 2.13.2.2.2. 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.
- 2.13.2.3. 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, SHALL), AT VENDOR'S SOLE OPTION AND EXPENSE;
- 2.13.2.3.1. PROCURE FOR TXDOT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR
- 2.13.2.3.2. 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-INFRINGEMENT.

2.13.3. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- 2.13.3.1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, 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 AGREEMENT. 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 THE 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.

- 2.13.3.2. **VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, 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 AGREEMENT. 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 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 ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- 2.14. DAMAGE TO TXDOT PROPERTY:** The Vendor shall be liable for damage to TxDOT's equipment, workplace and its contents resulting from the Vendor's or the Vendor's subcontractor's work or negligence in performance of the work by the Vendor's or subcontractor's personnel or equipment.
- 2.15. CONFIDENTIALITY CLAUSE:** TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released. Notwithstanding any provision to the contrary, the Vendor understands that TxDOT will comply with the Texas Public Information Act, Government Code Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Vendor, its employees or subcontractors shall not divulge any TxDOT Data to a third party at any time without the prior written approval of TxDOT. The Vendor will notify TxDOT within 24 hours of receipt of any third party requests for TxDOT Data or other information that was provided by TxDOT for use in performing the Agreement, including the Agreement itself. All information created by or accessible to a Vendor while providing a good or service for TxDOT is confidential. If applicable to a service, upon award of an Agreement, the Vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Vendor is required to make any information created or exchanged with the state pursuant to the Agreement, 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. Vendor agrees to provide the information to the public in any format reasonably required by TxDOT.
- 2.16. BUY TEXAS:** Pursuant to Section 2155.4441 of the Government Code, the Vendor shall buy products and materials produced in the State of Texas for use in providing services authorized in 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 the state.
- 2.17. COMPETENCE OF VENDOR:** The Vendor shall have available the necessary organization and facilities to fulfill all the requirements under the Agreement. Only personnel trained to perform the solicited services or, if applicable, licensed to perform such services shall be employed under and for the Agreement. Vendor shall obtain any other licenses or permits or both as required for the performance of the service.
- 2.18. CHANGES IN WORK:** If TxDOT determines it necessary to require corrections to completed work due to errors made by the Vendor, the Vendor shall correct the work at no cost to TxDOT. Any changes must be approved in advance in writing through a purchase order change notice issued by TxDOT's purchasing department.

- 2.19. IT SERVICE CONTRACTS SECURITY:** The Vendor will implement appropriate administrative, physical and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. The Vendor will immediately report to TxDOT any security incident which it becomes aware. The 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 Title 1, Texas Administrative Code, Section 202.
- 2.20. NOTICES:** Any written notices required under the resulting Agreement will be by either hand delivery to Vendor's office address specified on Page 1 of the Purchase Order or by U.S. Mail, certified, return receipt requested, to TxDOT, 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.
- 2.21. ACCESS TO INFORMATION:** The Vendor is required to make any information created or exchanged with TxDOT pursuant to this Agreement, 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 TxDOT. At a minimum the formats are to include portable document format (PDF) and HTML.
- 2.22. PUBLIC DISCLOSURE:** No public disclosures or news releases pertaining to this Agreement shall be made without prior written approval of TxDOT.
- 2.23. INSURANCE**
- 2.23.1. **DURING TERM OF AGREEMENT:** The Vendor shall maintain all required insurance coverage throughout the term of the Agreement. The Vendor shall 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 Agreement.
- 2.23.2. **WAIVER OF SUBROGATION ENDORSEMENT:** The Vendor's Worker's Compensation insurance policy shall have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. The Vendor shall pay the deductible amount.
- 2.23.3. **WORKERS' COMPENSATION INSURANCE:** Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and Title 28 Texas Administrative Code Chapter 110). The Vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage:
- 2.23.4. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Bodily Injury/Property Damage. Required coverage shall at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.
- 2.24. VENDOR PERSONNEL MANAGEMENT**
- 2.24.1. **INDEPENDENT CONTRACTOR:** It is expressly understood and agreed to by both parties that TxDOT is contracting with the Vendor as an independent contractor. As such, Vendor understands and agrees that individuals performing services in connection with the Agreement are not state employees, and that the Vendor shall 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 the Vendor subcontract any of the services required in the Agreement, the Vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any subcontractor of the Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that all services rendered under all subcontracts are rendered in compliance with the Agreement.
- 2.24.2. **ALCOHOL AND DRUG 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. Violation of this requirement shall constitute grounds for termination of the Agreement. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.



- 2.24.3. **REPLACEMENT OF PERSONNEL:** If TxDOT determines a Vendor's employee or Vendor subcontractor performing under this Agreement is unable to perform in accordance with the service requirements or to communicate effectively, or is in the opinion of TxDOT otherwise objectionable, the Vendor shall immediately remove that employee or subcontractor.
- 2.24.4. **LABOR/MATERIAL/EQUIPMENT:** The Vendor shall provide all labor, material, and equipment necessary to furnish the goods or perform the service(s) throughout the term of the Agreement. All employees of the Vendor shall 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 the Vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the Vendor.
- 2.24.5. **ENGLISH SPEAKING STAFF:** The Vendor shall at all times have a minimum of one English speaking employee on the job. All employees shall be well-groomed and appropriately dressed when on TxDOT property.
- 2.24.6. **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.
- 2.24.7. **SUBCONTRACTING REQUIREMENTS:** In accordance with Government Code Sections 2161.181-182 and 34 TAC §20.11 and pursuant to the CPA Historically Underutilized Business (HUB) Rules, 34 TAC, §20.14, and Transportation DBE/HUB/SBE Rules, 43 TAC 9.50-.57 (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: <http://www.dot.state.tx.us/gsd/purchasing/purchasing.htm>.
- 2.24.8. **VENDOR TITLE VI AFFIRMATIONS:** The Vendor affirms the following, with regard to the work performed by it under the Agreement:
- 2.24.8.1. Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by the 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.
- 2.24.8.2. 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 the Vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by the Vendor of the Vendor's and subcontractor's obligations under its Agreement relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 2.24.8.3. During the performance of this Agreement, the Vendor, for itself, its assignees and successors in interest (hereinafter referred to collectively in this subsection (c) as the "Vendor") agrees as follows:
- 2.24.8.3.1. Compliance with Regulations: The Vendor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as

they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement

- 2.24.8.3.2. Nondiscrimination: The Vendor, with regard to the work performed by it during the Agreement, 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 Vendor will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 2.24.8.3.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Vendor 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 Vendor of the Vendor's obligations under this Agreement and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- 2.24.8.3.4. Information and Reports: The Vendor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will 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 Vendor is in the exclusive possession of another who fails or refuses to furnish this information, the Vendor will so certify to TxDOT or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 2.24.8.3.5. Sanctions for Noncompliance: In the event of a Vendor's noncompliance with the nondiscrimination provisions of this Agreement, TxDOT will impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - 2.24.8.3.5.1. withholding payments to the Vendor under the Agreement until the Vendor complies; and/or
  - 2.24.8.3.5.2. cancelling, terminating, or suspending a Agreement, in whole or in part.
- 2.24.8.3.6. Incorporation of Provisions: The Vendor will 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 Vendor will 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 Vendor becomes involved in litigation with, or is threatened with litigation by, a subcontractor or supplier because of such direction, the Vendor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the Vendor may request the United States to enter into the litigation to protect the interests of the United States.
- 2.24.8.4. The Vendor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.
- 2.24.9. **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:
  - 2.24.9.1. All persons employed by Vendor during the term of this Agreement to perform duties within the State of Texas; and

2.24.9.2. All persons, including subcontractors, assigned by Vendor to perform work pursuant to this Agreement.

2.24.9.3. Violation of this provision constitutes a material breach of this Agreement.

**2.25. DISPUTE RESOLUTION.** In accordance with Government Code, Chapter 2260, TxDOT has established a dispute resolution process in 43 Texas Administrative Code §§9.1 and 9.2 to resolve disputes that may arise between TxDOT and the Vendor under the Agreement (referred to herein as the “dispute resolution process”). The dispute resolution process shall be used by TxDOT and the Vendor to resolve disputes arising under the Agreement, including without limitation any claim for breach of contract. The contested case process provided in Chapter 2260 is the Vendor’s sole and exclusive process for seeking a remedy for an alleged breach of contract by TxDOT if the parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Agreement by TxDOT nor any other conduct of any representative of TxDOT relating to the Agreement shall be considered a waiver of sovereign immunity to suit. Notwithstanding any provision of the Agreement to the contrary, unless otherwise agreed in writing by TxDOT, the Vendor shall continue performance and shall not be excused from performance during the period of Agreement claim or dispute is pending; however, the Vendor may suspend performance during the pendency of such claim or dispute if the Vendor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

**2.26. TERM OF AGREEMENT:** The term of the Agreement shall be as stated on the Purchase Order.

**2.27. ORDER OF PRECEDENCE:** In the event of conflicts or inconsistencies between this Agreement and its attachments and other solicitation documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order: (1) Amendments to the Agreement, (2) the Agreement and its Attachments, (3) the Purchase Order and (4) the Vendor’s Application.

**2.28. TERMINATION OF THE AGREEMENT:**

2.28.1. **FOR CAUSE:** If Vendor fails to provide a good or service according to the provisions of the Agreement or fails to comply with any term or condition of the Agreement, or if any representation or certification made in the Agreement or any related document is false, incomplete or inaccurate, TxDOT may immediately terminate the Agreement upon written notice to the Vendor. The defaulting Vendor will not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. TxDOT may impose sanctions, debar or suspend the Vendor for abandonment or default(s) on the Agreement. 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 Agreement. 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 Agreement. The exercise of any of the foregoing remedies will not constitute a termination of the Agreement unless TxDOT notifies the Vendor in writing prior to the exercise of such remedy. The 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.

2.28.2. **FOR CONVENIENCE:** The Agreement may be terminated in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. In the event of such termination, the Vendor shall, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. Termination under this paragraph shall not relieve the Vendor of any obligation or liability that has occurred prior to termination.

2.28.3. In the event of termination, the Account will be closed and any remaining Account funds (after all applicable fees and charges have been applied) will be refunded to Vendor.

- 2.29. SALE OR ASSIGNMENT:** The Agreement is void if sold or assigned to another company without written approval from TxDOT. Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than thirty (30) days from the date of change.
- 2.30. RENEWAL OF AGREEMENT FOR SERVICES:** The Agreement may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the Agreement.
- 2.31. EXTENSION OF AGREEMENT:**
- 2.31.1. TxDOT reserves the right to extend the Agreement for time only past the stated term to allow the Vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the Agreement.
  - 2.31.2. An Agreement in its final renewal period may be further extended for a period up to ninety (90) days at the option of TxDOT.
  - 2.31.3. The Vendor may request a time only extension of an Agreement 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 purchasing department in the form of a purchase order change notice.
- 2.32. SEVERABILITY CLAUSE:** In the event that any provision(s) of this Agreement may later be determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect.
- 2.33. BINDING EFFECT AND SURVIVAL OF OBLIGATIONS**
- 2.33.1. By executing this Agreement, the Vendor binds itself, its respective successors and assignees, to the faithful performance of the terms and conditions and provisions of the Agreement.
  - 2.33.2. Expiration or termination of the Agreement for any reason shall not release Vendor from any liabilities or obligations set forth in the terms and conditions and Agreement or any work order 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 confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, statement and fees verification. Upon expiration or termination of the Agreement for any reason, TxDOT shall retain ownership of all associated work products and documentation obtained from or created by the Vendor under the Agreement. Vendor shall deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.
  - 2.33.3. The term of service stated on the Purchase Order is binding on the Vendor regardless of the term on the originating agency contract or its Agreement.
- 2.34. AMENDMENTS TO THE AGREEMENT.** TxDOT may revise the terms of this Agreement at any time with prior written notice to the Vendor. Notice will be deemed received ten (10) days after being mailed to the Vendor at the address on file. If the Vendor does not accept the revised terms, the Vendor must immediately notify the appointed TxDOT representative. Following notification, the Agreement will be terminated and the Account will be closed as described above. Continued use of the Account will constitute acceptance of the revised terms.
- 2.35. NO EXCLUSIVITY.** TxDOT reserves the right to enter into similar agreements with multiple vendors.

3. **CONTACT INFORMATION.** Questions regarding this Agreement shall be referred to the designated TxDOT representative:

Name: Cheryl Hill, CTCM  
Title: Contract Specialist  
Address: TxDOT Toll Operations Div.  
Attn.: Contracting  
12719 Burnet Road  
Austin TX 78727  
Phone: (512) 874-9144  
Email: Cheryl.Hill@txdot.gov

4. **SIGNATORY WARRANTY.** The undersigned signatory for the Vendor represents and warrants that the signatory has full and complete authority to enter into this Agreement on the Vendor's behalf.

Signature of Vendor's representative below constitutes Vendor making an offer that may be accepted by TxDOT with issuance of a corresponding purchase order.

[INSERT COMPANY NAME]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_ Phone: \_\_\_\_\_