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|---|---|
| Payee Name: Certica Solutions, Inc. | Contract No.: |
| Payee ID: 1542027292 | PO No.: FY21 FY22 FY23 FY24 |
| Division/Organization Code: 611 | |
| Project Name: TSDS ODS 3.x Upgrade | |
| Legal/Funding Authority: Texas Education Code § 42.006 | RFO No.: 701-20-014 |
| | Project ID No.: 04482098 |

**STANDARD CONTRACT BETWEEN THE
TEXAS EDUCATION AGENCY AND
CERTICA SOLUTIONS, INC**

ARTICLE I. PARTIES TO CONTRACT

This Contract ("Contract") is entered into by and between the Texas Education Agency ("TEA" or "Customer"), a Texas State Agency and Certica Solutions, Inc. ("Contractor" or "Certica").

ARTICLE II. CONTRACT CONTINGENCY

In accordance with Paragraph 2 of the attached Standard TEA Terms and Conditions, this Contract and all renewals and/or extensions, if applicable, are contingent upon the availability of funds to TEA as appropriated by the Texas State Legislature.

ARTICLE III. PERIOD OF CONTRACT

The initial term ("Initial Term") of this Contract shall be from the date of the final signature to August 31, 2024. TEA may, in its sole discretion, renew the Contract for up to 1 additional 3 year period. To renew the Contract, TEA will notify Contractor in writing.

ARTICLE IV. PURPOSE OF CONTRACT

Contractor shall provide a SaaS solution for the TSDS ODS that utilizes the Ed-Fi ODS API platform and includes several upgrades including, but not limited to, managing data standard changes, managing extensions that emerge from legislative mandates and agency policy, and managing Ed-Fi version releases. Contractor shall also provide all additional functions described in the Attachments to this Contract, listed below.

ARTICLE V. PAYMENT UNDER CONTRACT

Rackspace USA Inc., acting as agent for TEA under the DIR DCS Program (DIR Contract DIR-PCM-MSA-436) shall pay Contractor in accordance with the attached Task, Activity, Deliverable and Budget Plan (Attachment A). Upon Contractor's satisfactory performance in accordance with Attachment A, Rackspace USA Inc., acting as agent for TEA, shall pay Contractor by State of Texas warrant(s) or direct deposit the amount of up to \$6,638,000.00. The potential total value of this Contract, incorporating all optional renewal terms is \$11,950,000 based on a per student SaaS cost and estimated total student populations.

ARTICLE VI. TERMS & CONDITIONS, ATTACHMENTS AND ANNEXES

Attachments appear behind the Contract in this order.

- Attachment A – Task, Activity, Deliverable and Budget Plan
- Attachment B – Standard TEA Terms and Conditions
- Attachment C – [Intentionally Omitted]

- Attachment D – Request for Offer #701-20-014, together with all addenda thereto and the Terms and Conditions thereof
- Attachment E – Open Source Licensed Materials
- Attachment F – Service Level Agreement
- Attachment G – Technology Platform Description
- Annex A, Historically Underutilized Business Subcontracting Plan

ARTICLE VII. ORDER OF PRECEDENCE

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


- Attachment B – Standard TEA Terms and Conditions
- Standard Contract, inclusive of all attachments and annexes other than Attachment B
- Contractor's Proposal to the Texas Education Agency entitled Offer Submitted to the Texas Education Agency, Contracts and Purchasing Division, submitted April 28, 2020.

ARTICLE VIII. ENTIRE CONTRACT

This Contract together with the documents referenced in Articles VI and VII above, or cited within, comprise the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Contract shall be of no force or effect unless contained in a subsequent amendment executed by both parties.

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AGREED and accepted on behalf of Contractor as indicated by signature below of a person authorized to bind Contractor.

| | |
|----------------------|--|
| Typed Name | Mark Rankovic |
| Typed Title | President & CEO |
| Authorized Signature |  |
| Date Signed | January 27, 2021 |

THIS SECTION RESERVED FOR TEA USE.

I, an authorized official of the Texas Education Agency, hereby certify that this Contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above.

AGREED and accepted on behalf of TEA on _____
(month/day/year) by a person authorized to bind TEA.

Submit Electronic Copy to
TEAContracts@tea.texas.gov
Submit by mail to:
Texas Education Agency
Contracts and Purchasing Division
1701 North Congress Avenue
Austin, Texas 78701-1494

DocuSigned by:



1/27/2021

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Mike Morath
Commissioner of Education

Attachment A
Task, Activity, Deliverable and Budget Plan

TASK, ACTIVITY, and DELIVERABLE BUDGET PLAN (TADBP)

ATTACHMENT A (Page 1)

| Deliverable/Task/Activity Item | Deliverable | Deliverable Type | Deliverable Acceptance Criteria Payment at the Time of Invoice for: | Timeline |
|---|---|--|--|--|
| Premium Plus Support includes 1, 2 and 3 Below | | | | |
| 1. Kickoff & Requirements: | | | | |
| 1.1 Project Kickoff Meeting & Project Planning | Detailed project/project work plan/risk management plan | Meeting & Project & risk management plan (document) in Word or other format as requested by TEA | Meeting agenda covers anticipated meeting goals; Meeting attendance satisfactory. Project & risk management plan includes scheduled weekly meetings/updates, and TEA comments incorporated into final document. | Commencement thru 2/28/2021 |
| 1.2 Requirements Documentation | Detailed requirements document | Requirements document in Word or other format as requested by TEA | Requirements draft provided to TEA and comments from TEA incorporated into final Requirements document. | Commencement thru 2/28/2021 |
| 2. Design & Architecture: | | | | |
| 2.1 System Design & Architecture | System design and architecture documentation | System design and architecture document in Word or other format as requested by TEA | System design and architecture draft provided to TEA and comments from TEA incorporated into final Requirements document. | Commencement thru 2/28/2021 |
| 3. Accelerated Product Feature Development: | | | | |
| 3.1 ODS w/ TEA Enhancements | TPDM ext applied, TEA ext applied, H-ODS, data extraction interface, as-of date support, single queryable view, version upgrades | Product Feature Delivered in Pilot Environment | Acceptance testing & validation by TEA (test environment) | 3/1/2021 thru 8/31/2021 and per Timeline established in 1.1. |
| 3.2 ODS Mini-Pilot | Initial vendor integration & data validation (select vendor and districts), sandbox deployment to support early mini-pilot | Pilot Environment Operational for Selected Vendors and Districts | Acceptance testing & validation by TEA | 3/1/2021 thru 8/31/2021 and per Timeline established in 1.1. |
| 3.3 TEA Admin User Interface | Loading centralized data, global descriptor support, vendor connection status, system error and data validation views, Deleting full data set by LEA/school year | Product Feature Delivered in Pilot Environment | Acceptance testing & validation by TEA (test environment) | 3/1/2021 thru 8/31/2021and per Timeline established in 1.1. |
| 3.4 User Interface - LEA, ESC, EPP | Connection status by vendor, manage local descriptors, view, search, and export API and data validation errors, accessibility requirements | Product Feature Delivered in Pilot Environment | Acceptance testing & validation by TEA (test environment) | 3/1/2021 thru 8/31/2021and per Timeline established in 1.1. |
| 3.5 User Interface - LEA, ESC, EPP Mini-Pilot | Review user experience and workflows w/ select LEA, ESC, EPP | UI/UX review document in Word or other format as requested by TEA | UI/UX draft provided to TEA and comments from TEA incorporated into final document | 3/1/2021 thru 8/31/2021and per Timeline established in 1.1. |
| 3.6 Data Validations | Build upon existing Certify PEIMS rules where necessary, ECOS rule development, validation on-demand, validation schedule, validations against PEIMS data mart and ECOS databases | Product Feature Delivered in Pilot Environment | Acceptance testing & validation by TEA | 3/1/2021 thru 8/31/2021 and per Timeline established in 1.1. |
| 3.7 Integration (UID, TEAL. TSDS Global Notification) | Integration of Ed-Fi ODS with eScholar UID, TEAL integration, integration with TEA central authority, integration w/ global notification system | Product Feature Delivered in Pilot Environment | Acceptance testing & validation by TEA | 3/1/2021 thru 8/31/2021 and per Timeline established in 1.1. |
| Premium Support includes 4 & 5 Below: | | | | |
| 4. Pilot Rollout and Support: | | | | |
| 4.1 Pilot Plan | Assist TEA in the development of the pilot plan | Pilot Project Plan (document in Word or other format as requested by TEA) | Pilot Project Plan draft provided to TEA and comments from TEA incorporated into final document | 9/1/2021 thru 8/31/2022 and per Timeline established in 1.1. |
| 4.2 Provision Sandboxes | Deploy sandboxes, API permission configuration support, global and local descriptor load support | Pilot Environment Operational for Selected Vendors and Districts and Production Environment Operational for All Vendors and Districts | Acceptance testing by TEA, Vendor connectivity validated | 9/1/2021 thru 8/31/2022 and per Timeline established in 1.1. |
| 4.3 Cloud Scale Testing | During the pilot, Certica will also be performing scale and performance testing and making improvements to scale if required | Documented Scale Testing Results | Passing scale and performance results. | 9/1/2021 thru 8/31/2022 and per Timeline established in 1.1. |
| 4.4 Defect & Requirement Gap Resolution | Certica will address any defects and gaps in requirements | Outstanding product features and/or fixed bugs, delivered in pilot and production environments | Acceptance testing and TEA approval (test environment) | 9/1/2021 thru 8/31/2022 and per Timeline established in 1.1. |
| 5. Production Rollout Support/Maintenance: | | | | |
| 5.1 Training | Training materials, customer support process definition & review, establish and finalize production support. Training & support process documentation | Training materials/documentation and delivered training workshops in word or other format as requested by TEA | Prior to going live, training materials, customer support process definition & review, establish and finalize production support (training also includes cybersecurity training for Certica where needed). Training & support process documentation starts during pilot phase and be finalized before going to production. | 9/1/2022 thru 8/31/2023 and per Timeline established in 1.1. |
| 5.2 Ongoing Maintenance & Support | Ongoing hosting, defect resolution, tier-4 helpdesk support, ticketing system, Ed-Fi upgrades, quarterly enhancements, follow TEA release management process, ongoing meetings and status updates | (A) Support process materials / documentation in Word or other version as requested by TEA (B) access to support / ticketing system, and (C) product upgrades installed in pilot / testing and production environments | Ongoing maintenance and support provided including hosting, timely defect resolution, tier-4 helpdesk support, ticketing system, Ed-Fi upgrades and legislative updates are fully included, quarterly enhancements, follow TEA release management process, ongoing meetings and status updates are held. This includes implementing Ed-Fi version upgrades in a timely manner, generally within 6 to 12 months of public release while preserving TEA-specific enhancements and functionality; Implementing quarterly enhancements designated by TEA in response to regulatory and legal data collection and reporting requirements. For the avoidance of doubt, Certica agrees to provide at least, but not limited to, one release per year to accommodate legislatively mandated data standard changes, so that TEA can collect required data from districts. | 9/1/2022 thru 8/31/2023 and per Timeline established in 1.1. |
| All of these tasks, activities and deliverables are to be provided by Certica as part of the SaaS subcription to the Technology Platform products (Certify and Data Connect) being licensed by TEA from Certica. As such, the cost for these tasks, activities and deliverables are <u>included</u> in the SaaS subscription and support fees charged for the Certify and Data Connect products and do not have individual fees or charges to be invoiced separately. | | | | |

TASK, ACTIVITY, and DELIVERABLE BUDGET PLAN (TADBP)

ATTACHMENT A (Page 2)

| Task/Activity Item | Deliverable | Deliverable Type | Deliverable Acceptance Criteria: | Timeline | Budget |
|---|--|---------------------------------|---|--------------------------------------|--|
| TASK 1: SaaS Licenses FY 21 | | | | | \$1,965,000.00 |
| 1.1 Certify State Edition™ | SaaS subscription including Premium Plus support | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains enhancements as completed and approved by TEA pursuant to project timeline. | Contract Signature - August 31, 2021 | \$122,812.50 monthly for 8 months* (Invoice 1 Service Dates Contract Signature-2/28/21, Invoice 2 Service Dates 3/1/21-5/31/21, and Invoice 3 Service Dates 6/1/21-8/31/21)** |
| 1.2 Data Connect State Edition™ | SaaS subscription including Premium Plus support | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains enhancements as completed and approved by TEA pursuant to project timeline. | Contract Signature - August 31, 2021 | \$122,812.50 monthly for 8 months* (Invoice 1 Service Dates Contract Signature-2/28/21, Invoice 2 Service Dates 3/1/21-5/31/21, and Invoice 3 Service Dates 6/1/21-8/31/21)** |
| TOTAL Per Invoice for 1.1 and 1.2: | | | | | \$245,625.00 monthly for 8 months* Paid in 3 Invoices (Invoice 1 Service Dates Contract Signature-2/28/21, Invoice 2 Service Dates 3/1/21-5/31/21, and Invoice 3 Service Dates 6/1/21-8/31/21)** |
| TASK 2: SaaS Licenses FY 22 | | | | | \$1,565,000.00 |
| 2.1 Certify State Edition™ | SaaS License including Premium support | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains enhancements as completed and approved by TEA pursuant to project timeline. | September 1, 2021 - August 31, 2022 | \$195,625.00 Quarterly (Invoice 1 Service Dates 9/1/21-11/30/21, Invoice 2 Service Dates 12/1/21-2/28/22, Invoice 3 Service Dates 3/1/22-5/31/22, and Invoice 4 Service Dates 6/1/22-8/31/22)** |
| 2.2 Data Connect State Edition™ | SaaS License including Premium support | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains enhancements as completed and approved by TEA pursuant to project timeline. | September 1, 2021 - August 31, 2022 | \$195,625.00 Quarterly (Invoice 1 Service Dates 9/1/21-11/30/21, Invoice 2 Service Dates 12/1/21-2/28/22, Invoice 3 Service Dates 3/1/22-5/31/22, and Invoice 4 Service Dates 6/1/22-8/31/22)** |
| TOTAL Quarterly for 2.1 and 2.2: | | | | | \$391,250.00 Quarterly (Invoice 1 Service Dates 9/1/21-11/30/21, Invoice 2 Service Dates 12/1/21-2/28/22, Invoice 3 Service Dates 3/1/22-5/31/22, and Invoice 4 Service Dates 6/1/22-8/31/22)** |
| TASK 3: SaaS Licenses FY23 | | | | | \$1,512,000.00 |
| 3.1 Certify State Edition™ | SaaS License including Certica Support*** | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains all enhancements | September 1, 2022 - August 31, 2023 | \$189,000.00 Quarterly (Invoice 1 Service Dates 9/1/22-11/30/22, Invoice 2 Service Dates 12/1/22-2/28/23, Invoice 3 Service Dates 3/1/23-5/31/23, and Invoice 4 Service Dates 6/1/23-8/31/23)** |
| 3.2 Data Connect State Edition™ | SaaS License including Certica Support*** | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains all enhancements | September 1, 2022 - August 31, 2023 | \$189,000.00 Quarterly (Invoice 1 Service Dates 9/1/22-11/30/22, Invoice 2 Service Dates 12/1/22-2/28/23, Invoice 3 Service Dates 3/1/23-5/31/23, and Invoice 4 Service Dates 6/1/23-8/31/23)** |
| TOTAL Quarterly for 3.1 and 3.2: | | | | | \$378,000.00 Quarterly (Invoice 1 Service Dates 9/1/22-11/30/22, Invoice 2 Service Dates 12/1/22-2/28/23, Invoice 3 Service Dates 3/1/23-5/31/23, and Invoice 4 Service Dates 6/1/23-8/31/23)** |
| TASK 4: SaaS Licenses FY24 | | | | | \$1,596,000.00 |
| Certify State Edition™ and Data Connect State Edition ™ Certica Support | SaaS License including Certica Support*** | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains all enhancements | September 1, 2023 - August 31, 2024 | \$0.28/student for the period 09/01/2023 to 08/31/2024; total dollar value based on estimated student population of 5,700,000; invoiced quarterly* |
| Initial Term | | | | TOTAL | \$6,638,000.00 |
| TASK 5: SaaS Licenses FY25 | | | | | \$1,682,000.00 |
| Certify State Edition™ and Data Connect State Edition ™ Certica Support | SaaS License including Certica Support*** | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains all enhancements | September 1, 2024 - August 31, 2025 | \$0.29/student for the period 09/01/2024 to 08/31/2025; total dollar value based on estimated student population of 5,800,000; invoiced quarterly* |
| TASK 6: SaaS Licenses FY26 | | | | | \$1,770,000.00 |
| Certify State Edition™ and Data Connect State Edition ™ Certica Support | SaaS License including Certica Support*** | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains all enhancements | September 1, 2025 - August 31, 2026 | \$0.30/student for the period 09/01/2025 to 08/31/2026; total dollar value based on estimated student population of 5,900,000; invoiced quarterly* |
| TASK 7: SaaS Licenses FY27 | | | | | \$1,860,000.00 |
| Certify State Edition™ and Data Connect State Edition ™ Certica Support | SaaS License including Certica Support*** | Technology Platform and Support | Product is supported, functions properly, meets specifications and contains all enhancements | September 1, 2026 - August 31, 2027 | \$0.31/student for the period 09/01/2026 to 08/31/2027; total dollar value based on estimated student population of 6,000,000; invoiced quarterly* |
| Renewal Term | | | | TOTAL | \$5,312,000.00 |
| *The Contractor's initial proposal included Premium Plus Support for FY 21 for a lower quarterly cost. However, that cost was spread over the entire 21 fiscal year. Because Contractor will be starting the Contract later in the FY 21 than originally anticipated, the Contractor will need to accelerate feature development for Premium Plus Support. Therefore, although payment will be the same total amount for fiscal year 21 as listed in Contractor's original proposal, it will be paid in higher increments to cover additional resources needed to complete the same feature development in a shorter time period. | | | | | |
| **Per the Contractor's initial proposal, the SaaS subscription and support fees will be invoiced on the day prior to the first day of each subscription period. | | | | | |
| - Premium Plus Support is Certica Support plus Tasks in Sections 1, 2 and 3 on page 1 of this Attachment A. - Premium Support is Certica Support plus Tasks in Sections 4 and 5 on page 1 of this Attachment A. | | | | | |
| ***Certica Support is described in Attachment F, provided that, notwithstanding anything to the contrary, Ed-Fi upgrades and legislative updates are fully included. | | | | | |

Payment will be made monthly upon completion of designated tasks/activities outlined in this Task, Activity, Deliverable and Budget Plan. Contractor must submit invoices electronically to accountspayable-US@rackspace.com and to Sandra Tate at Sandra.Tate@TEA.texas.gov. Contractor must provide a detailed narrative report with each invoice. The report must describe the specific work completed during the invoice period and cumulative completion status of all project tasks. Invoices will be reviewed and approved based upon project progress, task/subtask completion, and reasonable use of project funds; payment is based on performance of services being satisfactory to TEA. The final invoice is due within forty-five days of project completion. At a minimum, all invoices must include:

- Invoice date and invoice number;
- Contractor name, payee ID number and mailing address;
- Name and telephone number of the person designated to answer questions about the invoice;
- Purchase order and contract numbers; and
- Project name and sufficient detail about services rendered including service period and amount due.

Send invoices to:
Rackspace US, Inc. c/o TEA
Attn: Accounts Payable
1 Fanatical Place
San Antonio, TX 78218

Purchases of food are generally prohibited and must be preapproved by the TEA Project Manager. Food purchases must be in accordance with Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200, Subpart E, §200.432. Purchases must be necessary and reasonable for the successful performance of the Contract. This applies to both federal and state funded contracts. Website to view the regulations:

http://www.ecfr.gov/cgi-bin/text-idx?SID=f61b41b94d57ed256eb46811a14d243d&mc=true&node=se2.1.200_1432&rgn=div8

Contractor will make a good faith effort to comply with the State of Texas Travel Guidelines. TEA may at its discretion approve requests for reimbursement of travel which exceed the State of Texas Travel Guidelines. Contractor shall maintain receipts in accordance with Item M of the Terms and Conditions. The Comptroller's website for travel rules and regulations – [texttravel: https://fm.xcpa.state.tx.us/fmx/travel/texttravel/index.php](https://fm.xcpa.state.tx.us/fmx/travel/texttravel/index.php). Receipts must be made available for programmatic or financial audit, by TEA and by others authorized by law or regulation to make such an audit, for a period of not less than seven (7) years.

State travel expense reimbursement is not a per diem. Contractors must claim the actual expenses incurred for meals and lodging not to exceed the maximum allowable rates. The maximum should not be claimed unless the actual expenditures equal or exceed the maximum allowable rate. Effective January 1, 2021, the mileage rate is 56¢.

Attachment B
Standard TEA Terms and Conditions

ATTACHMENT B**CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS, RESPONSE PREFERENCES AND EXECUTION OF OFFER****1. Defined Terms:** As used in this Attachment B, the following capitalized terms have the meanings specified below.

- (a) *Authorized User* shall mean (i) TEA, (ii) any Texas Local Education Agency ("LEA"), school district staff member, private school, private school staff member, teacher, tutor, parent, student and/or resident (whether currently in-state or temporarily outside the state), and (iii) any other third-party and its or their staff or personnel serving or acting on behalf of any of the Authorized Users named in (i) or (ii) above.
- (b) *Commercial* shall mean selling or reselling (whether directly or indirectly, via outright sale, license or otherwise) for financial consideration, access to the Contractor Materials or the Technology Platform.
- (c) *Comptroller* means the Texas Comptroller of Public Accounts.
- (d) *Contract* means the document entered into between TEA and Contractor, including all attachments (for the avoidance of doubt, including, but not limited to, the Standard TEA Terms and Conditions and any Special Terms and Conditions), annexes, exhibits, schedules, amendments, renewals and extensions of or to the Contract.
- (e) *Contract Manager* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project.
- (f) *Contract Project* means the purpose intended to be achieved through the Contract.
- (g) *Contractor* means the party to this Contract who is providing the contracted goods or services to TEA, provided that, prior to contract award, Contractor means the person or entity who provides a Response (i.e., a "Respondent").
- (h) *Contractor Materials* means, collectively, the pre-existing, complete, standalone materials or products of Contractor marketed and offered by Contractor to third parties prior to provision to TEA that Contractor can document as such, and all Intellectual Property Rights embodied therein, and any derivatives thereof other than those created by TEA, that are created during the term of this Contract, and includes any Third Party Materials (as defined below).
- (i) *EIR* means electronic and information resources as defined in 1 TAC (as defined below) § 206.1, as may be amended from time to time.
- (j) *FERPA* means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), the regulations issued pursuant thereto, and any amendments thereto.
- (k) *HSP* means a HUB subcontracting plan.
- (l) *HUB* means an entity certified by the Comptroller as a Historically Underutilized Business as defined in Texas Government Code Section 2161.001.
- (m) *Intellectual Property Rights* means the legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations, social media pages and associated handles and hashtags; and (v) any other similar rights. The Intellectual Property Rights of a party include all legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (n) *Non-Commercial* means any activity other than Commercial activities.
- (o) *Personally Identifiable Information* means information that alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's: name; Social Security number; date of birth; driver's license number; government-issued identification number; mother's maiden name; unique biometric data (including, but not limited to, the individual's fingerprint, voice print, and retina or iris image); unique electronic identification number; address or routing code; telecommunication access device; account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; and/or identity and relates to the physical or mental health or condition of the individual, the provision of health care to the individual; or payment for the provision of health care to the individual.

- (p) *Protected Data* means the data, in electronic and physical form, that
 - (i) is collected by and through any Technology Platform provided or operated by Contractor,
 - (ii) may be input by Authorized Users, and/or
 - (iii) is generated by Authorized Users or their devices by interacting with any Technology Platform provided by or through Contractor,
 including, without limitation, Personally Identifiable Information pertaining to students as well as to their parents or legal guardian and all grades, scorings, rankings, percentage comparisons, answers and responses to questions and assignments, and "educational records" as that term is defined by FERPA. *Protected Data* shall also include all versions and portions of any part of the Protected Data, all files and databases containing such Protected Data, as well as any information derived or generated therefrom through database hygiene, database management or otherwise. As between TEA and Contractor, Protected Data shall be deemed to be owned by TEA, provided that Protected Data applicable to Authorized Users other than TEA, shall be owned by the applicable Authorized User to whom it applies, unless TEA acquires ownership thereof in another agreement.
- (q) *Response* is what a Contractor submits in response to the following specific competitive solicitations: an invitation for bids; a request for offers; a request for proposals; a request for qualifications; or a statement of work solicitation under a Department of Information Resources contract.
- (r) *Service Credit* means any applicable credit or any refund for inadequate performance of a Technology Platform that could be construed as liquidated damages and has been incorporated into this Contract as a valid pre-estimate of damages TEA will sustain which will not be capable of precise determination; such credit is therefore considered to be agreed-upon costs incurred as a result of Contractor's failure to meet the contracted-for requirements, and is not a penalty.
- (s) *Special Terms and Conditions* means any provisions contained in an Attachment to this Contract labeled "Special Terms and Conditions of this Contract."
- (t) *Standard TEA Terms and Conditions* or *Standard Terms* means the provisions contained in this Attachment B.
- (u) *State* means the State of Texas.
- (v) *TAC* means the Texas Administrative Code.
- (w) *TEA* means the Texas Education Agency.
- (x) *TEA Confidential Information* means information that is confidential under the provisions of the FERPA, the Texas Public Information Act, or other applicable State or federal laws, that is provided to Contractor by TEA, that Contractor collects on behalf of TEA, that Contractor obtains in connection with the provision of goods and services hereunder and/or that is otherwise designated by TEA as non-public TEA confidential information including, without limitation, Protected Data. Examples of TEA Confidential Information include: (i) Personally Identifiable Information (ii) criminal background checks; (iii) an e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (iv) certain personnel information concerning a TEA employee including, but not limited to, home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (v) information about security vulnerabilities in TEA systems; (vi) dataset extracted from confidential sources (e.g., SAS data sets); and (vii) Student IDs (FERPA protected) and some Government IDs. *TEA Confidential Information* also includes, without limitation, all cookies and metadata associated with TEA's webpages and online content.
- (y) *TEA Trademarks License* has the meaning assigned to such term in Clause 18 of this attachment B.
- (z) *Technology Platform* means the software and infrastructure (including but not limited to Contractor's software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements, and modifications) in a hosted environment provided by Contractor to which TEA and/or Any Authorized User is being granted access under this Contract via a web site, designated IP address(es), or APIs, as described more fully in Attachment G.
- (aa) *Term* means the period of time between the execution of the Contract and the expiration of the Contract.
- (bb) *Third-Party Materials* means any licensed third-party materials, and derivatives thereof, provided by Contractor to TEA.
- (cc) *WCAG* means web content accessibility guidelines, version 2.1 of June 5, 2018, from the World Wide Web Consortium, which are incorporated herein by reference, as amended.

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

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

2. **Excess Obligations Prohibited:** This Contract is subject to termination or cancellation, without penalty to TEA, either in whole or in part, subject to the availability of State funds. TEA is a State agency whose authority and appropriations are subject to actions of the Texas Legislature. If TEA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TEA’s or Contractor’s delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this provision, TEA will not be liable to Contractor for any damages that arise out of or are related to such termination or cancellation, and TEA will not be required to give prior notice of such termination or cancellation.
3. **Indemnification:** For the avoidance of doubt, TEA shall not indemnify Contractor or any other entity under the Contract because TEA is prohibited by law from indemnifying third parties.

General

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

Intellectual Property

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

Taxes/Workers’ Compensation/Unemployment Insurance – Including Indemnity

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

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

4. **Signature Authority and Binding Effect:** By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Contractor. By executing the Contract, Contractor represents and warrants that the individual signing the Contract and any documents made part of the Contract is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under the Contract. The Contract shall be binding upon and shall inure to the benefit of TEA and Contractor and to their respective permitted successors, and assigns.
5. **Responsibility for Actions and Limitation on Authority:** Contractor is solely responsible for its actions and those of its agents, employees or subcontractors. Contractor and its agents, employees or subcontractors shall have no authority to act for or on behalf of TEA or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Contractor and its agents, employees and subcontractors may not incur any debt, obligation, expenses, or liability of any kind on behalf of TEA or the State.
6. **Final Expression, and Superseding Document:** The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties and any documents referenced via URLs, "click-through" license agreements, end-user licenses, subscription agreements, terms of use or other terms that may be presented on, through or by the Technology Platform provided or operated by Contractor (whether presented before or after contract signing) (collectively, "Supplemental Terms"). Such Supplemental Terms shall have no force and effect with respect to the Parties or any Authorized Users except with respect to the Creative Commons and open source licenses specified in Attachment E. Contractor hereby represents and warrants that no Creative Commons licenses or open source licenses are applicable to any Works or Contractor Materials except as provided in Attachment E, and if no Attachment E is attached hereto, no such Supplemental Terms apply to this Contract. Subject to the foregoing, any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended as provided in Clause 7 or Clause 28 below.
7. **Amendments:** All modifications, amendments or extensions to this Contract are subject to Clause 2 of these Standard TEA Terms and Conditions, will be executed on standard TEA forms, and will follow TEA's internal contracting process. All modifications, amendments or extensions will be initiated by TEA Contract and Purchasing staff. A modification, amendment, or extension to this Contract will become effective on the date of signature by TEA or the effective date shown on such, modification, amendment or extension document, whichever is later. All modifications, amendments, or extensions (other than a renewal as provided for in the Contract) must be in writing and signed by both parties. Notwithstanding the foregoing, TEA may make technical amendments in order to correct manifest errors in the Contract, provided such technical amendments would not have a materially adverse effect on Contractor and that Contractor does not contest in writing the amendments within 30 days after TEA provides written notice to Contractor of such technical amendments.
 - (a) Written amendments are required for the following Contract changes:
 - i. Any revision which would result in the need for additional funding;
 - ii. Revisions or additions to the scope of work, deliverables, or objectives of the Contract, other than revisions permitted by paragraph (b) of this Clause 7;
 - iii. Any extension of the period of the Contract other than a renewal as provided for in the Contract;
 - iv. Any reduction of funds or reduction in the scope of work, other than revisions permitted by paragraph (b) of this Clause 7;
 - v. Any change to the Standard TEA Terms and Conditions; and
 - (b) Informal budget revisions signed by Contract Managers shall be permitted for the following contract changes:
 - i. Reallocating funds among existing contract tasks/deliverables (up to 25% increase/decrease per specified task/deliverable);
 - ii. Reallocating funds across TEA fiscal years and State bienniums; and
 - iii. Revisions to the scope of work consisting of a reduction to specified tasks that would decrease the total contract value (up to 25% decrease in total contract value).

Updates to Standard TEA Terms and Conditions

TEA updates the TEA Standard Terms and Conditions on a regular basis to account for changes to laws and evolving agency needs. Contractor agrees that updated Standard TEA Terms and Conditions may be included in any amendment, renewal, or other

document altering this Contract and that any negotiations regarding such updated Standard TEA Terms and Conditions will be limited to terms that have changed since the most recent Standard TEA Terms and Conditions attached to the Contract.

8. **Subcontracting:** Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TEA. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.
9. **Personnel Assignments, Transfers, HUB Subcontracting, Substitutions and Reporting:** TEA reserves the right to request changes in personnel assigned to the project. The TEA Contract Manager must pre-approve any changes in key personnel throughout the contract term. Pursuant to 34 TAC §201.281-298 and Texas Government Code, Chapter 2161, Contractor shall maintain business records documenting compliance with the HSP and shall submit compliance reports to TEA. Any changes to the HSP must be approved by TEA HUB Coordinator before subcontracting changes are initiated. Substitutions are not permitted without written approval of TEA Contract Manager. If Contractor subcontracts any of the work without prior authorization and without complying with this Clause, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable State law. Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PAR's are due no later than the 10th day of the following month. The PAR is required to be submitted monthly, even if no reportable activity occurred for the month. Reports shall be submitted electronically to the HUBOffice@tea.texas.gov. In addition to the PAR, Contractor shall also create and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
10. **Interpretation:** The terms, conditions, and assurances, which are stated in the competitive solicitation, in response to which Contractor submitted a Response, are incorporated herein by reference. Contractor's Response that was furnished to TEA in response to the competitive solicitation is incorporated herein by reference. In the event of a conflict between or among the various documents comprising the Contract, the order of precedence set forth in the Contract shall apply. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
11. **Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
12. **Proof of Financial Stability, Records Retention and the Right to Audit:** TEA may require Contractor to provide proof of financial stability prior to or at any time during the Contract term.

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

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

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

14. Technology Platform (SaaS) License

- (a) **License to Access and Use Technology Platform** Contractor hereby grants to TEA, exercisable by TEA and by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable, transferable and sublicensable (pursuant to Clause 15) right and

license throughout the world during the Term and such additional periods, if any, as Contractor is required to provide any Technology Platform, to: (i) access and use the Technology Platform, including in operation with other software, hardware, systems, networks, and Technology Platform, for TEA's permitted uses; (ii) generate, print, copy, upload, download, store and otherwise process all graphical user interfaces, audio, visual, digital, and other output, displays, and content as may result from any access to or use of the Technology Platform; (iii) prepare, reproduce, print, download and use as many copies of the documentation as may be necessary or useful for any use of the Technology Platform under this Contract; (iv) access and use the Technology Platform for all such non-production uses and applications as may be necessary or useful for the effective use of the Technology Platform as permitted hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support, and repair, which access and use will be without charge and shall not be included for any purpose in any calculation of TEA's or its Authorized Users' use of the Technology Platform, including for purposes of assessing any fees or other consideration payable to Contractor or determining any excess use of the Technology Platform as described in an order; and (v) perform, display, execute, reproduce, and modify (including to create improvements and derivative works of), and distribute and otherwise make available to Authorized Users, any Technology Platform solely to the extent necessary to access or use the Technology Platform in accordance with the terms and conditions of this Contract.

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

15. Intellectual Property

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

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

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

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

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

(b) License to Contractor Materials

Contractor hereby grants to TEA and Authorized Users a nonexclusive, worldwide, royalty-free, fully paid-up, irrevocable, perpetual, unlimited, assignable and transferable right and license to the Contractor Materials, and any updates, revisions, additions thereto, or derivative works thereof, to directly and indirectly: (i) use, access, execute, reproduce, copy, modify, adapt, publicly display, publicly perform, provide access to, distribute copies of, transmit and otherwise use and exploit; and (ii) authorize others to do any or all of the foregoing in a sublicense, subcontractor agreement, sub-grant or otherwise, for or on behalf of TEA, in order to further the purposes of TEA (collectively "Materials License"). The Materials License includes the right for TEA and Authorized Users to create derivative works of the Contractor Materials and authorize others to do so in order to further the purposes of TEA and/or Authorized Users. The authors of such derivative works shall have and retain ownership of such derivative works.

16. Social Security Numbers (SSNs) Withheld: TEA will not provide SSNs to any Contractor under this Contract unless specifically stated as part of the Contract Project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA and will destroy or return all student-identifying information in accordance with the terms in Clause 19 on Confidential Information, FERPA, and Information Security Requirements hereof.

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

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

Contractor hereby acknowledges and agrees that all trademarks and service marks adopted, used, registered, and/or owned by TEA ("TEA Trademarks," as shown in the TEA Brand Book, which is available upon request) remain the exclusive property of TEA, that all right, title and interest in and to the TEA Trademarks are exclusively held by TEA and all goodwill associated with such trademarks inures solely to TEA. TEA hereby grants to Contractor, and any approved subcontractors pursuant to Clause 8 hereof, for the term of this Contract, a limited, non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce TEA Trademarks on published materials, in print and digital form, solely for purposes in connection with the performance of this Contract ("TEA Trademarks License"), provided that such TEA Trademarks License is expressly conditional upon and subject to, the following:

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

Contractor represents and warrants that all materials produced for and/or procured by TEA will align with the requirements and content expectations detailed in the TEA Brand Book. All materials delivered by Contractor that do not meet the requirements contained in the TEA Brand Book shall be deemed not accepted for purposes of Clause 46 (Payment) of these Standard TEA Terms and Conditions. To the extent that Contractor has any questions about content in the TEA Brand Book or TEA appearance and style guidelines, they should email Communications@tea.texas.gov.

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

Contractor further agrees that it is critical that the goodwill associated with the TEA Trademarks is protected and enhanced and, toward this end, Contractor shall not during the term of this Contract or thereafter: (i) attack the title or any rights of TEA in or to the TEA Trademarks; (ii) attack the validity of this Contract; (iii) do anything either by an act of omission or commission which might

impair, violate or infringe the TEA Trademarks; (iv) claim (adversely to TEA or anyone claiming rights through TEA) any right, title or interest in or to the TEA Trademarks; (v) misuse or harm the TEA Trademarks or bring the TEA Trademarks into disrepute; (vi) for its benefit, directly or indirectly, register or apply for registration of the TEA Trademarks or any mark which is, in TEA's reasonable opinion, the same as or confusingly similar to any of the TEA Trademarks; and/or (vii) for its benefit, directly or indirectly, register, maintain or apply for registration of a domain name which is, in TEA's reasonable opinion, the same as, confusingly similar to or incorporates any of the TEA Trademarks.

19. Confidential Information, FERPA, and Information Security Requirements:

(a) Ownership of TEA Confidential Information.

As between TEA and Contractor, Contractor acknowledges and agrees that all TEA Confidential Information, including any Protected Data, is owned by TEA.

(b) Access to and Use of TEA Confidential Information

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

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

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

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

(c) FERPA

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

(d) Return and Destruction of TEA Confidential Information.

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

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

Subject to Clause 55(g), no later than 30 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of all TEA Confidential Information, including all copies thereof and materials incorporating such TEA Confidential Information, whether in physical or electronic form, and provide to the TEA Contract Manager documentation that the sanitization has been completed. An authorized agent of Contractor must certify the completion of the destruction of data and sanitization.

20. Information Security Requirements

Contractor shall: (a) use appropriate legal, organizational, physical, administrative and technical measures, and security procedures, including, without limitation, ensuring TEA Confidential Information will be encrypted at rest and in motion, to safeguard and ensure the security of TEA Confidential Information and to protect TEA Confidential Information from unauthorized access, hacking, disclosure, duplication, theft, use, modification and/or loss; (b) comply with all applicable laws and regulations governing the handling of TEA Confidential Information; (c) process all TEA Confidential Information solely within the contiguous United States and limit access to the TEA Confidential Information to employees, subcontractors and staff of Contractor who have passed reasonable security clearance checks; and (d) implement physical security and access controls at any of its facilities (including any data centers) that house TEA Confidential Information.

Contractor shall comply with rules pertaining to information technology security standards found at 1 TAC, Chapter 202, as may be amended from time to time.

TEA shall have the right to review Contractor's security measures to ensure that any data that is in Contractor's possession is secure. For any Contractor or subcontractor that transmits, processes, or stores TEA Confidential Information, TEA may require Contractor or subcontractor to periodically provide evidence of its information security policies, procedures and controls. Contractor shall cooperate fully by providing such evidence and by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s), if requested by TEA. TEA shall have the right to scan Contractor websites and mobile applications for vulnerabilities and to audit the security measures in effect on Contractor's connected systems without prior warning. TEA shall also have the right to immediately terminate network and system connections that do not meet the requirements herein. For any information security risks of the Contractor identified by TEA throughout the Term of this Contract, TEA may require an action plan to mitigate or remediate the security risk and Contractor agrees to provide such action plan promptly upon request.

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

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

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

(a) Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures, more fully detailed in the security and awareness training that every contractor is required to complete prior to obtaining access to TEA networks and systems. TEA's remote access request procedures will require Contractor to submit applicable TEA access request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. The off-site downloading, transfer, and/or storage of TEA Confidential Information is strictly prohibited unless such acts are specifically allowed in the Contract's scope of work. Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States.

(b) Cybersecurity Training

Contractor shall ensure that any Contractor employee or subcontractor employee who has access to a State computer system or database shall complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code. Such training is required to occur during the contract term and the renewal period. Contractor shall provide TEA with verification of the completion of the requisite training.

(c) Disclosure of Security Breach and Security Vulnerabilities

Contractor shall provide notice to TEA's Contract Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive data or TEA Confidential Information or any breach, denial of service attack and/or inaccessible data due to ransomware or other type of malware (each such event, a "Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- i. Description of the nature of the Security Incident;
- ii. The type of TEA information involved;
- iii. Who may have obtained the information;

- iv. What steps Contractor has taken or will take to investigate the Security Incident;
- v. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- vi. A point of contact for additional information.

Each day thereafter or as additional information becomes available, until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information:

- i. Who is known or suspected to have gained unauthorized access to TEA information;
- ii. Whether there is any knowledge if TEA information has been abused or compromised;
- iii. What additional steps Contractor has taken or will take to investigate the Security Incident;
- iv. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- v. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Further, Contractor will notify TEA within 12 hours of any new report of any security vulnerability that affects their platforms directly or indirectly, that is published in sources including, but not limited to, the Common Vulnerabilities and Exposures and publications of the Cybersecurity Infrastructure and Security Agency (each such event, a "Security Vulnerability").

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

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within 30 days of TEA's written request, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.

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

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

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

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

- 22. Electronic and Information Resources Accessibility Standards:** Contractor represents and warrants that the products and services that are the subject of this Contract comply with the State accessibility requirements for Electronic Information Resources (EIR) specified in 1 TAC 206 and 1 TAC Chapter 213 when such products or services are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accessibility mandated in TAC align with the federal regulations set forth in Section 508 of the Rehabilitation Act of 1973. All current and potential contractors that develop or maintain EIR for TEA shall follow the WCAG (also ISO/IEC standard 40500) as the technical accessibility standard.

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

A website Contractor shall arrange accessibility testing with a third-party company to evaluate the accessibility of the contracted site. The ideal third-party company shall have a proven track record in web accessibility testing and use real users with disabilities for manual testing. The third-party company will provide an accessibility conformance report (ACR) to the Contractor and any recommendations they suggest. The report must be submitted to the TEA Contract Manager for inclusion in the contract file.

- 23. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance

during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.

- 24. TEA Property:** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- 25. Use of State Property:** Contractor is prohibited from using State Property for any purpose other than performing services authorized under the Contract. State Property includes, but is not limited to, TEA's office space, identification badges, TEA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TEA-issued software, and the TEA Virtual Private Network (VPN client)), and any other resources of TEA. Contractor will not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States. Contractor will not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor will be responsible for all charges attributable to Contractor's use of State Property that exceeds the Contract Project. Contractor will fully reimburse such charges to TEA within 10 calendar days of Contractor's receipt of TEA's notice of amount due. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA. Use of State Property for a purpose not authorized by Contract will constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to TEA under Contract, at law, or in equity.
- 26. Governing Law and Venue:** The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TEA.
- 27. No Waiver:** Nothing in this Contract shall be construed as a waiver of TEA's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TEA or the State. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TEA or the State under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TEA does not waive any privileges, rights, defenses, or immunities available to TEA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.
- 28. Applicable Law and Conforming Amendments:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 29. Federal Rules, Laws, and Regulations that apply to all Federal Programs:** Contractor represents and warrants its compliance with all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
 - (a) Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
 - (b) Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
 - (c) Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
 - (d) Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105;
 - (e) The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
 - (f) The Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments;
 - (g) Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
 - (h) Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
 - (i) The Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended;
 - (j) P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
 - (k) General Education Provisions Act, as amended.

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

- 30. Equal Employment Opportunity:** Contractor represents and warrants its compliance with all applicable duly enacted State and federal laws governing equal employment opportunities.
- 31. E-Verify Program:** Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:
 - (a) All persons employed by Contractor to perform duties within Texas; and
 - (b) All persons, including subcontractors, assigned by Contractor to perform work pursuant to the contract within the United States of America.
- 32. Compliance with Laws:** Contractor shall comply with all federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Contractor represents and warrants that it has acquired all applicable licenses, certifications, permits and any other documentation to perform this Contract. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 33. Legal and Regulatory Actions:** Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response including a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. In addition, Contractor represents and warrants that it shall notify TEA in writing within 5 working days of any changes to the representations or warranties in this clause and understands that failure to so timely update TEA shall constitute a material breach of contract and may result in immediate termination of the Contract.
- 34. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure to so comply.
- 35. No Exclusivity:** The Contract is not exclusive to the Contractor. TEA may obtain products and related services from other sources during the term of the Contract. TEA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.
- 36. Antitrust:** By signing this Contract, Contractor represents and warrants that, in accordance with Texas Government Code Section 2155.005 neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution has, (a) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws; or (b) communicated directly or indirectly the Response to any competitor or any other person engaged in the same line of business as Contractor.
- 37. Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit. Contractor represents and warrants that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practices in an administrative hearing or court suit.
- 38. Child Support Obligation Affirmation:** Under Section 231.006 of the Texas Family Code, Contractor certifies that the individual or business entity named in this Contract or Response is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 39. Public Information Act:** Contractor understands that TEA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State. Information, documentation, and other material in connection with this solicitation, this Response or any resulting Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

TEA Contract Manager will provide the specific format by which Contractor is required to make the information accessible by the public.

TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to (a) the Response, (b) the goods or services provided under the Contract or (c) information provided to TEA under this Contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in (a) the Response, (b) the Contract, (c) provided under the Contract, or (d) otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided (a) in the Response, (b) under or in this Contract, or (c) otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act. Upon receipt of a request for information related to the goods or services provided under the Contract maintained by the Contractor, the TEA Contract Manager shall request the responsive information from the Contractor. The Contractor shall respond to TEA's request within five working days.

- 40. Lobbying Prohibition:** Contractor represents and warrants that TEA's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- 41. Prohibition of Text Messaging and Emailing while Driving during Official Federal Grant Business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.
- 42. Liability for and Payment of Taxes:** Purchases made for the State's use are exempt from the State Sales Tax and Federal Excise Tax. TEA will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- 43. Conformance:** Contractor represents and warrants that all goods and services furnished will conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and will be free from any defects in materials, workmanship, or design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- 44. Buy Texas Affirmation:** In accordance with Texas Government Code, Section 2155.4441, Contractor agrees that during the performance of a contract for services, Contractor shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this State. This provision does not apply if Contractor receives any federal funds under this Contract.
- 45. Pricing Certification, Best Pricing:** Contractor hereby represents and warrants that the fees and expenses charged for the work being conducted for TEA under this Contract are no less favorable than Contractor's standard pricing practices utilized for offers for similar work to similar organizations including, without limitation, any pricing provided pursuant to a contract with the Texas Department of Information Resources or any pricing previously provided to TEA. If Contractor enters into any subsequent agreement for similar work with any similar organization during the term of this Contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this Contract, Contractor shall notify TEA promptly of the existence of such more favorable benefits, pricing and/or hourly rates and TEA shall have the right to receive the more favorable contractual terms immediately. If requested in writing by TEA, Contractor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
- 46. Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Payment for goods or services purchased with State-appropriated funds will be issued by (a) State warrants or (b) electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>. Invoices must be submitted to TEAAccountsPayable@tea.texas.gov and TEA Contract Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the latest of:
 - (a) Date on which TEA received the goods;
 - (b) Date the performance of the service under the Contract is completed; or
 - (c) Date on which TEA received the complete and correct invoice for goods or services.

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

TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition provided by the TEA Contract Manager, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. TEA reserves the right to reject and withhold payment for deliverables found to be substandard or not in compliance with the deliverable definition, including test items developed under the Contract.

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

Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees must be stated in the competitive solicitation and documented in the Contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall be requested in the final invoice.

Unless otherwise stated, payment under this Contract will be made upon delivery of goods and performance of services based upon submission of an invoice, properly prepared and certified, outlining expenditures by deliverable. Include the Contract number, purchase order number, and the Comptroller Texas Identification Number (TIN) on all invoices. The Deliverables / Tasks and Activities in the invoice must coincide with the Deliverables / Tasks and Activities detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the invoice. The final invoice is due within 45 days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract. All costs must be reasonable, allowable and allocable to the project.

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

- 47. Debts and Delinquencies Affirmation.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State, any payments or other amounts Contractor is otherwise owed under the Contract may be applied toward any debt Contractor owes the State until the debt is paid in full, regardless of when the debt or delinquency was incurred. These provisions are effective at any time Contractor owes any such debt or delinquency. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the State by the Federal Government.

Contractor may verify its account status by accessing the Comptroller's website at https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

- 48. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- 49. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- 50. Contractor Performance and Past Performance:** TEA is required to submit Contractor Performance reports under Texas Government Code, §2155.089, and 34 TAC, §20.509 and §20.115. The Comptroller's Vendor Performance Tracking System (VPTS) provides the State procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract awarding process. Historic reports submitted prior to February 10th, 2017 will be displayed as "Legacy Satisfactory" or "Legacy Unsatisfactory."

TEA may conduct reference checks with other entities regarding past performance of Contractor or its subcontractors. In addition to evaluating performance through the VPTS, TEA may examine other sources of Contractor performance, including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of Contractor performance may include any governmental entity, whether an agency or political subdivision of the State, another state, or the Federal government. Further, TEA may initiate such examinations of Contractor performance based upon media reports. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in a non-award to Contractor. The VPTS is located on Comptroller's website at: <http://www.txsmartbuy.com/vpts>.

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

Time is of the Essence.

Contractor's timely performance is essential to this Contract.

Suspension

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

Sanctions

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

52. Abandonment or Default: If Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor 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 significantly changed. The period of suspension will be determined by TEA based on the seriousness of the default.

53. Dispute Resolution: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.

54. Protests: Any actual or prospective Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this Contract by TEA may submit a formal protest to the Director of TEA's Purchasing and Contracts Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules (19 TAC Section 30.2002).

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

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

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

(b) **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under the Contract. TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

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

(c) **Termination Due to Changes in Law:** If federal or State laws or regulations or other federal or State requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this Contract.

- (d) **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all Works and associated documentation and materials obtained from Contractor under the Contract.
- (e) **Survival of Terms:** Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, ownership of intellectual property or other property rights, dispute resolution, rights and remedies upon termination, invoice and fees verification.
- (f) **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a new contractor, Contractor shall hand-over to the new contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the new contractor within 10 days of announcement of award at the new contractor's expense for data processing and production, packing and shipping. Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the new contractor. Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Contract Manager shall approve the transition plan prior to its implementation. The transition plan must minimize the impacts on continuity of operations and maintain communication with TEA Contract Manager and the new contractor.

- (g) **Return of Works and TEA Confidential Information:** Subject to paragraph (f) of this Clause 55 above, upon the request of TEA, but in any event upon termination or expiration of this Contract or a statement of work, Contractor, at its sole expense, shall surrender to TEA all Works pertaining to the Contract Project, any and all documentation or other products or results of the services, and all other documents or materials (and copies of same) furnished by TEA to Contractor, including all materials embodying the Contract Project, regardless of form or whether complete or incomplete, and all TEA Confidential Information upon TEA's request. Failure to timely deliver such Works, information and any and all documentation or other products and results of the services will be considered a material breach of this Contract and TEA has the unrestricted right at any time during the term of this Contract to request the return of TEA Confidential Information and/or the return of Protected Data to all Authorized Users.

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

- 56. Insurance:** Contractor represents and warrants that it maintains and will maintain the following insurance coverage during the term of this Contract:

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

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

All required insurance coverage, other than workers compensation and professional liability, must name the State and its Officers, Directors, and Employees as additional insureds.

Contractor shall:

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

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

- 57. Force Majeure:** Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation,

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

- 58. Drug Free Workplace Policy:** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 59. TEA No Smoking Policy:** The Texas Facilities Commission (TFC), in compliance with the City of Austin ordinances, prohibits smoking and the use of all tobacco products within 15 feet outside of public entrances to state-owned facilities. TFC has designated where outside smoking areas are located on state property. Smoking and other tobacco use are prohibited in all areas of the William B. Travis Building and any other building occupied by or under the control of TEA. This includes the use of e-cigarettes and vaping products per Texas Facilities Commissions regulations. Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of TEA.
- 60. Performance Measurement:** Contractor shall use OMB-approved standard information collections when providing financial and performance information. Contractor must be able to relate financial data to performance accomplishments of the project. Contractor must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). Contract performance should be measured in a way that will help to improve program outcomes, share lessons learned, and spread adoption of promising practices. Contractor must have effective control over, and accountability for, all funds, property, and other assets. The Contractor must adequately safeguard all assets and assure that they are used solely for authorized purposes.
- 61. Entities that Boycott Israel:** Contractor represents and warrants that: (a) it does not, and shall not for the duration of the Contract, boycott Israel, or (b) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.
- 62. Disaster Recovery Measures and Plan:** Contractor will maintain commercially reasonable business continuity and disaster recovery measures (including but not limited to adequate backups in the case of ransomware) to prevent or cure any resulting delay or failure and must execute such measures prior to being excused from performance due to force majeure. In accordance with 13 TAC Section 6.94(a)(9), Contractor must provide to TEA the descriptions of its business continuity and disaster recovery plan. Contractor shall provide TEA with a copy of updated versions of its business continuity and disaster recovery plan (and that of any subcontractor, including any third party hosting company, that it uses) within 30 days after changes are adopted, or within five days of TEA requesting a copy. Contractor must provide TEA the expected recovery time objective and recovery point objective in the event of major outage. TEA shall be free to share the disaster plan with any government agency with jurisdiction to request a copy from TEA and as otherwise required by court a court of competent jurisdiction, or any federal or State law, including without limitation the Public Information Act, in accordance Clause 39 hereof.
- 63. Computer Equipment Recycling Program:** If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in Compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
- 64. Television Equipment Recycling program:** If Contractor is submitting a Response for the purchase or lease of covered television equipment, then Contractor certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
- 65. Secure Erasure of Hard Disk Capability:** All equipment provided to TEA by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.
- 66. Electrical Items:** All electrical items purchased under this Contract must meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 67. Independent Contractor:** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor, Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers are not employees of TEA or the State. Contractor shall have no claim against TEA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or

employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and TEA.

- 68. Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 69. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees, agents or representatives, including any subcontractors and employees, agents or representative of such subcontractors assigned to TEA projects, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- 70. Criminal Background Checks:** If during the term of this Contract, Contractor and/or Contractor's staff, or subcontractor and/or subcontractor's staff have either (a) access to Texas public school campuses, or (b) access to TEA Confidential Information or TEA data systems, all Contractor and/or Contractor's staff and/or subcontractor and/or subcontractor's staff must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor, Contractor's staff, subcontractor or subcontractor's staff is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- (a) Contractor, Contractor's staff, subcontractor or subcontractor's staff will not meet eligibility standards and be permanently disqualified from serving on TEA assignments if an initial review of criminal history records indicates:
 - i. Felony conviction or deferred adjudication;
 - ii. Offense on conviction of which the defendant is required to register as a sex offender;
 - iii. Conviction or deferred adjudication of a Class A Misdemeanor; or
 - iv. Offense under the laws of another state or federal law that is equivalent to an offense specified above, or their criminal record indicates an unresolved Felony or Class A misdemeanor.
 - (b) Educator Certification Required: If the individual is a certified educator, the educator's certificate(s) must currently be valid and in good standing. If the certificate(s) is/are not in good standing (inactive, invalid, revoked, suspended or surrendered) the individual is not eligible for TEA appointments, assignments, contract, or grant awards or to provide services to school entities on behalf of TEA.
- 71. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TEA or another State agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (a) the nature of the previous employment with TEA or the other State agency; (b) the date the employment was terminated; and (c) the annual rate of compensation for the employment at the time of its termination.
- 72. No Conflicts of Interest:** Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 73. Collusion:** Contractor represents and warrants that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's Response is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- 74. Suspension and Debarment:** Contractor represents and warrants that it and its principals are not suspended or debarred from doing business with the State or federal government as listed on the State Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and/or the System for Award Management (SAM) maintained by the General Services Administration.
- 75. Financial Participation Prohibited:** Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- 76. Foreign Terrorist Organizations:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 77. Former TEA Employees:** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of TEA during the 12 month period immediately prior to the date of execution of the Contract. In the case of professional services contracts as described by Chapter 2254 of the Texas Government Code, Contractor represents and warrants that if a former employee of TEA was employed by Contractor within one year of the employee's leaving TEA, then such employee will not perform services on projects with Contractor that the employee worked on while employed by TEA.

- 78. Restricted Employment of Certain State Personnel:** Pursuant to Section 572.069 of the Texas Government Code, Contractor represents and warrants that it has not employed and will not employ a former State officer or employee who participated in a procurement or contract negotiations for TEA involving Contractor within two years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former State officers or employees whose State service or employment ceased on or after September 1, 2015.
- 79. Dealings with Public Servants:** Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.
- 80. Prior Disaster Relief Contract Violation:** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit State agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.
- 81. Ability to Conduct Business in Texas:** Contractor represents and warrants that it is duly organized, validly existing and in good standing under the laws of its state of organization and shall be authorized to do business in the State in accordance with Texas Business Organizations Code, Title 1, Chapter 9.
- 82. Headings:** The headings of articles, sections or clauses contained in this Attachment B and in the Contract, its attachments and annexes are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision hereof or thereof.
- 83. Assignment:** Contractor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of TEA, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. To seek consent for assignment of this Contract, Contractor should contact TEAContractMonitoring@tea.texas.gov.
- 84. Contracting Information Responsibilities (effective January 1, 2020):** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (a) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TEA for the duration of the Contract, (b) promptly provide to TEA any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TEA, and (c) on termination or expiration of the Contract, either provide at no cost to TEA all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TEA. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 85. Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 86. Executive Head of State Agency Affirmation:** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.
- 87. Point of Contact, Responsiveness and Escalation:** All notices, reports, documents, correspondence or other data required by this Contract shall be in writing and delivered to the individuals listed below, their successors in office, or the TEA employee requesting such notice, report, document, correspondence or other data, on or before scheduled due dates or where no due date is specified within five working days of any request for such notice, report, document, correspondence or other data by TEA. Within 30 days of

execution of this Contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Contract Manager level.

| TEA | Contractor |
|--------------------------|--------------------------------|
| Texas Education Agency | Certica Solutions, Inc. |
| 1701 North Congress Ave. | 301 Edgewater Place, Suite 330 |
| Austin, TX 78701 | Wakefield, MA 01880 |
| Attn: Sandra Tate | Attn: Mark Rankovic |
| | |
| | |
| | |

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

The Texas Government Code and Family Code cites referenced in this document may be viewed at:

<http://www.statutes.legis.state.tx.us/>

The TAC cites referenced in this document may be viewed at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

Attachment D
Request for Offer #701-20-014,
together with all addenda thereto and the Terms and Conditions thereof

TEXAS EDUCATION AGENCY
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701-1494

REQUEST FOR OFFERS (RFO)

RFO # 701-20-014, Texas Student Data System (TSDS)
Operational Data Store (ODS) 3.x Upgrade

| | |
|--|---|
| OFFER DELIVERY: Secure ShareFile Link: https://tea.sharefile.com/r-r3b3c108878f46828 or Email to TEASolicitations@tea.texas.gov | REFER INQUIRIES TO: Donna Tabron TEASolicitations@tea.texas.gov |
|--|---|

**WITHOUT EXCEPTION - OFFER MUST BE TIME AND DATE STAMPED BY
TEA CONTRACTS & PURCHASING BEFORE:**

April 23, 2020 - 2:00 PM, Central Time

Pursuant to the provisions of [Texas Government Code §§2156.121 – 2156.127](#), sealed offers will be accepted until the date and time established for receipt. Names, prices and other offer details may only be divulged after the award of a contract, if a contract is awarded. The award notice will be posted to the Electronic State Business Daily (ESBD) at <http://www.txsmartbuy.com/sp>.

The Texas Education Agency (TEA) conducts this solicitation and to intends to award a contract for the purposes stated herein pursuant to Texas Government Code §§[2151.004\(d\)](#), [2155.131](#), and [2157.068](#).

All written requests for information will be communicated to all applicants through the ESBD portal. See **Section 2.2** for the deadline to submit questions to be posted to the ESBD portal.

All offers received in response to this solicitation are the property of the State of Texas (State or Texas). All offers must be delivered to TEA Contracts and Purchasing Division, as required by the instructions within this solicitation. All addenda to and interpretation of this solicitation shall be in writing. The State shall not be legally bound by any unwritten addenda or interpretation.

The respondent understands and agrees that no public disclosures or news releases related to this solicitation, negotiations or later award, or any results or findings based on information provided or obtained to fulfill the requirements of this solicitation shall be made without TEA's prior written approval.

NOTE: Failure to formalize the terms of the offer by signing the **Contract Terms, Conditions and Affirmations, Response Preferences and Execution of Offer** will result in disqualification of the offer. **The respondent must indicate exceptions to the contract terms and conditions in the body of their offer and offer alternative language to any contract terms and conditions when they submit an offer to this solicitation.** If an offer is signed and submitted without including specific exceptions to the **Contract Terms and Conditions** included in this solicitation, TEA will not negotiate those terms and reserves the right to start negotiations with other respondents.

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SECTION ONE: INTRODUCTION, BACKGROUND AND SCOPE

1.1 PURPOSE

The Texas Education Agency (TEA) is seeking offers from qualified vendors to provide a software as a service (SaaS) solution for the Texas Student Data System (TSDS) Operational Data Store (ODS) that utilizes the Ed-Fi ODS/APIs as the primary data collection and storage mechanism for TSDS and will keep pace with the published Ed-Fi upgrades. The SaaS solution must create a sustainable way to manage data standard changes, extensions that emerge from legislative mandates and agency policy, and Ed-Fi version releases. The SaaS solution will serve as the primary collection mechanism for accountability data from K-12 local education agencies (LEAs) and Educator Preparation Programs (EPPs). The SaaS solution must include data validation capability that includes the Public Education Information Management System (PEIMS) validations and easily accommodate new business rules for TEA required data collections.

Because of the size and complexity of the TSDS data collections, TEA is seeking a vendor with a track record of handling projects of similar scale and complexity. Therefore, eligible respondents must have existing SaaS products in production within K-12 education agencies, serving at least one million students across their current product offerings to be eligible to submit a response. Responses will only be considered from vendors with an existing commercially available SaaS Ed-Fi ODS product and SaaS data validation engine with existing PEIMS business rules.

Offers shall demonstrate the respondent's ability to:

- Support LEA/ESC data loads via API to an existing Ed-Fi 3.x compliant SaaS ODS
- Handle the load of data for 5.4M students, 600,000+ staff at 1237 districts and 8400 campuses
- Handle multiple data collections occurring simultaneously
- Extend ODS implementation with TPDM model and Texas specific extensions
- Provide PEIMS specific data validations and notifications
- Integrate with the Unique ID application and other TSDS applications
- Support an end-to-end pilot of data submissions integrated with TSDS
- Provide ongoing maintenance and support

1.2 BACKGROUND

The current ODS solution has perpetuated a system where districts still submit submission specific data, limiting time savings for districts and potential for duplicate data. It is a bulk-load based system which has led to performance problems, causing frustration for larger districts. Being a proprietary software limits TEA's ability to take advantage of the community of State Education Agencies (SEAs) and innovations around the Ed-Fi technical suite.

The enormous amount of education data collected from LEAs by TEA annually (over 3.4 billion records across submissions) placed a heavy burden on the old PEIMS application system which was started in 1987. To better handle mandated data submissions, TEA planned and implemented a new system, the TSDS, which also has the capability to consolidate other data collections and provide better information to all constituencies. A systems diagram of the current TSDS implementation is included in Appendix A.

Since 2011, TEA has implemented the following TSDS components:

- **TSDS ODS**, an LEA-facing data warehouse that houses data for multiple data collections;
- **Texas Education Data Standard (TEDS)**, a set of data standards based on the **Ed-Fi 1.0 XML** data standard;
- a redesigned **PEIMS** application;
- educator-facing **studentGPS® Dashboards**;
- **TSDS Unique ID**, a new unique identity management system for staff and students throughout Texas; and
- a standardized interface and workflow for all TSDS Core data collections, including the **Early Childhood Data System (ECDS)**, **Residential Facility Tracker**, **Class Roster** and selected **State Performance Plan Indicators**.

The vision of TSDS is to consolidate all TEA's required reporting to a single data collection system that eliminates duplicate data reporting for LEAs and improves data quality and consistency. TEA will continue to migrate data collections beyond PEIMS, ECDS, Resident Facility Tracker, Class Roster, and State Performance Plan Indicators to source data from the TSDS ODS, thus growing the number of TSDS components. Currently, TEA is embarking upon a related project to standardize EPP data to the Teacher Preparation Data Model (TPDM), which is an extension package for Ed-Fi 3.x. The ODS solution must include this extension package to support the collection, validation, and downstream reporting of EPP data on the TPDM standard. Downstream reporting will include interactive visualizations of EPP data on both public-facing and secure dashboards.

Vendors in Texas must align to the TEDS to submit data to TSDS for any of the TSDS collections. Currently, TEDS is an extended version of the Ed-Fi 1.0 data standard which requires districts to submit data in an XML format. The Ed-Fi Alliance has released several data standard revisions since TEA adopted the Ed-Fi data standard, the most recent is Ed-Fi Technical Suite 3. The Ed-Fi Alliance is actively trying to migrate the nationwide vendor community to the Ed-Fi Technical Suite 3. The Ed-Fi Alliance is also only supporting one version back from the most recent release, which means TEA is now on an unsupported version of the Ed-Fi data standard. As a result, the national vendors who operate in Texas must support yet another version of the Ed-Fi standard only for Texas. To alleviate this burden for vendors and to provide additional data integration capability to the Texas LEAs, TEA seeks to upgrade to the current version of the Ed-Fi Technical Suite 3.0 and create a sustainable pathway for future upgrades.

In addition to migrating TEDS to the Ed-Fi 3.1 data standard, the ODS must also be migrated to support the Ed-Fi Technical Suite 3.0. Currently, TSDS is integrated with the eScholar Data Warehouse. In 2011, eScholar was selected as the commercial off-the-shelf (COTS) component for the original TSDS ODS. Buy versus build was the preferred approach for the original system to minimize development risk (integration/configuration versus new development) and to optimize the project schedule. Although eScholar has a reasonable COTS product that has served TEA well for over six years, there is not a sustainable migration path to newer versions of Ed-Fi and it has not been able to keep up with the growing capacity and capabilities required to realize the vision of TSDS.

Currently, EPP data is contained within the Educator Certification Online System (ECOS). This custom-built database and suite of applications supports the collection, storage, and a limited amount of reporting of EPP data. The structure of this database and the need to support EPPs in increasingly complex data utilization necessitates the population of ECOS data into the ODS. To the extent that this data maps to the TPDM standard, and to the extent necessary to report statutory-mandated and TEA-defined reporting, these data must be populated into the Ed-Fi 3.1 ODS with TPDM extensions.

TEA recognizes upgrading the TSDS ODS is a major undertaking and will require thorough testing before moving to the new TSDS ODS. Therefore, TEA will conduct a pilot to field test the end-to-end upgraded TSDS solution. This will entail a limited set of LEAs and EPPs submitting data via the Ed-Fi APIs to the Ed-Fi ODS and powering either the EPP dashboards or TSDS collections. The pilot is intended to be a comprehensive test of the upgraded TSDS system, not just the TSDS ODS. Upon successful completion of the pilot, the upgraded system will be made available to all LEAs and EPPs for data submission and reporting.

As used in this solicitation, the capitalized terms listed in Appendix B shall have the meaning as specified therein.

1.3 CONTRACT TERM

The initial term of any contract resulting from this solicitation shall be from contract execution to August 31, 2021. TEA, in its sole discretion, may renew any contract awarded pursuant to this solicitation for two additional fiscal years under the same scope of work. All contracts are subject to appropriation of funds by the Texas Legislature. TEA will notify the contractor of its decision to renew the contract. If the contract is renewed, the first optional renewal period shall be from September 1, 2021 through August 31, 2022. The second optional renewal period shall be from September 1, 2022, through August 31, 2023.

1.4 BUDGET

One fixed-price contract may be awarded from this solicitation. TEA reserves the right to not award a contract from this solicitation. Offers must include a detailed **Task, Activity, Deliverable and Budget Plan**, as described in **Section 3.4** of this solicitation (See also, **Attachment E**). Separate indirect cost rate calculations are not permitted for this procurement. The proposed budget and payments to a vendor must be based on satisfactory completion and acceptance of deliverables.

The respondent must include a projected **Task, Activity, Deliverable and Budget Plan** through August 31, 2023. The **Task, Activity, Deliverable and Budget Plan** must clearly identify proposed prices related to each proposed task, subtask and corresponding subtask deliverable for the initial contract period and each optional renewal period. Payment will be made upon satisfactory performance of services, receipt and acceptance of specified deliverables and receipt of properly prepared invoices and supporting documentation. TEA will establish monthly invoicing procedures for the awarded fixed-price contract aligned to completion and acceptance of the deliverables named in the approved **Task, Activity, Deliverable and Budget Plan**.

1.5 SCOPE OF WORK, PROJECT DESCRIPTION AND REQUIREMENTS

The scope of this project requires a SaaS solution for the TSDS ODS that creates a sustainable way to manage data standard changes, extensions that emerge from legislative mandates and agency policy, and Ed-Fi version releases. The SaaS solution must support K-12 LEAs, Education Service Centers (ESCs) and EPPs. In addition, it must provide a data validation capability.

This section outlines the features of the SaaS product that are required by TEA. Respondent must indicate which features already exist in their product and propose a plan for enhancing their product to include any necessary features that are not currently included.

For existing features, the awarded vendor is required to complete a detailed feature review with TEA at the start of the project to ensure TEA and the awarded vendor understand how the current feature supports TEA's needs and verify the feature enhancements needed. For any new feature development(s), the awarded vendor will be required to complete the following:

- Requirements gathering;
- Solution design and documentation;
- Appropriate unit, functional, integration and performance testing; and
- Plan outlining approach to maintaining any enhancements made specifically for TEA

The Scope of Work includes:

A. Ed-Fi 3.x ODS

The awarded vendor must provide an Ed-Fi ODS that has the following features:

1. reporting marts and application with preference for TEA staff to access a consolidated view of data across districts and not have to interact with individual district ODS schema
2. Allows for queries to obtain data according to an 'as of' date. As-of-date query/access is
 - a. for downstream workloads and is not required to be addressed by source systems (SIS) and
 - b. not required to be accessible via API
3. Allows the ability for TEA staff to design and implement TEA extensions in the Ed-Fi ODS
4. Supports integration of Ed-Fi version updates, as available
5. Incorporates a strategy for maintaining TEA-specific enhancements
6. Provides data validation capabilities

B. TEA Administrator User Interface

The awarded vendor must provide a user interface (UI) which allows TEA staff to manage and monitor the ODS, including:

1. Loading centralized data (e.g., education organization information);
2. Managing global descriptors;
3. Viewing connection status by LEA for each LEA vendor (i.e., which vendors have access for a given district and what is the status of their connection);
4. Viewing system level errors and data validation counts by organization;
5. Updating and adding business rules; and
6. Deleting full data set by LEA/school year.

C. External User Interface

The awarded vendor must provide a UI which allows LEAs, ESCs and EPPs to manage Ed-Fi ODS/APIs and ODS data. While in many cases LEAs will directly manage their vendor-to-API connections and be responsible for data management and reporting, there are some cases where the LEA delegates some or all this responsibility to their ESC. The UI must allow LEAs or ESCs - on behalf of an LEA - to complete the tasks outlined below:

1. Provision key and secret for vendors;
2. Manage vendor CRUD permissions;
3. View connection status by vendor;
4. Manage local descriptors (both state and local descriptors will be utilized by LEAs);
5. View and search record content and last update dates; and
6. View, search, and export API and data validation errors (distinguish between business validation errors and API errors).

Ideally, the UI would allow the ESC to use a single log-in to access the UI and then select the LEA for which they want to conduct the above operations versus requiring a unique login per LEA. The awarded vendor will need to work with TEA to understand how TEA's log-in system will support this feature.

D. Data Validation

As districts move from bulk/collection-based data reporting to transactional reporting, they will require more robust data validation services than currently provided in TSDS. The proposed solution must include a SaaS hosted data validation tool that can provide actionable feedback to the LEAs, ESCs and EPPs about their data quality to determine if the data provided meets TEA's collection requirements. The data validation product must:

1. Contain a base set of TSDS business rules;
2. Contain a base set of ECOS data business rules;
3. Contain a base set of 'data sanity' rules that detect major failures of LEA/EPP systems (e.g., over half of the records in a domain were deleted);
4. Allow TEA to define and add new collection-specific data validation rules;
5. Provide LEA/EPP ability to execute validations on-demand;
6. Provide the LEA/EPP the ability to schedule the execution of validations;
7. Surface data validation errors in an intuitive UI;
8. Allow LEA/EPP to share data validation error reports within their organization; and
9. Have the ability to run validation checks against data stored in the Ed-Fi ODS schema as well as PEIMS data mart and ECOS databases.

E. Technical Specifications

The proposed ODS solution must conform to the following technical specifications:

1. Scalable as the data load and querying volume increases;
2. Provide a service level agreement (SLA) of 99%+ availability; and
3. User Interface development must conform to the following technical specifications:
 - a. Include domain and secure socket layer (SSL) certificate
 - b. Be operable on standard internet browsers (Chrome, Safari, Firefox, Edge), including current and one prior version (within the last two years)
 - c. Be able to provide content and web page loading times in one second or less, per TEA standards
 - d. Have third-party written verification that the website conforms to the WCAG 2.0 level II accessibility standards
 - e. Be built with a responsive design that can be used with mobile devices (desired)

F. Security and Data Privacy

Appropriate levels of security shall be implemented to meet federal, state, and local regulations, particularly the Family Education Rights and Privacy Act (FERPA) and Health Information Portability and Accountability Act (HIPAA). The Texas Education Agency Log-In (TEAL) will be the source of user roles information. The vendor will collaborate with TEA to define the appropriate user roles and corresponding data and feature access for SaaS ODS and data validation rules engine user interfaces.

Security Requirements

1. TEA and its business partners are required to comply with Texas HB8 (85R), codified in the Texas Government Code 2054.516, requiring all data agency websites or applications that process sensitive personal information or confidential information be subjected to vulnerability and penetration testing, and to address any vulnerability identified.
2. Websites shall be accessible through a secure connection (HTTP-only, with HTTP Strict Transport Security (HSTS)), utilizing Transport Layer Security (TLS) version 1.2 or higher. TEA retains the right to scan websites for vulnerabilities and require remediation of identified issues in a timely manner not to exceed three months, compliant with the Payment Card Industry Data Security Standards (PCI DSS) at a minimum.
3. Provide secure configuration guidelines that were utilized that fully describe all security relevant configuration options and their implications for the overall security of the software. The guidelines shall include a full description of dependencies on the supporting platform, including operating system, web server, and application server, and how they should be configured for security.
4. The following sample list of requirements is given to exemplify best application and development
 - a. practices:
 - b. Usage-limiting techniques and other protective countermeasures wherever a denial-of service or automated attack vulnerability is clearly inherent in the architecture.
 - c. Sufficiently strong encryption, per industry standards, wherever confidential data is at rest or traverses a network.
 - d. Effective error handling that does not return unnecessarily verbose message to the user that could be used to gain insight into the application internals or other privileged processes or data.

5. The vendor will notify TEA immediately upon learning of any actual or suspected security breach or denial of service attack. A security breach is an incident in which sensitive, protected, or confidential data may have been viewed, stolen, altered, or used by an individual unauthorized to do so. A denial-of-service attack is a cyber-attack where the perpetrator seeks to make a machine or network resource unavailable to its intended users by temporarily or indefinitely disrupting services of a host connected to the Internet.
6. Additional consideration will be given to vendors that meet FedRAMP requirements.

G. Accessibility Requirements

Any Electronic Information Resources (EIR) produced as part of the resulting contract must follow all accessibility standards referenced in Attachment B, item R. EIR includes documents, websites, and audio & video presentations. These standards include but are not limited to the following requirements:

1. All images and other non-text objects must contain appropriately descriptive alternative text and null alternative text;
2. Tables should only be used for tabular data and must include valid row and column header tags;
3. Header tags (h1, h2, etc.) must be used to convey document structure;
4. Users must be able to navigate the web pages, including all links, features, forms, navigations, and sub-navigation, using the keyboard only;
5. All scripted features must be able to function using the keyboard only with losing focus;
6. All form fields must have descriptive form labels;
7. All information conveyed with color must also be available without color;
8. Foreground and background color combinations must provide sufficient contrast when viewed by someone with color deficits or when viewed on a black and white screen; colors used in the design must be WCAG 2.0, Level AA standards for color/contrast ratio; and
9. Video and audio content must follow accessibility guidelines and include closed captioning and audio descriptions; audio files must include written transcripts; audio and video controls must be operable using a keyboard only.

H. Implementation Support and Services

In addition to providing SaaS Ed-Fi ODS and data validation products, the awarded vendor will need to provide services to ensure a successful transition to the new TSDS ODS solution.

Integration

The awarded vendor will be responsible for integrating their solutions with the current TEA systems and applications outlined below:

1. Integration of Ed-Fi ODS with eScholar UID to validate student and staff identities when data is written to the ODS;
2. Integration of the solution UIs with TEAL to authenticate LEA and state users and obtain user authorization information;
3. Integration with TEA central organization data to populate initial education organizations; and
4. Integration to push system outage notification to the TSDS global notification system.

TEA will be responsible for integration of the existing TSDS downstream applications (e.g., PEIMS, ECDS, and SPPI-14) to the Ed-Fi ODS. However, the awarded vendor is required to provide knowledge transfer and some basic thought partnership as TEA plans and executes their approach to sourcing data from the Ed-Fi ODS to downstream applications.

Implementation Support

The awarded vendor will be required to work closely with TEA staff to complete the following activities:

1. Implement the Ed-Fi TPDM Extension;
2. Implement TEA defined data model extensions; TEA will map the TEDS to Ed-Fi data standard version 3.1 and provide documentation outlining specific extensions that will be needed to fulfill TEA required data collections;
3. Work closely with TEA staff to implement TEA defined business rules; TEA staff will document the existing PEIMS and required collections business rules, compare to the business rule set currently provided by the vendor and identify rules that must be added;
4. Deploy sandboxes for source system vendors to test their API integration as they prepare to support LEAs and Educator Prep Programs in complying with the updated TSDS/TPDM submission processes and standards; and

Pilot Support

The awarded vendor will support a pilot implementation intended to be a comprehensive test of the upgraded TSDS system including TPDM, not just the TSDS ODS.

1. Deploy sandboxes for select LEAs and EPPs to pilot the new TSDS & TPDM submission processes and standards. This will include supporting pilot LEAs in appropriately configuring API permissions for their source system vendors.
2. Fix defects and implement missed requirements identified during Pilot testing prior to Production.

I. Project Management

The vendor will complete the following activities related to solution delivery and project management:

1. Develop a project plan and schedule that identifies product release dates and key dependencies on TEA deliverables;
2. Produce product roadmap that documents feature scope, delivery timing, and demo schedule;
3. Coordinate regular project update meetings and working sessions with TEA and any other relevant vendors/contractors to ensure feature development, testing, and release meet the agreed upon requirements;
4. Provide input and background for TEA's Change Management Plan. The aim of the Change Management Plan is to identify and communicate the feature and process changes that districts, vendors, and TEA staff should expect as a result of the TSDS upgrade;
5. Provide input and background to TEA's Pilot Implementation Plan for PEIMS testing and EPP dashboard implementation to ensure the feature releases align with required functionality for the pilots and the responsibilities of each party to support the pilot is clear; and
6. Collaborate with TEA to determine how the ongoing product release process and cycles will align with TEA's current Data Governance process.

J. Training

By the conclusion of this project, TEA expects that ESC staff shall be able to provide tier-one support to LEAs, EPPs, and LEA/EPP vendors and TEA shall be able to provide tier-two/-three support to ESCs. During the term of this project, the awarded vendor will be responsible for equipping TEA staff with the information they need to support users of the SaaS Ed-Fi ODS and data validation engine. During this period of knowledge transfer, the awarded vendor must provide the following services to pilot participants and TEA:

1. Training materials for ESCs and vendors on how to set-up, configure, and troubleshoot (business and technical training) the SaaS products;
2. Customer assistance and support for the solution, including basic help desk support for simple user questions concerning the base commercial solution and for any questions concerning TEA added-value components; and
3. Production support and maintenance of the solution; specifically, support for TEA value-added components of the commercial product.

K. Ongoing Maintenance and Support

The awarded vendor must provide SaaS and not custom developed implementation of the Ed-Fi ODS and data validation engine. Therefore, the awarded vendor will be required to host and maintain the solutions on an on-going basis. The initial contract will be for three years of services including any required feature development and ongoing maintenance and support. Assuming successful execution of the initial contract, TEA intends to exercise renewal option(s) for ongoing maintenance and support. As part of the SaaS contract, the awarded vendor will be required to:

1. Host the solution in Amazon Web Services or other govcloud (US) cloud provider approved by the Texas Department of Information Resources;
2. Maintain the solution including identifying and correcting defects in a timely manner;
3. Provide tier-4 help desk support for TEA who will escalate issues from TEA internal staff, LEAs, EPPs, and LEA/EPP vendors;
4. Provide TEA administrators access to a ticketing system for issues to be logged, tracked, and resolved;
5. Implement Ed-Fi version upgrades in a timely manner, generally within 6 to 12 months of public release while preserving TEA-specific enhancements and functionality;
6. Implement quarterly enhancements designed by TEA in response to regulatory and legal data collection and reporting requirements; and
7. Follow TEA release management approval process

L. Cybersecurity Training

If the awarded vendor requires access to any state computer system or database, the awarded vendor shall complete cybersecurity training and verify completion of the training program to the Agency pursuant to and in accordance with Section 2054.5192 of the Government Code.

1.6 DELIVERABLES AND MILESTONES

This section provides information about the minimum project deliverables, conditions associated with completing the deliverables and anticipated acceptance criteria for the named deliverables. Information about key dates, milestones, reports and meetings is also provided. TEA encourages vendors to provide additional deliverables, milestones and innovative solutions in their response to address the requirements of this solicitation.

A. High-Level Deliverables and Milestones Estimated Schedule

The following table contains the minimum required deliverables and milestones and the estimated delivery schedule for those deliverables. Vendors can include additional deliverables relative to the contents of their proposed services.

| Number | Deliverable/Milestone Description | Acceptance Criteria | Expected Due Date |
|--------|---|---|--------------------------------|
| 1 | Project Kickoff Meeting and Project Work Plan | Texas Education Agency (TEA) Project Manager (PM) acceptance of the deliverables; meeting attendance, agenda, and provide project work plan | No later than 9/11/2020 |
| 2 | Requirements Documentation | Draft and final document submission and acceptance by TEA PM | Draft no later than 10/31/2020 |
| 3 | ODS with TEA specific enhancements | TEA to validate ODS is enhanced with the TEA specific requirements through acceptance testing in the Vendor provided test environment | No later than 8/31/2021 |
| 4 | TEA Administrator User Interface | TEA to validate the TEA Admin UI requirements through acceptance testing in the Vendor provided test environment | No later than 8/31/2021 |
| 5 | User Interfaces – LEA, ESC, EPP | TEA to validate the External UI requirements through acceptance testing in the Vendor provided test environment | No later than 8/31/2021 |
| 6 | Data Validations | TEA to validate the data validations are meeting requirements through acceptance testing in the Vendor provided test environment | No later than 8/31/2021 |
| 7 | Integration (UID, TEAL, etc) with TSDS | TEA to verify that the ODS and TSDS integration is working as documented in requirements through acceptance testing in the Vendor provided test environment and integrated TSDS environment | No later than 8/31/2021 |
| 8 | Pilot Support (Test) | TEA to verify that the data submitted to the SaaS ODS matches the data submitted to the current/legacy ODS. | 9/1/21 – 8/31/22 |
| 9 | Production Support/maintenance | TEA to validate that the new system provides at the least the same results as the current system with improvements as documented in the requirements. | 9/1/22 – 8/31/23 |
| 10 | Weekly Progress Reports | TEA PM acceptance of weekly progress report | Ongoing |
| 11 | Weekly Status Meetings | Acceptance of meeting minutes | Ongoing |

B. Project Kickoff and Project Plan

TEA will conduct the project kickoff meeting held at a location and time selected by the agency where the awarded vendor and its assigned staff will be introduced to the TEA team and go over the high-level project work plan developed by the vendor.

C. Product License Fee(s)

The response must include product license fees and scale.

D. Product Feature Acceptance Testing

The awarded vendor must provide a development and a test environment where TEA can conduct development efforts for downstream application integration and perform user-acceptance testing of each feature release. The awarded vendor will also be required to generate any sample data required for testing. The awarded vendor must notify the TEA project manager when the feature release is deployed in development and test environments. Once a feature release is provided to TEA, they will conduct user-acceptance testing. Within five business days of the release to the test environment, the TEA project manager will either accept the release or provide the awarded vendor with a written list of requested revisions in the vendor's ticketing system. TEA requested revisions will be made in a timely fashion and the deliverable will be resubmitted to the TEA project manager for review.

E. Acceptance of Other Deliverables

For any deliverables such as documentation or training materials that support the SaaS products, the awarded vendor must provide an electronic copy of the deliverable to the TEA project manager. It is the TEA project manager's responsibility to distribute additional copies to any other reviewers. All deliverables must be submitted in a format approved by the TEA project manager.

TEA will provide written feedback with specific details on desired edits/changes or confirm acceptance of the deliverable within five business days of receipt of the deliverable.

F. Delivery Timeline

1. Deliverables must be provided on the dates specified in the product release schedule. Any changes to the delivery date must have prior written approval by the TEA project managers.
2. If the deliverable cannot be provided within the scheduled time frame, the awarded vendor is required to contact the TEA project manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
3. A request for a revised schedule must be reviewed and approved by the TEA project manager before placed in effect.

G. Vendor Responsibilities

The awarded vendor will have primary responsibility for the following activities throughout the duration of the project:

1. Conduct feature review with TEA to solidify details of feature enhancements that will be required to meet TEA's needs;
2. Design and implement feature enhancements to meet agreed upon requirements;
3. Utilize internal development management software to keep track of feature requirements and progress toward completion;
4. Develop feature release schedule to meet agreed-upon requirements;
5. Develop and implement test approach for unit, functional, integration and performance testing to be conducted as part of feature releases;
6. Provide development and test environment where TEA can conduct user-acceptance testing for each release;
7. Conduct feature demos regularly to show progress;
8. Provide TEA Technical Directors and Project Manager with a weekly status report; and
9. Attend weekly status meetings with the TEA project team in person or over the phone, at the discretion of TEA.

H. TEA Staff Responsibilities

Agency staff will have primary responsibility for the following activities throughout the duration of the project:

1. Conduct project kickoff meeting held at a location and time selected by the agency where the awarded vendor and its assigned staff will be introduced to the TEA team.
2. Update the TEDS to reflect Ed-Fi data standard version 3.x and complete the following related tasks:
 - a. Work through the TEA governance process to approve the updated TEDS specifications
 - b. Publish the specification for source system vendors and provide overview training to vendors, as needed
 - c. Work with the TSDS ODS awarded vendor to design and implement any data standard extensions required to fulfill TEA data collections
3. Integrate TSDS ODS with downstream applications
 - a. Bring up parallel environment to develop and test integration of existing downstream applications and data marts with new SaaS ODS
 - b. Execute performance and user-acceptance testing of downstream applications
 - c. Develop and execute user-acceptance testing for the SaaS ODS and data validation engine including the core product functionality and Texas specific requirements
4. Conduct pilot implementation and parallel testing for TSDS collections, including:
 - a. Develop pilot timeline and scope
 - b. Select LEAs to participate in pilot
 - c. Train and certify ESC champions and pilot LEA data stewards
 - d. Run data collections in both environments and compare results
5. Conduct pilot implementation for EPP dashboards
 - a. Develop pilot timeline and scope
 - b. Select EPPs to participate in pilot
 - c. Work with external vendor/contractor to load data for pilot sites and verify accuracy of dashboards

6. Conduct statewide rollout, including:
 - a. Develop and communicate onboarding plan to all LEAs and EPPs
 - b. Refine training based on pilot
 - c. Conduct LEA rollout
7. Sunset existing eScholar ODS

I. Expectations & Acceptance Criteria

The awarded vendor is responsible for submitting a Project Work Plan that describes the vendor's technical approach for delivering a SaaS Ed-Fi ODS that supports Ed-Fi Technical Suite 3.x, integrates with TSDS and allows each LEA/ESC/EPP to submit transactional data via Ed-Fi APIs.

The awarded vendor must provide a development and a test environment where TEA can conduct development efforts for downstream application integration and perform user-acceptance testing of each feature release. The awarded vendor will also be required to generate any sample data required for testing. The awarded vendor must notify the TEA project manager when the feature release is deployed in development and test environments. Once a feature release is provided, TEA will conduct user-acceptance testing. TEA will provide written feedback with specific details on desired edits/changes or confirm acceptance of the deliverable within five business days of receipt of the deliverable. TEA requested revisions will be made in a timely fashion and the deliverable must be resubmitted to the TEA project manager for review.

1. Deliverable Expectations
 - a. Deliverables must be provided on the dates specified. Any changes to the delivery date must have prior written approval by the TEA contract manager.
 - b. The awarded vendor will work with the TEA contract manager to refine requirements for each deliverable to ensure that the agreed-upon requirements are clearly defined before the deliverable is developed, including but not limited to the deliverable description, applicable standards, and acceptance criteria.
 - c. The awarded vendor must plan for transitioning services that will result in no downtime.
 - d. Deliverables submission format and acceptance criteria must be approved by the TEA contract manager.
 - e. All deliverables will be reviewed and approved by the TEA contract manager. (see Attachment B)
2. Deliverable Review & Acceptance
 - a. All deliverables will be reviewed and approved by the TEA project manager.
 - b. TEA will complete a review of each submitted deliverable within 5 business days from the date of receipt.
3. Delayed Deliverables
 - a. If the deliverable cannot be provided within the scheduled timeframe, the awarded vendor will be required to contact the TEA contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related artifacts and the overall project.
 - b. A request for a revised schedule must be reviewed and approved by the TEA contract manager before placed in effect. Contract Terms and Conditions may dictate remedies, costs, and other actions based on the facts related to the request for a revised schedule.

J. Reports & Meetings

1. Required Reports
 - a. The awarded vendor will be required to provide the TEA contract manager with weekly written progress reports. These reports will be due by noon each Friday throughout the life of the project.
 - b. The progress reports must cover all work performed and completed during the week for which the progress report is provided and must present the work to be performed during the subsequent week.
 - c. The progress report must identify any problems encountered or outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.
2. Required Meetings
 - a. The awarded vendor and project team must attend the project kickoff meeting at a location and time selected by the TEA contract manager.
 - b. The awarded vendor will be responsible for conducting weekly status meetings with the TEA contract manager. The meetings will be held on a date, time and place designated by the TEA contract manager. The meetings shall be in person or over the phone at the discretion of the TEA contract manager.

K. TEA Workspace, Rules, Processes, Procedures and Standards

The majority of the work will be done at the vendor site. When required TEA will provide the vendor project team with space for work, meetings, product demonstrations and most other activities required for completion of this agreement. The awarded vendor's project team must abide by TEA rules, processes, procedures, and standards during the contract term when at the TEA site. Failure to abide by these requirements may result in a unilateral TEA decision to remove a staff member from the awarded vendor's project team. This includes, but is not limited to the following standards and procedures:

1. Dress
2. Drug-free workspace;
3. Holidays and work hours;
4. Sexual harassment;
5. Security;
6. Change Requests, including infrastructure;
7. Configuration Management; and
8. Access and protection of confidential information (including FERPA)

TEA reserves the right to approve or reject any staff throughout the duration of the contract. TEA requires all staff and vendors/contractors to work from the US. Awarded vendors shall immediately remove any awarded vendor staff member upon written request from TEA.

L. Service Level Agreement

The information below shall be considered for service levels and incorporation into the response.

1. Availability (data, system, and components)
 - a. 24 x 7 x 365, 99.8% average over a month not including scheduled downtime.
 - b. Full database backups are performed every evening between the hours of 1am – 3 am EST. Backup files will be retained for thirty days.
 - c. 90% of issues responded to in one hour or less during primary coverage.
 - d. The standard maintenance window for the Production environment is each Sunday between 5:00 am and 2:00 pm.
 - e. In the event of a major disaster event, such as flooding of the hosting facility or an earthquake that destroys the infrastructure, vendor will restore services at alternate location within 3 business days
 - f. If production data needs to be restored from backup, it shall be done within 48 hours.
2. Initial Response Time
 - a. Severity 1: 30 minutes
 - b. Severity 2: 2 hours
 - c. Severity 3: 4 business hours
 - d. Severity 4: 3 business days
3. Maintenance and Upgrades
 - a. Minimum of 10-day Notice prior to a code promotion going into the production environment.
 - b. Routine, scheduled maintenance will be performed inside the maintenance window.
 - c. Emergency maintenance may be performed outside the maintenance window and will be counted as unscheduled downtime.
4. Security (as defined by TEA)
 - a. All servers are located behind the firewall with only essential ports enabled.
 - b. All firewalls have Intrusion Detection enabled
 - c. TLS 1.2. encryption is used

1.7 CONTRACT MONITORING

TEA assesses potential risks posed to TEA by any actual or potential contract using the TEA Risk Assessment Form prepared by agency staff. The TEA Risk Assessment Form is based on the weighted risk assessment process in the *Texas Procurement and Contract Management Guide*, in which weights are assigned to specific risk factors to assign contracts to low-, medium-, and high-risk categories. The TEA Project Manager, with assistance from Contracts and Purchasing staff, will conduct ongoing monitoring of all contracts. All pricing provided in the offer should include a specific deliverable or a set of deliverables that demonstrate successful completion of activities. All activities must have documentation to support their completion. TEA reserves the right to reject goods or services, which do not address the deliverables stated in the contract and do not meet TEA quality review.

Contract monitoring activities are conducted in a variety of ways, but must be objective and must address contract complexity, value, and risk. TEA has criteria for low-risk (Tier I) contract monitoring and medium- or high-risk (Tiers II and III) enhanced contract monitoring activities. These criteria are described in the table below. Monitoring may include, but is not limited, to reviewing invoices to ensure the receipt and acceptance of goods and services per contract requirements and monitoring agency contracts for certain administrative reporting activities stated in the contract's terms and conditions or in any special provisions. These include contractor reporting of any litigation, lobbyist activities, changes in ownership or financial status, and key changes on personnel, and monitoring agency compliance with statutes, rules, and regulations governing state agency contract and procurement activities. TEA defines enhanced monitoring for Tiers II and III as the additional monitoring above that required for all agreements.

TEA expects staff to monitor projects funded from this solicitation throughout the life of the contract and expects the contractor to be responsive to requests for documentation for purposes of monitoring within the response times stated above. A history of unresponsiveness to requests for supporting documentation will escalate the contractor's risk score and planned monitoring activities for this project. In addition, the contractor's risk score will be higher in future contractual engagements with TEA, if contractor is unresponsive to requests for supporting documentation during the term of this contract.

| TABLE 1: TEA Contract Monitoring and Enhanced Monitoring Criteria | | |
|---|--------------------|---|
| General Contract Monitoring | Tier I Low-Risk | Tier I contracts meet these criteria: <ul style="list-style-type: none"> Under \$1,000,000; The contractor will not have access to confidential information or TEA data systems, and will not be in contact with students; The contract is awarded: <ul style="list-style-type: none"> through a competitive procurement, as described in the State of Texas Procurement and Contract Management Guide, and was approved by the Texas Comptroller of Public Accounts, if the procurement was for \$100,000 or more; or through the Department of Information Resources (DIR) using a cooperative contract; The project is not a low-risk tolerance project; Vendor performance reported in the Vendor Performance Tracking System (VPTS) is an A; and A program or service similar to existing programs or services TEA provides. |
| | Tier II Mid-Risk | Tier II contracts meet one or more of these criteria: <ul style="list-style-type: none"> Over \$1,000,000, but less than \$10,000,000; A proprietary or sole source contract under \$1,000,000; A consulting service reportable to the Office of the Governor's Department of Budget and Planning; Contractor will receive an advanced payment; Contractor will have access to confidential records or TEA data systems, or will be in contact with students; The project is a low-risk tolerance initiative; Vendor performance reported in VPTS is lower than A, but at least B; A new program or service, unlike a current TEA initiative; or The contractor has not had a major contract with a Texas state agency. |
| Enhanced Contract Monitoring | Tier III High-Risk | Tier III contracts meet one or more of these criteria: <ul style="list-style-type: none"> Over \$10,000,000; A proprietary or sole source contract over \$1,000,000; Vendor performance reported in VPTS is lower than B; or TEA, in its sole discretion, has determined that a contract meeting one or more Tier II risk criteria should be subject to Tier III monitoring procedures. |

SECTION TWO: GENERAL INSTRUCTIONS AND OFFER REQUIREMENTS

2.1 OFFER SUBMISSION

The respondent should read the information contained in the following criteria carefully and submit a complete response to be considered. Offers with conditional clauses, alterations, or irregularities are subject to rejection by TEA at its option. **OFFERS RECEIVED AFTER THE TIME AND DATE PUBLISHED IN THIS SOLICITATION WILL NOT BE EVALUATED.**

OFFERS **MUST BE SUBMITTED ELECTRONICALLY** BY SECURE SHAREFILE LINK OR EMAIL.

Offers must be submitted in a format that is accessible to TEA (i.e. .pdf, Word, Excel). At a minimum, offers must be provided as a single .pdf document containing all required components and attachments. Required forms must contain a manual signature and be scanned into the electronic file. The respondent must sign the Execution of Offer (See **Attachment B**). By signing the Execution of Offer, the respondent or the respondent's legally authorized agent affirms that all statements within the offer are true and correct. Discovery of any false statement in the offer is a material breach and may void the submitted proposal or any resulting contracts. To be considered for an award, offers must be received before 2:00 P.M. CT on the due date noted within this solicitation.

A. Submission by ShareFile Link

TEA strongly encourages use of this secure, electronic submission method. Respondents should navigate to the specially created ShareFile folder linked below to upload their response document(s). Respondents will be required to include their name, company name and email address prior to the upload and should also be mindful of the filename(s). Once uploaded, the ShareFile application will notify TEA of the upload and send confirmation of the submission to the respondent's email address entered prior to document upload. The file(s) will be date and time-stamped upon upload and only approved TEA staff will have access to the information contained in the secure ShareFile folder.

The secure ShareFile link for this solicitation is: <https://tea.sharefile.com/r-r3b3c108878f46828>

B. Submission by Email

Although TEA prefers use of ShareFile for response submission, TEA will also accept offers submitted by email. Offers submitted by email MUST be sent to TEASolicitations@tea.texas.gov. Respondents should include their company name and the TEA solicitation number in the subject line of their email. Submission by this method will not provide an official date and time-stamp, however, TEA staff will reply by email with confirmation of receipt as quickly as possible.

C. Intent to Submit an Offer

The respondent should notify TEA in writing of their intent to submit a response (See **Attachment A**) as soon as possible via email at TEASolicitations@tea.texas.gov. Failure to submit a **Notice of Intent** will not disqualify the respondent from consideration.

2.2 ANTICIPATED SEQUENCE OF EVENTS

| DATE | EVENT |
|------------------------|---|
| March 27, 2020 | Publication of solicitation in the Electronic State Business Daily (ESBD) at: http://www.txsmartbuy.com/sp |
| April 7, 2020 | Last day to submit written questions before 2:00 p.m. CT to TEASolicitations@tea.texas.gov . |
| April 13, 2020 | Final publication of questions and answers in the ESBD at: http://www.txsmartbuy.com/sp |
| April 13, 2020 | Notice of Intent to Submit an Offer (Preferred Date) |
| April 23, 2020 | Offers due in TEA Contracts and Purchasing Division before 2:00 P.M. CT. Offers MUST be submitted electronically through the ShareFile link https://tea.sharefile.com/r-r3b3c108878f46828 or by email to TEASolicitations@tea.texas.gov |
| April 24 – May 8, 2020 | Offer Check-In, Evaluation and Oral Presentations (if required) |
| May 2020 | Recommendation for Award, Contract Negotiation and Development |
| June 2020 | Anticipated start date of contract and commencement of work |

NOTE: No work shall be completed by the contractor before contractor receives a fully executed contract. TEA will not pay for services invoiced before the date that a fully executed contract is finalized.

2.3 QUESTIONS RECEIVED PRIOR TO OFFER DEADLINE

Any additional information, different from or in addition to, information provided in this solicitation will be provided only in response to written inquiries. All written inquiries and the written answers will be posted as an addendum to this solicitation on the ESBD at <http://www.txsmartbuy.com/sp>. Addendums will be added, as needed, while this solicitation is advertised. The respondent's failure to periodically check the ESBD will in no way release the awarded vendor from complying with "addenda or additional information" that may result in additional cost to meet the requirements of this solicitation. **NO PHONE INQUIRIES WILL BE ACCEPTED.**

Any amendment to this solicitation will be posted as an addendum on the ESBD. If a respondent does not have internet access, copies of the solicitation and addenda may be obtained through the point of contact listed in this solicitation. Upon publication of this solicitation, employees and representatives of TEA will not answer questions or otherwise discuss the contents of this solicitation with any potential respondent or their representatives outside of the process stated above. If a respondent fails to observe this restriction, that respondent's offer will be disqualified. This restriction does not preclude discussions for conducting business unrelated to this solicitation.

TEA will not be bound by any communication with respondents other than the written addenda issued by TEA.

2.4 STANDARD REQUIREMENTS

- A. Offers that address only part of the requirements of this solicitation will be considered non-responsive.
- B. TEA reserves the right to reject any and all responses and to negotiate portions thereof, including, but not limited to the proposed personnel and the proposed Task, Activity, Deliverable, and Budget Plan.
- C. TEA shall select the offer based on the best value to the State and TEA. The respondent must furnish clarifying information to TEA if requested. Failure to provide the requested material or information shall disqualify the respondent.
- D. The awarded vendor must collaborate with TEA staff to clarify the project design, activities, and/or other items and modify if necessary.

2.5 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

TEA is not liable for any costs incurred in the preparation or submission of an offer.

2.6 DISCLOSURE OF OFFER CONTENT

After contract award, offers are subject to release under the [TGC, Chapter 552, Public Information Act](#). The respondent should indicate on the offer cover if their submission contains proprietary information and identify the specific sections within the offer that are proprietary.

Contractors are required to make any information created or exchanged with the State pursuant to a contract, and not otherwise exempt 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 contractor and TEA will agree on the specific format that will be used.

2.7 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

TEA encourages contracting and subcontracting opportunities for HUBs in all contracts. Accordingly, TEA has adopted a policy on utilization of HUBs. If TEA determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan (HSP) is a required element of the offer. Respondents who are certified as a HUB with the State are encouraged to submit an offer for the services requested in this solicitation.

A. Statement of Probability

TEA has determined that subcontracting opportunities are probable in connection with this procurement. Therefore, ALL respondents must submit an HSP as a part of their offer. Offers that do not include an HSP will be rejected for non-compliance.

1. If the respondent is a HUB, the HSP is still required to identify the percentage of work to be performed by subcontractors.
2. If the respondent (HUB or non-HUB) is not subcontracting any portion of the work, the Self Performance portion of the HSP must be completed and returned with the offer.

The respondent shall develop and administer the HSP as a part of the offer in accordance with the TEA policy on utilization of HUBs and State law. The respondent must make a good faith effort and solicit a minimum of three Texas-certified HUBs from the State's Centralized Master Bidders List (CMBL) / HUB Directory for work that they cannot complete with their own staff and resources. The respondent must also notify minority or women trade organizations or development centers of subcontracting opportunities. Additional requirements are listed in **Attachment C, HUB Subcontracting Plan (form)**.

The HSP will be incorporated into the contract between TEA and the awarded vendor.

B. HUB Subcontracting Goal

The HUB subcontracting goal for this procurement is 26.0% minority-owned, woman-owned and/or service-disabled veteran-owned business participation.

Respondents are encouraged to collaborate with TEA to develop mentor-protégé opportunities. Under [34 TAC §20.298](#), a respondent's participation in a Mentor-Protégé Program under [TGC §2161.065](#), and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the area to be subcontracted with the protégé.

C. HUB Subcontract Progress Assessment Reporting

The awarded vendor will be responsible for maintaining business records documenting compliance with HUB Program requirements. The awarded vendor must submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. The awarded vendor shall also report all 2nd and 3rd tier subcontracting in the monthly PAR. PAR's are due no later than the 10th day of the following month. The PAR must be submitted monthly, even if no subcontracting activity occurred during the month at HUBOffice@tea.texas.gov.

D. How to Find Texas Certified HUBs for Subcontracting Opportunities

Historically Underutilized Businesses may be found on the CMBL / HUB Directory at: <https://mycpa.cpa.state.tx.us/tpasscmbllsearch/index.jsp>. Sample selections for this offer are below.

1. [Class Code: 206 – Computer Hardware and Peripherals for Mainframes and Servers](#)
Item: 89, Storage Devices, Electronic, Disk Drive Compatible, Network Attached Storage (NAS), Storage Attached Network (SAN)
2. [Class Code: 920 – Data Processing, Computer, Programming and Software Services](#)
Item: 02, Access Services, Data
Item: 03, Application Service Provider (ASP), Web Based Hosted*
Item: 05, Application, Infrastructure, Hosting and Cloud Computing Services
Item: 21, Data Entry Services
Item: 22, Data Preparation and Processing Services, Including Bates Coding*
Item: 24, Data Conversion Services
Item: 40, Programming Services, Computer, Including Mobile Device Applications*
Item: 45, Software Maintenance and Support Services*
Item: 46, Software Updating and Upgrading Services*
Item: 48, Storage Services, Data Media
Item: 75, Technical Writing and Documentation, IT Services*
Item: 76, Testing of Systems Infrastructure, Components or Software, IT Services*
3. [Class Code: 924 – Educational and Training Services](#)
Item: 05, Advisory Services, Educational
Item: 18, Educational Services, Alternative
Item: 19, Educational Research Services
4. [Class Code: 961 – Miscellaneous Services, No 1](#)
Item: 02, Administrative Services, All Kinds

2.8 CONFLICT OF INTEREST

A respondent will not be selected if it has a conflict of interest that will or may arise during the performance of its obligations under the contract. The respondent must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to the submission of an offer by the entity and its proposed subcontractors. The respondent must complete the Disclosure of Interested Parties Form in **Attachment G**. (See also Section 3.3.) **TEA will not accept information provided in other areas of the offer as satisfaction in lieu of full completion of the Attachment G form with required attachments. TEA recommends the completed form and responsive attachments be incorporated into a separate and distinct tab in the offer.** Failure to furnish this information will result in disqualification from further consideration.

As part of this disclosure requirement, each offer must include all past and present contractual, business, financial, or personal relationships between the respondent or respondent's staff and TEA and between the respondent's planned subcontractors or such subcontractor's staff, if any, and TEA. For purposes of this disclosure requirement: (i) "past" is defined as within the two calendar years prior to the deadline for submission of offers in response to this solicitation; (ii) TEA is defined as the statewide elected official who heads TEA, as well as TEA's employees or recent former employees; (iii) "recent former employees" is defined as those TEA employees who have terminated TEA employment

within the two calendar years prior to the deadline for submission of offers in response to this solicitation; (iv) “personal relationship” is defined as a current or past connection other than a clearly contractual, business, financial, or similar relationship and includes family relationships or other connections outside simply providing a response to this solicitation; and (v) for this purpose, “family relationship” means a relationship within the third degree of consanguinity or second degree of affinity (see [TGC Chapter 573](#)) which defines these degrees of consanguinity and affinity.

Connections other than such family relationships fall within this definition and must be disclosed, if a reasonable person could expect the connection to diminish the respondent’s independence of judgment or effectiveness in the performance of its responsibilities to TEA or the State under the contract; **OR** if a reasonable person could expect the connection, within the overall context of the respondent’s submission of an offer, possible selection for an award, or its performance of the contract, to create an issue for TEA’s consideration relative to a potential appearance of impropriety or conflict of interest.

For each item, respondent’s must provide a detailed explanation as to why the entity does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety relative to submission of an offer, possible selection as contractor, or its performance of the contract.

The respondent must certify that they comply with [TGC §669.003](#), relating to contracting with the executive head of a state agency. If TGC §669.003 applies, the respondent will provide the following information for the bid to be evaluated: name of former executive; name of state agency; date of separation from state agency; position with the respondent; and date of employment with the respondent. The respondent agrees that it is a continuing duty to supplement its offer under this provision and that the duty to disclose any conflicts of interest is an ongoing obligation throughout the term of the contract. The respondent shall submit updated information as soon as reasonably possible upon learning of any change to their affirmation.

2.9 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

In 2015, the Texas Legislature adopted House Bill 1295, which added [TGC §2252.908](#). TGC §2252.908 states that a state agency may not enter into certain contracts with a business entity unless the business entity submits a certificate of interested parties form to the state agency at the time it submits the signed contract. Subject to the exemptions found in TGC §2252.908(c), the law applies to any state agency contract that either: (i) requires an action or vote by the governing body of the state agency or entity before the contract may be signed; or (ii) has a value of at least \$1 million. The disclosure requirement applies to contracts entered into on or after January 1, 2016.

The awarded vendor must submit Form 1295 electronically through the Texas Ethics Commission’s website at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The awarded vendor must complete Form 1295 and print the completed form that includes a unique certification number. An authorized agent of the awarded vendor must sign the printed form. The completed Form 1295 that includes the certification number must be provided to TEA. TEA must notify the Texas Ethics Commission, using the commission’s filing application, of receipt of the filed Form 1295 no later than the 30th day after the date the contract binds all parties to the contract.

SECTION THREE: OFFER FORMAT AND CONTENT

3.1 OFFER FORMAT AND CONTENT

The offer must be written entirely on 8 ½” X 11” white paper and should be limited to 50 pages not including appendices and attachments. Offers must be submitted in a manner which does not carry any benefit, keepsake, or value for members of the evaluation team.

A. Offer Cover Page

Offers must include a cover page, which clearly states the name of the organization and the name, position, and telephone number of the respondent’s Project Manager who may be contacted regarding the offer (See **Attachment D**).

B. Offer Checklist

Offers should be organized, tabbed and clearly labeled according to the contents in TABLE 3 below. The checklist is provided to assist the respondent in ensuring that all required information is included in their offer and to assist the evaluation team during their review of the offer. The respondent should refer to the appropriate section of this solicitation for detailed information on the items listed in the checklist. **Failure to provide the required information will result in disqualification of the offer from consideration.**

| TABLE 3: OFFER CHECKLIST | | |
|--------------------------|---|---------------------------|
| <input type="checkbox"/> | Offer Cover Page | Attachment D |
| <input type="checkbox"/> | Understanding of the Project and Methodology | Section 3.2 |
| <input type="checkbox"/> | Management Plan, Experience & Qualifications | Section 3.3 |
| <input type="checkbox"/> | Task, Activity, Deliverable, and Budget Plan | Section 3.4, Attachment E |
| <input type="checkbox"/> | Signed Contract Terms, Conditions and Affirmations, Response Preferences, and Execution of Offer | Attachment B |
| <input type="checkbox"/> | HUB Subcontracting Plan | Attachment C |
| <input type="checkbox"/> | Access to Confidential Information Form | Attachment F |
| <input type="checkbox"/> | Disclosure of Interested Parties Form <i>including</i> all attachments (i.e. organization charts, resumes, etc.) | Section 2.8, Attachment G |
| <input type="checkbox"/> | Affirmation of Availability: Features and Requirements | Attachment H |

3.2 UNDERSTANDING OF THE PROJECT, METHODOLOGY AND TECHNICAL COMPONENTS

The offer must communicate an understanding of the project, requirements, and plan for working with TEA to ensure that your product features meet the needs of the TSDS upgrade. Include a description of your current approach to scoping, developing, testing, and releasing new product features. The offer must provide detailed information and evidence about the capabilities of the existing SaaS as related to the requirements provided in Section 1.5 and 1.6 of this solicitation. The offer must also provide a detailed description of the tasks to be performed and identify potential risk/problems in the conduct of the project, including methods to identify and solve such problems. The respondent must describe clearly, specifically and as completely as possible, the methodology for carrying out the objectives and requirements of the project during the entire contract period.

The offer must describe the project design, project activities, deliverables, materials, and other products, services, and reports to be generated during the contract period and show how they advance the purposes and specifications described in this solicitation. Technical evidence relating to the successful implementation of the respondent's proposed tool and its ability to perform the related services must be included in the offer. The overall quality of these components and of the offer itself will be considered.

Responses from vendors who do not have an existing SaaS Ed-Fi ODS product and SaaS data validation product will be disqualified. The offer must provide evidence of the successful implementation of the existing SaaS solution serving *at least* 1 million K-12 students in the United States. The SaaS data validation product must already contain PEIMS business rules. The SaaS Ed-Fi ODS must be in production in an LEA or SEA. The offer must outline the product features described in this solicitation that are not currently present in the proposed, existing SaaS. For any features that may require significant design decisions (example storing historical data or querying as-of date), provide an overview of the specific solution you will deliver.

Failure to provide this information will result in disqualification of the offer from consideration.

3.3 MANAGEMENT PLAN, EXPERIENCE AND QUALIFICATIONS

The respondent must provide evidence of its ability to manage and coordinate the types of tasks, activities and deliverables described in this solicitation and to produce required and on-demand reports for state, district and campus level data.

A. Offers must include the following information for each skill set identified in this solicitation:

1. Position title and proposed number of staff in the position;
2. Job description for the position; and
3. Description of the minimum education, certification, skillset, and experience levels required for the position.

- B. Emphasis should be placed on the qualifications of the individuals in the project team. Resumés and supporting documentation on all proposed personnel should include the following:
1. A description of each individual's experience;
 2. Documentation of education and certification(s);
 3. Detailed information on years of experience with software and roles and responsibilities with projects of similar nature in complexity, including roles and responsibilities in those projects;
 4. Detailed description of experience working with Texas education data and TSDS; and
 5. Detailed description of experience working with LEA vendors and Ed-Fi Technical Suite.
- C. The offer must also include the following information:
1. Evidence of the ability to perform the tasks described in this solicitation;
 2. Evidence of successful past performance for projects of similar size and scope;
 3. Number of years the proposed tool/application has been successfully implemented in similar size and scope;
 4. Number of years the organization has provided the services described in this solicitation;
 5. The respondent's organizational chart and a description of its management structure*;
 6. Names and resumés* of the proposed project manager(s) who will direct the overall project throughout the duration of the contract and proposed staff who will coordinate major activities during each phase of the contract, and the time allocations that the personnel described will devote to fulfillment of the contract;
 7. Names and resumés for each member of the proposed project team*;
 8. The organizational chart(s) and full resumés of all proposed subcontractors and consultants who will participate in the project*;
 9. The next level of authority within the organization to escalate issues throughout the term of the contract;
 10. Description of the respondent's process for client interfacing and the established policy of quality control;
 11. Description of prior contracting experience with Texas governmental entities or agencies;
 12. At least two applicable project experiences within the past three years similar in size, scope and complexity to the one described in this solicitation. Respondent must describe the nature of each engagement and include at least two customer reference contacts per project, including current contact information. For each reference provided, the respondent should include the:
 - Organization/Company name, point of contact with current telephone number and email address;
 - Industry/subject focus, project description, implementation dates and total contract value; and
 - Key technologies employed (hardware and software tools).
- TEA may contact references to verify past performance such as:
- Quality of deliverables, methodology and timeliness/adherence to schedule and budget;
 - Business conduct and innovation;
 - Problem resolution and customer satisfaction.

***Note: The respondent must also complete the Disclosure of Interested Parties form (Attachment G.) TEA will not accept information provided in response to Section 3.3 as satisfaction in lieu of full completion of Attachment G and its required attachments. TEA recommends the completed form and responsive attachments be incorporated into a separate and distinct tab in the offer.**

Failure to provide this information will result in disqualification of the offer from consideration.

3.4 TASK, ACTIVITY, DELIVERABLE AND BUDGET PLAN

The respondent should plan for a project starting date of **July 1, 2020**. The offer must include a detailed **Task, Activity, Deliverable and Budget Plan (TADBP)** (See **Attachment E**) for proposed services by fiscal year during the initial contract period and each optional renewal period. At a minimum, each TADBP shall include:

- A. The proposed major tasks, subtasks, activities, and deliverables;
- B. The name(s) of proposed staff responsible for each task;
- C. The proposed acceptance criteria for each deliverable;
- D. The proposed due date for each task subtask, activity and deliverable;
- E. The proposed price for each task, subtask, activity and deliverable; and
- F. The detailed costs associated with the proposed price for each task, subtask, activity and deliverable.

The TSDS upgrade must be complete and ready for state-wide release by **July 1, 2022**. A tentative schedule of deliverables and milestones for are included in Section 1.6. The proposed **TADBP** must include key project deliverables and proposed delivery dates. (This cannot be the detailed feature release schedule, but it must highlight the major features to be delivered and critical process, tasks, activities, deliverables and service delivery dates.) Time frames must be logical and appropriate to complete all activities within the contract period. Costs must be reasonable (i.e., consistent with current market price), allocable and necessary to accomplish the objectives of the project. The proposed **TADBP** shall provide evidence that financial resources are adequately and appropriately allocated in a cost-effective and prudent business manner to accomplish project objectives and activities. Goods and services to be fulfilled from other entities, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be also be specified.

TEA recommends the **TADBP** be developed and submitted as an excel workbook. The TADBP must include pricing by deliverable but the detailed costs associated with the proposed pricing must be included as a separate tab within the workbook. **The proposed TADBP must be valid for at least 120 business days from the solicitation closing date.**

Failure to provide this information will result in disqualification of the offer from consideration.

3.5 RESPONDENT'S FINANCIAL RESPONSIBILITY

All private sector companies, individuals, or non-profit organizations may be required to submit indicators of financial stability before an award. For example:

- Private companies may be asked to submit their most recent audited financial statement or a certified public accountant-compiled financial report;
- Non-profits may be asked to submit an audited financial statement, a certified public accountant-compiled financial report, or similar document; and
- Individuals may be asked to submit those documents that depict their financial stability, such as an audited proprietorship financial statement, statement from a certified public accountant or banker, or a statement from contractors or suppliers.

Non-profit organizations may also be required to submit proof of non-profit status. A respondent may show that it is a non-profit organization by any of the following means:

- A copy of a letter from the Internal Revenue Service recognizing that contributions to the organization are tax deductible under §501(c)(3) of the Internal Revenue Code;
- A statement from a state taxing body or the state attorney general certifying that the organization is a non-profit organization operating within the state and that no part of its net earnings may lawfully benefit any private shareholder or individual;
- A certified copy of the respondent's articles of incorporation or similar document, if it clearly establishes the non-profit status of the respondent; or
- Any item described above, if it applies to a state or national parent organization, together with a statement by the parent organization that the applicant is a local non-profit affiliate.

Failure to provide the information, *if requested*, will result in disqualification. Following a disqualification, TEA may, in its sole discretion, commence negotiations with another respondent.

3.6 ACCESS TO CONFIDENTIAL DATA

During the contract period, the awarded vendor may be exposed to confidential information and protected security information. The respondent's authorized representative must read, sign and return the confidentiality statement (See Attachment F), acknowledging the confidentiality requirements. Additional documentation may be required during the contract term.

Family Educational Rights and Privacy Act (FERPA)

FERPA ([20 U.S.C. §1232g; 34 CFR Part 99](#)) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under applicable programs of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. The rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students." FERPA outlines the circumstances in which schools are required to have written permission from a parent or eligible student in order to release information from a student's education record. The initial contractors designed and constructed the TSDS application to follow the FERPA guidelines. Any modifications made to TSDS must also adhere to the FERPA guidelines. The awarded vendor staff having access to data stored within TSDS must protect the confidentiality of the data following FERPA guidelines.

SECTION FOUR: REVIEW AND EVALUATION OF OFFERS

4.1 REVIEW OF OFFERS

Reviews will begin as soon as practical after the response deadline. Respondents with the highest scoring offers may be asked to send a representative to Austin, Texas, at a time and place to be arranged by TEA and the respondent, for oral presentation and demonstration. Oral presentations may also be conducted by conference call. If oral presentations are required, offers will be scored again following oral presentations. The evaluation team shall consist of TEA staff with subject matter expertise and knowledge in the content area. The evaluation team will consist of the same individuals if written and oral presentations are required. The recommendations of the evaluation team will be presented to TEA senior executive staff that will:

1. Approve the recommendation in whole or in part;
2. Disapprove the recommendation; or
3. Defer action on the recommendation for further evaluation.

TEA will not disclose information until a contract is executed by both parties. Upon contract award, TEA will post the contract award notice to the ESBD at: <http://www.txsmartbuy.com/sp>. TEA will notify each respondent in writing of the selection or non-selection for award after contract execution. Additional copies of offers not selected for funding will be destroyed, according to TEA's approved records retention policy.

4.2 EVALUATION CRITERIA

TEA intends to award one contract based on the ability of a vendor to complete all requirements contained in this solicitation. A vendor who is in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for an award. TEA will base its selection on the criteria described below and the best value standards in accordance with TGC [§2155.074](#), [2155.075](#) and [2151.003](#).

State agencies report vendor performance to the Comptroller of Public Accounts via the VPTS to assist all state agencies in determining best value for future awards. In accordance with [TGC §2262.055](#), TEA will use the VPTS to determine whether to award a contract to a vendor reviewed in the tracking system. Vendor performance will be used as a pass/fail factor prior to contract award.

| CATEGORIES | POINTS |
|---|--------|
| A. GENERAL AND OVERALL RESPONSE <ol style="list-style-type: none"> 1. Overall quality and clarity of response. (10) <ul style="list-style-type: none"> • Overall response demonstrates a clear understanding of the services to be performed. • Overall response demonstrates a clear understanding of the project. 2. Rate the feature coverage of the respondent's proposed SaaS offering. (5) 3. Respondent has a reasonable approach to additional feature development necessary to fulfill the SaaS feature requirements. (5) | 20 |
| B. MANAGEMENT COMPONENT <ol style="list-style-type: none"> 1. Quality of the evidence of the respondent's skills to develop and manage to a project plan that identifies product release dates and key dependencies on TEA deliverables. (5) 2. Evidence of the respondent's skills to produce a product roadmap that documents feature scope, delivery timing, and demo schedule. (5) 3. Evidence of the respondent's skills to provide input and background for TEA's planning and governance framework, including the Change Management Plan, Pilot Implementation Plan. (5) 4. Evidence that the respondent is capable of collaboration with TEA regarding ongoing product release cycles and the TEA Data Governance process. (5) | 20 |
| C. TASK, ACTIVITY, DELIVERABLE AND BUDGET PLAN <ol style="list-style-type: none"> 1. Respondent's overall project plan is reasonable and aligned with project milestones. (5) 2. Evidence that the respondent is capable of communicating the project risks with their approach and has proposed reasonable mitigation strategies. (5) 3. Evidence of the respondent's skill and experience with requirements gathering and documentation (if existing product requires new feature development). (5) 4. Evidence of the respondent's skill and experience with solution design and documentation (if existing product requires new feature development). (5) 5. Evidence of the respondent's skills to produce documentation for data mappings, metrics, and business rules (if existing product requires new feature development). (5) 6. Respondent's budget is clear and reflects a complete understanding of the SaaS product and project requirements. (5) 7. Respondent's overall project cost is reasonable. (20) <ul style="list-style-type: none"> • Vendor's SaaS costs are reasonable. • Vendor's one-time development, management, and other activity costs are reasonable (if applicable). | 50 |

| | |
|---|------------|
| D. TECHNICAL COMPONENT <ol style="list-style-type: none">1. Strength and appropriateness of the proposed enterprise service integrations including the eScholar UID system, the TSDS global notification system, TEAL, and TEA central organization data. (5)2. Strength and appropriateness of the proposed plan of migrating the Ed-Fi ODS to align with TEDS and the Ed-Fi Data Standard v3.1. (5)3. Strength and appropriateness of proposed solution to implement the Ed-Fi Teacher Prep Data Model Extension. (5)4. Strength and appropriateness of proposed solution to implement TEA defined data model extensions. TEA will map the Texas Education Data Standard to Ed-Fi data standard version 3.1 and provide documentation outlining specific extensions that will be needed to fulfill TEA required data collections. (5)5. Evidence of the respondent's skills to work closely with TEA staff to implement TEA defined business rules. TEA staff will document the existing PEIMS and required collections business rules, compare to the business rule set currently provided by the respondent, and identify rules that must be added. (5)6. Strength and appropriateness of proposed solution to deploy sandboxes for vendors to test their API integration as they prepare to support LEAs and Educator Prep Programs in complying with the updated TSDS submission processes and standards. This includes supporting pilot LEAs in appropriately configuring API permissions for their vendors. (5) | 30 |
| E. TRAINING AND ONGOING MAINTENANCE AND SUPPORT <ol style="list-style-type: none">1. Quality of the evidence of the respondent's skills to produce training materials for ESCs and vendors on how to set-up, configure, and troubleshoot (business and technical training) the SaaS products. (5)2. Evidence of the respondent's skills and resources to provide customer assistance/support for the solution, including basic help desk support for simple user questions concerning the base commercial solution and any questions concerning TEA added-value components. (5)3. Evidence of the respondent's skills to maintain the solution including identifying and correcting defects in a timely fashion. (5)4. Evidence of the respondent's skills to provide tier 4 help desk support for TEA who will escalate issues from TEA internal staff, LEAs, EPPs, and LEA/EPP vendors. (5)5. Strength and appropriateness of proposed solution to provide quarterly enhancements designed by TEA in response to regulatory and legal data collection and reporting requirements. (5)6. Respondent's solutions meet FedRAMP requirements. (5) | 30 |
| Total Points | 150 |

SECTION FIVE: CONTRACTUAL REQUIREMENTS

5.1 AWARDED VENDOR'S OFFER

TEA will incorporate the selected offer into the contract.

5.2 CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Any contract resulting from this solicitation will include the following documents, if applicable, in the following order of precedence:

- A. Special Terms and Conditions of the contract, if applicable;
- B. Standard TEA Terms and Conditions;
- C. Standard Contract, inclusive of all attachments and annexes, other than A. and B. above;
- D. Best and Final Offer (BAFO), if applicable; and
- E. Respondent's Offer submitted in response to this solicitation.

5.3 PROJECT REVIEW REQUIREMENT

TEA reserves the right to review any materials, and/or products developed or adapted by the contractor. Upon completion of the contract period, all documents will be returned to TEA or destroyed in accordance with the requirements contained in **Attachment B**. All works and materials created at any time during the contract period belong to TEA. The TEA Project Manager will establish procedures for communicating phase out and transition of deliverable(s), as needed.

5.4 INVOICING AND PAYMENT

All payments are made in accordance with [TGC §2251.001 et seq.](#) Payments for Goods and Services. Unless otherwise indicated by TEA, payment is only by reimbursement upon satisfactory performance of services.

Payment is contingent upon submission of properly prepared and certified invoices. The information provided on each detailed status report must coincide with the tasks outlined in the approved budget, as negotiated with TEA. The TEA Project Manager will review and approve invoices based upon satisfactory completion of tasks, receipt and acceptance of deliverables.

Invoices must note the service period, contract number, purchase order number, the Texas Comptroller of Public Accounts Payee Identification Number (TIN), the services (tasks and deliverables) completed during the period, and applicable supporting details and documentation. More information about the invoicing process will be shared during the contract development period.

Per guidelines set forth by the Texas Comptroller of Public Accounts' payment scheduling policy, agencies pay invoices as close to the due date as possible to maximize fiscal benefits to the state. Per the [Texas Prompt Payment Act](#), payments are due from TEA 30-days from the latest of (i) receipt of goods under the contract, (ii) receipt of services under the contract, or (iii) receipt of a correct and complete invoice.

5.5 CRIMINAL HISTORY REVIEW

All contractors who have, or will potentially have, direct contact with a student(s), access to confidential data, or access to TEA data systems, shall submit to a national criminal history record information review (this includes fingerprinting) before the commencement of the contract. The award of a contract is contingent upon meeting TEA's Eligibility Standards, as identified in TEA's terms and conditions (See **Attachment B**). All individuals affiliated with the contractor that may perform services under a contract must complete a criminal history review before the beginning of the assignment. If said individuals have not completed this requirement, the individual is not eligible for assignment.

The awarded contractor must provide assurances to TEA that all employees and subcontractors comply with the criminal history review requirement for every individual who has continuing duties under the contract who has, will have, or potentially may have direct contact with students on school property or another location where students are regularly present, or access to confidential data or TEA data systems.

The contractor is responsible for the following:

- A. Contacting the Department of Public Safety to set up a secure site account to monitor progress;
- B. Collecting personal information for all applicable employees and subcontractors;
- C. Communicating instructions to those individuals as to how fingerprints must be submitted, including information indicating that the individual is responsible for all associated fees;
- D. Reviewing each individual's criminal history and ensuring that all employees and subcontractor(s), are eligible for employment under the contract;
- E. Maintaining any applicable and necessary files related to criminal history background checks for audit purposes; and
- F. Providing assurance to the TEA Project Manager that all applicable contractor and subcontract employees have met the fingerprinting requirement; that they are eligible to be on campus or such other applicable location; that they are eligible to receive TEA confidential information or access TEA data systems; and that criminal histories are available to TEA or a campus administrator upon request.

Once all applicable individuals are fingerprinted, and the contractor has confirmed their eligibility for employment under the contract, the contractor notifies TEA Project Manager. TEA Project Manager sends the list of names to the TEA Educator Investigations Division, which verifies that each individual has been fingerprinted. The Educator Investigations Division does not review the criminal history of these individuals or confirm their eligibility for employment under the contract.

NOTICE OF INTENT TO SUBMIT AN OFFER**RFO #701-20-014, Texas Student Data System (TSDS)
Operational Data Store (ODS) 3.x Upgrade**

The undersigned organization hereby files a notice of intent to submit an offer.

| | |
|------------------------------|--|
| Name of Organization: | |
| Mailing Address: | |
| Contact Person: | |
| E-Mail: | |
| Phone Number: | |

- Filing of this notice is not mandatory, however, it will assist TEA in anticipating the volume of offers to better expedite the review process and finalize the contract award(s).
- Filing this notice in no way binds the organization to submit an offer.
- A vendor who does not file this notice is still eligible to submit an offer.

PLEASE SUBMIT THIS NOTICE BY E-MAIL AS SOON AS POSSIBLE TO:

TEASolicitations@tea.texas.gov

Texas Education Agency

Attention: Donna Tabron

Contracts and Purchasing Division

ATTACHMENT B**CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS, RESPONSE PREFERENCES AND EXECUTION OF OFFER****A. Defined Terms:** As used in this Attachment B, the following capitalized terms have the meanings specified below.

1. *Comptroller* means the Texas Comptroller of Public Accounts.
2. *Contract* means the document entered into between TEA and Contractor, including all attachments (for the avoidance of doubt, including, but not limited to, the Standard TEA Terms and Conditions and any Special Terms and Conditions), annexes, exhibits, schedules, amendments, renewals and extensions of or to the Contract.
3. *Contract Project* means the purpose intended to be achieved through the Contract.
4. *Contractor* means the party to this Contract who is providing the contracted goods or services to TEA.
5. *EIR* means electronic information resources.
6. *FERPA* means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99).
7. *HSP* means a HUB subcontracting plan.
8. *HUB* means an entity certified by the Comptroller as a Historically Underutilized Business as defined in [Texas Government Code Section 2161.001](#).
9. *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
10. *Major Contract* means any contract that has a value of at least \$1 million. See [Texas Government Code Section 2262.001\(4\)](#).
11. *Project Manager* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project.
12. *Response* is what a Respondent submits in response to the following specific competitive solicitations: an invitation for bids (IFB); a request for offers (RFO); a request for proposals (RFP); or a request for qualifications (RFQ).
13. *Respondent*, identifies a person or entity who responds to the following specific competitive solicitations: an IFB, a RFO, a RFP, and a RFQ. Respondent infers pre-solicitation award status and Contractor infers post-award status, but otherwise refer to the same person or entity.
14. *Special Terms and Conditions* means any provisions contained in an Attachment to this Contract labeled "Special Terms and Conditions of this Contract".
15. *Standard TEA Terms and Conditions* mean the provisions contained in this Attachment B.
16. *State* means the State of Texas.
17. *TAC* means the Texas Administrative Code.
18. *TEA* means the Texas Education Agency.
19. *TEA Confidential Information* means information that is confidential under the provisions of the FERPA, the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver's license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (f) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (g) biometric identifiers such as fingerprints; (h) information about security vulnerabilities in TEA systems; and (i) SAS data sets.
20. *WCAG* means web content accessibility guidelines.
21. *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract. "Works" includes but is not limited to computer software, data, metadata, source code, concepts, systems, methodologies, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc. "Works" does not include any pre-existing materials of Contractor, or any licensed third-party materials provided by Contractor.

B. Excess Obligations Prohibited: This Contract is subject to termination or cancellation, without penalty to TEA, either in whole or in part, subject to the availability of State funds. TEA is a State agency whose authority and appropriations are subject to actions of the Texas Legislature. If TEA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TEA's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this provision, TEA will not be liable to Contractor for any damages that arise out of or are related to such termination or cancellation, and TEA will not be required to give prior notice of such termination or cancellation.

C. Indemnification: For the avoidance of doubt, the TEA shall not indemnify Contractor or any other entity under the Contract.

General

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

Intellectual Property

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE AND THE TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, ARISING OUT OF OR RELATING TO: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE TEA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE TEA BY CONTRACTOR OR OTHERWISE TO WHICH THE TEA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND THE TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, CONTRACTOR WILL REIMBURSE THE TEA AND THE STATE FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE TEA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF THE TEA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE TEA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF THE TEA'S COUNSEL.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

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

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

For local educational agencies (LEAs), regional education service centers (ESCs), public institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract.

- D. Signature Authority and Binding Effect:** By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any Contract that may result from the submission of this Response. The Contract shall be binding upon and shall inure to the benefit of the TEA and Contractor and to their respective permitted successors, and assigns.

- E. Responsibility for Actions and Limitation on Authority:** Contractor is solely responsible for its actions and those of its agents, employees or subcontractors. Contractor and its agents, employees or subcontractors shall have no authority to act for or on behalf of TEA or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Contractor and its agents, employees and subcontractors may not incur any debt, obligation, expenses, or liability of any kind on behalf of TEA or the State.
- F. Final Expression, and Superseding Document:** The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by written amendment properly executed by both TEA and Contractor.
- G. Amendments:** All amendments to this Contract are subject to Paragraph B of these Standard TEA Terms and Conditions, will be executed on standard TEA forms, and will follow TEA's internal contracting process. All amendments will be initiated by TEA Contract and Purchasing staff. An amendment to this Contract will become effective on the date of signature by TEA or the effective date shown on the amendment document, whichever is later. All amendments must be in writing and signed by both parties. Notwithstanding the foregoing, TEA may make technical amendments in order to correct manifest errors in the Contract, provided such technical amendments would not have a materially adverse effect on Contractor and that Contractor does not contest in writing the amendments within 30 days after TEA provides written notice to Contractor of such technical amendments.
1. Written amendments are required for the following Contract changes:
 - a. Any revision which would result in the need for additional funding;
 - b. Revisions or additions to the scope of work, deliverables, or objectives of the Contract (regardless of whether there is an associated budget revision requiring prior approval);
 - c. Any extension of the period of the Contract other than a renewal as provided for in the Contract;
 - d. Any reduction of funds or reduction in the scope of work;
 - e. Any change to the Standard TEA Terms and Conditions; and
 - f. Any change to key personnel of Contractor.
 2. Informal budget revisions signed by contract managers shall be permitted for the following contract changes:
 - a. Reallocating funds among existing contract tasks/deliverables (up to 25% increase/decrease per specified task/deliverable);
 - b. Reallocating funds across TEA fiscal years and State bienniums; and
 - c. Revisions to the scope of work consisting of additional work under existing tasks/deliverables (e.g., TEA requires 4 trainings instead of 3) not to exceed delegation amounts equal to 25% of the contract value as of the most recent formal contract document.

Updates to Standard TEA Terms and Conditions

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

- H. Subcontracting:** Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TEA. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.
- I. No Third-Party Beneficiaries:** This Contract is made solely and specifically among and for the benefit of the parties named herein and their respective permitted successors and assigns. No other person shall have any right, interest, or claims under this Contract or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.
- J. Personnel Assignments, Transfers, HUB Subcontracting, Substitutions and Reporting:** TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Pursuant to 34 TAC §201.281-298 and Texas Government Code, Chapter 2161, Contractor shall maintain business records documenting compliance with the HSP and shall submit compliance reports to TEA. Any changes to the HSP must be approved by TEA HUB Coordinator before subcontracting changes are initiated. Substitutions are not permitted without written approval of TEA Project Manager. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law. Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PAR's are due no later than the 10th day of the following month. The PAR is required to be submitted monthly, even if no reportable activity occurred for the month. Reports shall be submitted electronically to the HUBOffice@tea.texas.gov. In addition to the PAR, Contractor shall also create

and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.

- K. Interpretation:** The terms, conditions, and assurances, which are stated in the competitive solicitation, in response to which Contractor submitted a Response, are incorporated herein by reference. Contractor's Response that was furnished to TEA in response to the competitive solicitation is incorporated herein by reference. In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, attachments, annexes, Standard TEA Terms and Conditions, Special Terms and Conditions, and exhibits or other documents making part of this Contract, this Contract and its attachments and annexes, including but not limited to, the Standard TEA Terms and Conditions and any Special Terms and Conditions shall take precedence over all other documents which are a part of this Contract. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- L. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- M. Proof of Financial Stability, Records Retention and the Right to Audit:** TEA may require Contractor to provide proof of financial stability prior to or at any time during the Contract term.

Contractor shall maintain and retain all records relating to the performance of the Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the Contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

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

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

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

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

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

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

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

For School Districts and Nonprofit Organizations: The foregoing Intellectual Property Ownership provisions also apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors.

For Education Service Centers (ESCs): The foregoing Intellectual Property Ownership provisions also apply to an ESC and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from TEA's Office of Legal Services.

For Colleges and Universities: The foregoing Intellectual Property Ownership provisions also apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA's Office of Deputy Commissioner for Finance.

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

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

Q. Confidential Information, FERPA, and Information Security Requirements:

Access to TEA Confidential Information

Contractor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA Confidential Information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of TEA Confidential Information, additional TEA confidentiality forms will need to be signed by each individual who requires access to or may be exposed to that information. Contractor shall access TEA's systems or TEA Confidential Information only for the purposes for which it is authorized. TEA expects all partners, consultants, and Contractors to abide by TEA information security policies. TEA reserves the right to review Contractor's security policy to ensure that any data that is on Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

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

1. Date and time of sanitization/destruction;
2. Description of the item(s) and serial number(s) if applicable;
3. Inventory number(s); and
4. Procedures and tools used for sanitization/destruction.

No later than 60 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA documentation that the sanitization has been completed. An authorized agent of the company must certify the completion of the destruction of data and sanitization.

Contractor must be compliant with rules pertaining to information technology security standards found at 1 Texas Administrative Code, Chapter 202 ([https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202)).

If Contractor is providing a Cloud-hosted deliverable, Contractor must complete paperwork documenting compliance with the Cloud Security Alliance's (CSA) Cloud Controls Matrix (CCM) found at <https://cloudsecurityalliance.org/group/cloud-controls-matrix>. Contractor must submit the completed paperwork to the TEA Contracts and Purchasing Division for inclusion in the Contract file.

FERPA

Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within 60 days of project completion. Contractor also agrees not to disclose any information to which it is privy under this Contract without the prior consent of TEA. [The National Institute of Standards and Technology \(NIST\)](#) provides in-depth guidance and best practices for the implementation of effective methods of data destruction in their [Guidelines for Media Sanitation](#).

Information Security Requirements

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. The off-site downloading, transfer, and/or storage of sensitive and protected data is strictly prohibited unless such acts are specifically allowed in the Contract's scope of work.

TEA is required to comply with Texas Government Code, Sec. 2054.516, requiring all state agency websites or mobile applications that process sensitive personal information or confidential information be subjected to vulnerability and penetration testing, and to address any vulnerability identified. Websites shall be accessible through a secure connection (HTTPS-only, with HTTP Strict Transport Security (HSTS)), utilizing Transport Layer Security (TLS) version 1.2 or higher. TEA reserves the right to scan websites for vulnerabilities and to audit the security measures in effect on Contractor's connected systems without prior warning, and request remediation of identified issues in a timely manner not to exceed three months. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

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

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive data or TEA Confidential Information or any breach or denial of service attack (each such event, a "Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

1. Description of the nature of the Security Incident;
2. The type of TEA information involved;
3. Who may have obtained the information;
4. What steps Contractor has taken or will take to investigate the Security Incident;
5. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
6. A point of contact for additional information.

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

1. Who is known or suspected to have gained unauthorized access to TEA information;
2. Whether there is any knowledge if TEA information has been abused or compromised;
3. What additional steps Contractor has taken or will take to investigate the Security Incident;
4. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
5. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Further, Contractor will notify TEA within 12 hours of any new report of any security vulnerability that affects their platforms directly

or indirectly, that is published in sources including, but not limited to, the Common Vulnerabilities and Exposures and publications of the Cybersecurity Infrastructure and Security Agency (each such event, a "Security Vulnerability").

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

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within 30 days of TEA's written request, then TEA shall have the right to collect such costs.

- R. Electronic and Information Resources Accessibility Standards:** State agencies shall procure products which comply with the State Accessibility requirements for Electronic 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.

Regulations updating the accessibility requirements for entities covered by Section 508 of the Rehabilitation Act of 1973 were adopted in FY 2015. Therefore, all current and potential contractors are hereby notified of the changes. The current technical requirements for accessibility contained within this regulation form the basis for our TAC rules on EIR accessibility.

This refresh of 508 uses the [WCAG 2.0 AA Accessibility Guidelines](#) (also ISO/IEC standard 40500) as the new technical standard that federal agencies are required to meet when procuring products and services. The Texas Department of Information Resources is modifying the TAC rules to align with it.

Given this change, all Texas agencies and institutions of higher education must begin using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:

1. It is technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later.
2. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

[WCAG 2.0 AA at a glance](#)
[IBM Developer Guidelines Web Checklist](#)
[Webaim.org Accessibility Checklist](#)

All websites must follow Federal 508 accessibility requirements and WCAG 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the Contractor must contract with a third party with expertise and a proven track record in accessibility testing. This company must evaluate the site and produce a report that verifies the site is compliant to WCAG 2.0 AA. The report must be submitted to the TEA Contracts and Purchasing Division for inclusion in the contract file.

The awarded Contractor must employ real users with disabilities for manual testing. Contractor must provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Contractor shall validate, by title, if all accessibility requirements have been met.

- S. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- T. TEA Property:** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA

to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.

- U. Use of State Property:** Contractor is prohibited from using State Property for any purpose other than performing services authorized under the Contract. State Property includes, but is not limited to, TEA's office space, identification badges, TEA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TEA-issued software, and the TEA Virtual Private Network (VPN client)), and any other resources of TEA. Contractor will not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access TEA's network or e-mail while outside of the continental United States. Contractor will not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor will be responsible for all charges attributable to Contractor's use of State Property that exceeds the contract scope. Contractor will fully reimburse such charges to TEA within ten (10) calendar days of Contractor's receipt of TEA's notice of amount due. Use of State Property for a purpose not authorized by Contract will constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to TEA under Contract, at law, or in equity.
- V. Governing Law and Venue:** Subject to and without waiving any of TEA's rights, including sovereign immunity, this Contract is governed by and construed in accordance with the laws of the State, without regard to the conflicts of law provisions thereof. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless a specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the TEA.
- W. No Waiver:** Nothing in this Contract shall be construed as a waiver of TEA's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TEA or the State. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TEA or the State under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TEA does not waive any privileges, rights, defenses, or immunities available to TEA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.
- X. Applicable Law and Conforming Amendments:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Any alterations, additions, or deletions to the terms of this contract which are required by changes in federal or state law or regulations are automatically incorporated into this contract without written amendment hereto and shall become effective on the date designated by such law or regulation.
- Y. Federal Rules, Laws, and Regulations that apply to all Federal Programs:** Contractor represents and warrants its compliance with all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
 2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
 3. Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
 4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105;
 5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
 6. The Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments;
 7. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
 8. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
 9. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
 10. General Education Provisions Act, as amended.

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

- Z. Equal Employment Opportunity:** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
- AA. E-Verify Program:** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

1. All persons employed by Respondent to perform duties within Texas; and
2. All persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.

BB. Compliance with Laws: Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Contractor represents and warrants that it has acquired all applicable licenses, certifications, permits and any other documentation to perform this Contract. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.

CC. Legal and Regulatory Actions: Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response including a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TEA's consideration of the Response. In addition, Respondent represents and warrants that it shall notify TEA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TEA shall constitute breach of contract and may result in immediate termination of the contract.

DD. Forms, Assurances, and Reports: Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure to so comply.

EE. No Exclusivity: The Contract is not exclusive to the Contractor. TEA may obtain products and related services from other sources during the term of the Contract. TEA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

FF. Antitrust: By signing this Contract, Contractor represents and warrants that, in accordance with [Texas Government Code Section 2155.005](#) neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated any provision of the [Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15](#), or the federal antitrust laws; or (2) communicated directly or indirectly the Response to any competitor or any other person engaged in the same line of business as Contractor.

GG. Unfair Business Practices: Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit. Respondent represents and warrants that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practices in an administrative hearing or court suit.

HH. Child Support Obligation Affirmation: Under Section 231.006 of the Texas Family Code, Respondent certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.

II. Public Information: Respondent understands that the TEA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation, this Response or any resulting Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

TEA Project Manager will provide the specific format by which Contractor is required to make the information accessible by the public.

TEA is subject to the provisions of the [Texas Public Information Act](#). If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to TEA under this Contract constituting a

record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act. Upon receipt of a request for information related to the goods or services provided under the Contract maintained by the Contractor, the TEA Project Manager shall request the responsive information from the Contractor. The Contractor shall respond to TEA's request within five (5) business days.

- JJ. Lobbying Prohibition:** Contractor represents and warrants that TEA's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- KK. Prohibition of Text Messaging and Emailing while Driving during Official Federal Grant Business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under [Executive Order 13513](#), "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.
- LL. Liability for and Payment of Taxes:** Purchases made for the State's use are exempt from the State Sales Tax and Federal Excise Tax. TEA will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- MM. Conformance:** Contractor represents and warrants that all goods and services furnished will conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and will be free from any defects in materials, workmanship, or design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- NN. Buy Texas Affirmation:** In accordance with [Texas Government Code, Section 2155.4441](#), Contractor agrees that during the performance of a contract for services, Contractor shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state. This provision does not apply if Contractor receives any federal funds under this Contract.
- OO. Pricing Certification, Best Pricing:** Contractor hereby certifies that the fees and expenses charged for the work being conducted for TEA under this Agreement are no less favorable than Contractor's standard pricing practices utilized for offers for similar work to similar organizations. If Contractor enters into any subsequent agreement for similar work with any similar organization during the term of this Contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this Contract, Contractor shall notify the TEA promptly of the existence of such more favorable benefits, pricing and/or hourly rates and the TEA shall have the right to receive the more favorable contractual terms immediately. If requested in writing by the TEA, Contractor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
- PP. Payment:** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Payment for goods or services purchased with state-appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>. Invoices must be submitted to TEAAccountsPayable@tea.texas.gov and TEA Project Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the latest of:
1. Date on which TEA received the goods;
 2. Date the performance of the service under the Contract is completed; or
 3. Date on which TEA received the complete and correct invoice for goods or services.

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

TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition provided by the Project Manager, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. TEA reserves the

right to reject and withhold payment for deliverables found to be substandard or not in compliance with the deliverable definition, including test items developed under the Contract.

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

Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees must be stated in the competitive solicitation and documented in the Contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall be requested in the final invoice.

Unless otherwise stated, payment under this Contract will be made upon delivery of goods and performance of services based upon submission of an invoice, properly prepared and certified, outlining expenditures by deliverable. Include the Contract number, purchase order number, and the Comptroller Texas Identification Number (TIN) on all invoices. The Deliverables / Tasks and Activities in the invoice must coincide with the Deliverables / Tasks and Activities detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the invoice. The final invoice is due within 45 days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract. All costs must be reasonable, allowable and allocable to the project.

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

Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State, any payments or other amounts Respondent is otherwise owed under the Contract may be applied toward any debt Respondent owes the State until the debt is paid in full, regardless of when the debt or delinquency was incurred. These provisions are effective at any time Respondent owes any such debt or delinquency. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the State by the Federal Government. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify its account status by accessing the Comptroller's website at https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

- QQ. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- RR. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- SS. Contractor Performance and Past Performance:** TEA is required to submit Contractor Performance reports under Texas Government Code, [§2155.089](#), and 34 Texas Administrative Code (TAC), [§20.509](#) and [§20.115](#). The Comptroller's Vendor Performance Tracking System (VPTS) provides the state procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract awarding process. Historic reports submitted prior to February 10th, 2017 will be displayed as "Legacy Satisfactory" or "Legacy Unsatisfactory."

TEA may conduct reference checks with other entities regarding past performance of Respondent or its subcontractors. In addition to evaluating performance through the VPTS, TEA may examine other sources of contractor performance, including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of contractor performance may include any governmental entity, whether an agency or political subdivision of the State, another state, or the Federal government. Further, TEA may initiate such examinations of contractor performance based upon media reports. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in a non-award to Respondent. The VPTS is located on Comptroller's website at: <http://www.txsmartbuy.com/vpts>.

- TT. Time Delays, Suspension, and Sanctions for Failure to Perform:**
Time is of the Essence.

Contractor's timely performance is essential to this contract.

Suspension

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

Sanctions

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

- UU. Abandonment or Default:** If Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Respondent. The defaulting Contractor 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 significantly changed. The period of suspension will be determined by TEA based on the seriousness of the default.
- VV. Dispute Resolution:** The dispute resolution process provided for in [Chapter 2260](#) of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- WW. Protests:** Any actual or prospective Respondent or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this Contract by TEA may submit a formal protest to the Director of TEA's Purchasing and Contracts Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules ([19 TAC Section 30.2002](#)).

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

- XX. Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract.
 - 1. Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 15 calendar days' advance written notice to Contractor. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for payments limited only to the portion of work TEA authorized in writing and which Contractor has completed, delivered to TEA, and which has been accepted by TEA. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TEA shall have no other liability, including no liability for any costs associated with the termination.
 - 2. Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under the Contract. TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

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

- 3. Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this contract.

4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all Works and associated documentation and materials obtained from Contractor under the Contract.
5. **Survival of Terms:** Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, ownership of intellectual property or other property rights, dispute resolution, rights and remedies upon termination, invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a new contractor, Contractor shall hand-over to the new contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the new contractor within 10 days of announcement of award at the new contractor's expense for data processing and production, packing and shipping. Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the new contractor. Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Project Manager shall approve the transition plan prior to its implementation. The transition plan must minimize the impacts on continuity of operations and maintain communication with TEA Project Manager and the new contractor.

7. **Return of Works:** Subject to paragraph 6 above, upon the request of TEA, but in any event upon termination or expiration of this Contract or a statement of work, Contractor, at its sole expense, shall surrender to TEA all Works pertaining to the Contract Project, any and all documentation or other products or results of the services, and all other documents or materials (and copies of same) furnished by TEA to Contractor, including all materials embodying the Contract Project, regardless of form or whether complete or incomplete. Failure to timely deliver such Work and any and all documentation or other products and results of the services will be considered a material breach of this Contract.

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

YY. Insurance: Contractor represents and warrants that it maintains and will maintain the following insurance coverage during the term of this Contract:

| Minimum Required Amounts of Insurance Coverage | |
|---|---|
| Type of Insurance | Each Occurrence/Aggregate |
| <i>Workers Compensation</i> | Statutory Limits |
| <i>Employers Liability</i> | |
| Bodily Injury by Accident | \$1,000,000 each Accident |
| Bodily Injury by Disease | \$1,000,000 each Employee |
| Bodily Injury by Disease | \$1,000,000 Policy Limit |
| <i>Commercial General Liability</i> (Occurrence based) | |
| | Bodily Injury and Property Damage |
| | \$1,000,000 each Occurrence Limit |
| | \$2,000,000 Aggregate Limit |
| | \$5,000 Medical Expenses each person |
| | \$2,000,000 Products/Completed Operations Aggregate Limit |
| | \$1,000,000 Personal Injury and Advertising Liability |
| | \$50,000 Damage to Premises Rented |
| <i>Automobile Liability</i> All Owned, Hired and Non-Owned Vehicles | \$500,000 Combined Single Limit (for each accident) |
| <i>Umbrella/Excess Liability</i> | \$1,000,000 per Occurrence |

All required insurance coverage must: (1) be in a form satisfactory to TEA; (2) be written on a primary and non-contributory basis with any other insurance coverages Contractor currently has in place; (3) include a Waiver of Subrogation Clause; and (4) issue from a company or companies that: (a) have a Financial Strength Rating of "A" or better from A.M. Best Company, Inc., (b) have a Financial Size Category Class of "VII" or better from A.M. Best Company, Inc., and (c) are authorized to do business under the laws of the State.

All required insurance coverage, other than workers compensation and professional liability, must name the State and its Officers, Directors, and Employees as additional insureds.

Contractor shall:

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

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

ZZ. Force Majeure: Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as a defense.

AAA. Drug Free Workplace Policy: Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

BBB. TEA No Smoking Policy: TEA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TEA.

CCC. Performance Measurement: Contractor shall use OMB-approved standard information collections when providing financial and performance information. Contractor must be able to relate financial data to performance accomplishments of the project. Contractor must also provide cost information to demonstrate cost effective practices (e.g. through unit cost data). Contract performance should be measured in a way that will help to improve program outcomes, share lessons learned, and spread adoption of promising practices. Contractor must have effective control over, and accountability for, all funds, property, and other assets. The Contractor must adequately safeguard all assets and assure that they are used solely for authorized purposes.

DDD. Entities that Boycott Israel: Contractor represents and warrants that: (1) it does not, and shall not for the duration of the Contract, boycott Israel, or (2) the verification required by [Section 2271.002 of the Texas Government Code](#) does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify TEA.

EEE. Disaster Recovery Plan: In accordance with 13 TAC Section 6.94(a)(9), Contractor must provide to TEA the descriptions of its business continuity and disaster recovery plan.

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

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

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

- III. Electrical Items:** All electrical items purchased under this Contract must meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- JJJ. Independent Contractor:** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor, Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers are not employees of TEA or the State. Contractor shall have no claim against the TEA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and TEA.
- KKK. Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- LLL. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees, agents or representatives, including any subcontractors and employees, agents or representative of such subcontractors assigned to TEA projects, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- MMM. Criminal Background Checks:** If during the term of this Contract, Contractor and/or Contractor's staff, or subcontractor and/or subcontractor's staff have either (1) access to Texas public school campuses, or (2) access to TEA Confidential Information or TEA data systems, all Contractor and/or Contractor's staff and/or subcontractor and/or subcontractor's staff must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor, Contractor's staff, subcontractor or subcontractor's staff is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
1. Contractor, Contractor's staff, subcontractor or subcontractor's staff will not meet eligibility standards and be permanently disqualified from serving on TEA assignments if an initial review of criminal history records indicates:
 - a. Felony conviction or deferred adjudication;
 - b. Offense on conviction of which the defendant is required to register as a sex offender;
 - c. Conviction or deferred adjudication of a Class A Misdemeanor; or
 - d. Offense under the laws of another state or federal law that is equivalent to an offense specified above, or their criminal record indicates an unresolved Felony or Class A misdemeanor.
 2. Educator Certification Required: If the individual is a certified educator, the educator's certificate(s) must currently be valid and in good standing. If the certificate(s) is/are not in good standing (inactive, invalid, revoked, suspended or surrendered) the individual is not eligible for TEA appointments, assignments, contract, or grant awards or to provide services to school entities on behalf of TEA.
- NNN. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by TEA or another state agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with TEA or the other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- OOO. No Conflicts of Interest:** Pursuant to Texas Government Code §2261.252, TEA may not enter into a contract for the purchase of goods or services with a private Contractor if certain positions within TEA including the Commissioner, the General Counsel or the Procurement Director or their covered family members have a financial interest in Contractor. Any contract found to violate Texas Government Code §2261.252 is void. Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety, and, if these facts change during the course of the Contract, Contractor certifies that it shall disclose to TEA the actual or potential conflict of interest and any circumstances that create the appearance of impropriety.
- PPP. Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's Response is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- QQQ. Suspension and Debarment:** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

- RRR. Financial Participation Prohibited:** Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004, the Respondent certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.
- SSS. Foreign Terrorist Organizations:** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- TTT. Former TEA Employees:** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the TEA during the twelve (12) month period immediately prior to the date of execution of the Contract. In the case of professional services contracts as described by Chapter 2254 of the Texas Government Code, Respondent represents and warrants that if a former employee of the TEA was employed by Respondent within one year of the employee's leaving the TEA, then such employee will not perform services on projects with Respondent that the employee worked on while employed by the TEA.
- UUU. Restricted Employment of Certain State Personnel:** Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TEA involving Respondent within two (2) years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- VVV. Dealings with Public Servants:** Pursuant to Section 2155.003 of the Texas Government Code, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.
- WWW. Prior Disaster Relief Contract Violation:** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.
- XXX. Ability to Conduct Business in Texas:** Contractor represents and warrants that it is duly organized, validly existing and in good standing under the laws of its state of organization and shall be authorized to do business in the State in accordance with Texas Business Organizations Code, Title 1, Chapter 9.
- YYY. Headings:** The headings of articles, sections or clauses contained in this Attachment B and in the Contract, its attachments and annexes are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision hereof or thereof.
- ZZZ. Assignment:** Contractor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of TEA, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. To seek consent for assignment of this Contract, Contractor should contact TEAContractMonitoring@tea.texas.gov.
- AAAA. Contracting Information Responsibilities (effective January 1, 2020):** In accordance with [Section 552.372 of the Texas Government Code](#), Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TEA for the duration of the Contract, (2) promptly provide to TEA any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TEA, and (3) on termination or expiration of the Contract, either provide at no cost to TEA all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TEA. Except as provided by [Section 552.374\(c\) of the Texas Government Code](#), the requirements of [Subchapter J, Chapter 552, Government Code](#), may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- BBBB. Cybersecurity Training:** If Contractor (including a subcontractor, officer, or employee of Contractor) has access to any State computer system or database, Contractor shall complete cybersecurity training and verify completion of the training program to TEA pursuant to and in accordance with [Section 2054.5192 of the Texas Government Code](#).
- CCCC. Human Trafficking Prohibition:** Under [Section 2155.0061 of the Texas Government Code](#), Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

DDDD. Executive Head of State Agency Affirmation: Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the TEA. Respondent must provide the following information in the Response.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Respondent: _____ Date of Employment with Respondent: _____

EEEE. Point of Contact, Responsiveness and Escalation: All notices, reports, documents, correspondence or other data required by this Contract shall be in writing and delivered to the individuals listed below, their successors in office, or the TEA employee requesting such notice, report, document, correspondence or other data, on or before scheduled due dates or where no due date is specified within 5 business days of any request for such notice, report, document, correspondence or other data by TEA.. Within 30 days of execution of this Contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

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

The Texas Government Code and Family Code sites referenced in this document may be viewed at:

<http://www.statutes.legis.state.tx.us/>

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

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

RESPONSE PREFERENCES

The Respondent if selected as the Contractor, will be required to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside of Texas ([Texas Government Code § 2155.4441](#)).

Check below if claiming a preference included in [Texas Government Code Chapter 2155](#)

| | | |
|--------------------------|-------------|---|
| <input type="checkbox"/> | § 2155.441 | Products of persons with mental or physical disabilities |
| <input type="checkbox"/> | § 2155.442 | Energy efficient products |
| <input type="checkbox"/> | § 2155.443 | Rubberized asphalt paving |
| <input type="checkbox"/> | § 2155.444 | Texas and United States products and Texas services |
| <input type="checkbox"/> | § 2155.4441 | Preference under service contracts. |
| <input type="checkbox"/> | § 2155.445 | Recycled, remanufactured, or environmentally sensitive products |
| <input type="checkbox"/> | § 2155.446 | Use of Paper containing recycled fibers |
| <input type="checkbox"/> | § 2155.447 | Recycled oil |
| <input type="checkbox"/> | § 2155.449 | Products and services from economically depressed or blighted areas |
| <input type="checkbox"/> | § 2155.450 | Products of facilities on formerly contaminated property |
| <input type="checkbox"/> | § 2155.451 | Vendors that meet or exceed air quality standards. |
| <input type="checkbox"/> | § 2155.452 | Contractors providing foods of higher nutritional value. |

EXECUTION OF OFFER

Respondent will provide its nine-digit Federal Employer's Identification Number (FEIN) to TEA. If Respondent does not have a FEIN, Respondent shall next provide Respondent's 14-digit State Payee Identification Number (TIN). If Respondent neither has a FEIN or a TIN, Respondent shall provide a Social Security Number (SSN) if Respondent is an individual. If Respondent is incorporated, Respondent shall also provide to TEA the corporation's charter number issued by the Texas Secretary of State's office. Information provided by Respondent will be verified by TEA and kept confidential to the fullest extent allowed by law.

| | |
|------------------------|--|
| Contractor's FEIN | |
| Contractor's SSN | |
| Contractor's TIN | |
| Contractor's charter # | |

Respondent has read, understands, and agrees to be bound to the terms and conditions stated in the solicitation if a contract is awarded to Respondent pursuant to this solicitation.

By signature hereon, the Respondent represents and warrants that all statements and information prepared and submitted in the response to this document are current, complete, true and accurate. Submitting a document with a false statement or material misrepresentations made during the performance of a Contract is a material breach of contract and may void the submitted Response and any resulting Contract.

The undersigned is an authorized official for the Respondent and certifies that the Response submitted with this "Contract Terms, Conditions and Affirmations, Response Preferences and Execution of Offer" instrument is in full compliance with the provisions herein. The undersigned further certifies that the Response submitted with this instrument is allowed to claim any of the Chapter 2155 Texas Government Code preferences checked above. In compliance with this solicitation, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the Response.

Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

| |
|--|
| RESPONDENT/COMPANY NAME: |
| STREET ADDRESS: |
| CITY/STATE/ZIP: |
| TELEPHONE #: |
| FACSIMILE #: |
| EMAIL ADDRESS: |
| NAME OF RESPONDENT'S AUTHORIZED AGENT: |
| TITLE OF RESPONDENT'S AUTHORIZED AGENT: |
| SIGNATURE OF AUTHORIZED AGENT: |

ATTACHMENT "B" MUST BE SIGNED AND RETURNED WITH YOUR RESPONSE

Respondent acknowledges that under state law and TEA policy, they may not disclose any information during the solicitation process (upon opening the Response and during negotiations). The solicitation process must remain confidential and is exempt from open records until such time that a contract is awarded. Failure to abide by this requirement will result in disqualification.

ATTACHMENT C

HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACTING PLAN (HSP)

Separate document package.

Definition of a Historically Underutilized Business (HUB)

- At least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Service Disabled Veteran, as defined by 38 United States Code (U.S.C.), §101(2) who have a service-connected disability as defined by 38 U.S.C. §101(16) and have a disability rating of 20 percent or more as determined by the Department of Veterans Affairs or the Department of Defense.
- A for-profit entity that has not exceeded the size standards prescribed by [34 TAC §20.294](#), and has its principal place of business in Texas, and
- Has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.

*Note: Veterans are not required to be United States citizens, however, they must reside in Texas.

**Note: Sole proprietorships must be 100 percent owned and controlled by an individual meeting the Criteria above.

In addition, each entity within a joint venture is required to be HUB certified.

The statewide HUB Program facilitates the use of HUBs in State procurement and provides information on the state's procurement process to minority, woman-owned and service-disabled veteran owned businesses.

In accordance with [34 TAC §20.284](#), each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases.

Contractors seeking certification as a HUB are required to submit a completed HUB certification application and supporting documentation to the statewide HUB Program.

Questions regarding the TEA HUB Program or the HUB Subcontracting Plan may be directed to the TEA HUB Office: HUBOffice@tea.texas.gov.

ATTACHMENT D**FORMAT OF OFFER COVER PAGE**

OFFER Submitted to the Texas Education Agency, Contracts and Purchasing Division

RFO # 701-20-014, Texas Student Data System (TSDS)**Operational Data Store (ODS) 3.x Upgrade**

| | |
|---|---|
| RESPONDENT ORGANIZATION: <i>Name and address of organization submitting offer (include zip code)</i> | |
| RESPONDENT ORGANIZATION IDENTIFICATION NUMBER: <i>Respondent organization Federal Employer's Identification Number (FEIN) or Texas Identification Number (TINS)</i> | |
| OFFER DEVELOPED BY: <i>Name, position, email, and telephone number of person responsible for development of offer</i> | |
| PROJECT ADMINISTRATOR: <i>Name, position, email, and telephone number of person to oversee proposed project</i> | |
| CONTRACTING OFFICER: <i>Name, position, email, and telephone number of official with authority to negotiate contracts for proposer organization</i> | |
| DURATION OF PROJECT: <i>Beginning and ending dates of proposed project</i> | |
| TOTAL BUDGET FOR PROPOSED PROJECT: <i>Proposed budget by fiscal year</i> | |
| CONTAINS PROPRIETARY INFORMATION: | <input type="checkbox"/> Check box if offer contains proprietary information (Mark pages containing proprietary information) |
| ACCEPTANCE OF TERMS AND CONDITIONS: | <input type="checkbox"/> We hereby accept, by the submission of the offer, the Contract Terms, Conditions and Affirmations, Response Preferences and Execution of Offer |
| | <input type="checkbox"/> Offer includes vendor proposed alternate language to the TEA Contract Terms and Conditions |
| DATE SUBMITTED: <i>Date offer is submitted to TEA</i> | |

| OFFER CHECKLIST | | |
|-----------------|---|----------------------------------|
| OFFER TAB # | Label/Contents | Section/Attachment Reference |
| | Offer Cover Page | Attachment D |
| | Understanding of the Project and Methodology | Section 3.2 |
| | Management Plan, Experience & Qualifications | Section 3.3 |
| | Task, Activity, Deliverable, and Budget Plan | Section 3.4, Attachment E |
| | Signed Contract Terms, Conditions and Affirmations, Response Preferences, and Execution of Offer | Attachment B |
| | HUB Subcontracting Plan | Attachment C |
| | Access to Confidential Information Form | Attachment F |
| | Disclosure of Interested Parties Form <i>including all attachments</i> (i.e. organization charts, resumes, etc.) | Section 2.8, Attachment G |
| | Affirmation of Availability: Features and Requirements | Attachment H |

FORMAT OF TASK, ACTIVITY, and DELIVERABLE BUDGET PLAN (TADBP)

| Deliverable/Task/Activity Item | Deliverable | Deliverable Type | Deliverable Acceptance Criteria Payment at the Time of Invoice for: | Timeline | Price |
|--|-------------|------------------|--|----------|-------|
| [Task/Deliverable]: | | | | | \$ |
| 1.1 [Respondent Entry] | | | | | \$ |
| 1.2 [Respondent Entry] | | | | | \$ |
| [Task/Deliverable]: | | | | | \$ |
| 2.1 [Respondent Entry] | | | | | \$ |
| 2.2 [Respondent Entry] | | | | | \$ |
| Total Budget (Execution – 8/31/20) | | | | | \$ |
| [Task/Deliverable]: | | | | | \$ |
| 3.1 [Respondent Entry] | | | | | \$ |
| 3.2 [Respondent Entry] | | | | | \$ |
| [Task/Deliverable]: | | | | | \$ |
| 4.1 [Respondent Entry] | | | | | \$ |
| 4.2 [Respondent Entry] | | | | | \$ |
| Total Budget (9/1/20 – 8/31/21) | | | | | \$ |
| [Task/Deliverable]: | | | | | \$ |
| 5.1 [Respondent Entry] | | | | | \$ |
| 5.2 [Respondent Entry] | | | | | \$ |
| Total Budget (9/1/21 – 8/31/22) | | | | | \$ |
| [Task/Deliverable]: | | | | | \$ |
| 5.1 [Respondent Entry] | | | | | \$ |
| 5.2 [Respondent Entry] | | | | | \$ |
| Total Budget (9/1/22 – 8/31/23) | | | | | \$ |
| TOTAL PROPOSED CONTRACT AMOUNT (including all optional renewal periods) | | | | | \$ |

ACCESS TO CONFIDENTIAL INFORMATION FORM

SOW 701-20-014, TSDS ODS 3.x Upgrade

I understand that any unauthorized disclosure of confidential, sensitive, and restricted student information is illegal as provided in the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the implementing of federal regulation found in [34 CFR, Part 99](#).

I also understand that failure to observe these restrictions is prohibited by the [Texas Government Code, Section 552.352](#) and that such an offense constitutes a Class A misdemeanor.

I certify that I have read and understand the above statement.

Signature

Date

Printed Name

Title

Organization Name & Contact Information

Vendor ID Number

ATTACHMENT G**DISCLOSURE OF INTERESTED PARTIES FORM****RFO # 701-20-014, Texas Student Data System (TSDS) Operational Data Store (ODS) 3.x Upgrade**

TEA will not accept information provided in other areas of the response as satisfaction in lieu of full completion of this form. TEA recommends this completed form and responsive attachments be incorporated into a separate and distinct tab in the response. Failure to furnish this information will result in disqualification from further consideration. Attach added pages, if more space is needed to complete the form.

It is the policy of the State of Texas and Texas Education Agency that a state officer or a state employee may not have direct or indirect interest, including financial and other interest, or engage in a business transaction or professional activity, or incur an obligation in any nature that is in conflict with the proper discharge of the officer or employee's duties in the public interest (TGC §572.001(a)). TEA is committed to vetting any conflict of interest or any appearance of conflict of interest that may arise in the procurement process. TEA will use information in this document to review conflicts of interest or potential conflicts of interest for this procurement.

SECTION A: RESPONDENT'S DISCLOSURE OF INTERESTED PARTIES

1. **List the names of respondent's board of directors, advisory council, or governing board.** Provide information on any business for which a board member has controlling interest; owns a percentage of voting interest; owns more than \$25,000 of the fair market value; holds shares, stocks, or other direct/indirect participation in more than 10% of profits, proceeds, or capital gains; serves on the board of directors; serves as an elected officer; is an employee; or could reasonable foresee that a contract with TEA would result in a personal financial benefit. **(If respondent does not have a board of directors, advisory council, or governing board then enter a statement to confirm this information.)**

| Name | Title | Disclosure of Business Relationship(s) as described above. |
|------|-------|---|
| | | |
| | | |
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| | | |

2. **List executive or senior leadership of respondent's organization, including title.** Provide information on any business for which an individual has controlling interest; owns a percentage of voting interest; owns more than \$25,000 of the fair market value; holds shares, stocks, or other direct/indirect participation in more than 10% of profits, proceeds, or capital gains; serves on the board of directors; serves as an elected officer; is an employee; or could reasonable foresee that a contract with TEA would result in a personal financial benefit.

| Name | Title | Disclosure of Business Relationship(s) as described above. |
|------|-------|--|
| | | |
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| | | |

3. **Attach the respondent's organization chart.**
4. **Attach resumés of all project leadership and proposed staff providing services as part of this response.**
5. **List the name(s), Title(s) and employment status of former TEA employees employed by respondent.**

| Name | Employment Dates with TEA | Job Title/Function with TEA | Employment Date(s) with respondent | Job Title/Function with respondent |
|------|------------------------------|--------------------------------|---------------------------------------|---------------------------------------|
| | | | | |
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ATTACHMENT G**SECTION B: SUBCONTRACTOR AND/OR SUPPLIER INFORMATION**

1. **Indicate below the name, address, and phone number of ALL proposed subcontractors and/or suppliers included in this response.** Provide information on any business for which a subcontractor and/or supplier has controlling interest; owns a percentage of voting interest; owns more than \$25,000 of the fair market value; holds shares, stocks, or other direct/indirect participation in more than 10% of profits, proceeds, or capital gains; serves on the board of directors; serves as an elected officer; is an employee; or could reasonable foresee that a contract with TEA would result in a personal financial benefit. **(If respondent is not subcontracting any portion of the proposed services then enter a statement to confirm that information.)**

| Name | Address | Telephone # | Disclosure of Business Relationship(s) as described above. |
|------|---------|-------------|--|
| | | | |
| | | | |
| | | | |

2. **Attach an organizational chart for all proposed subcontractor(s) and/or supplier(s) in this response.**
3. **Attach resumes of all proposed subcontractor staff providing services as part of this response.**

4. **List the name(s), title(s) and employment status of former TEA employee(s) employed by subcontractor(s).**

| Name | Employment Dates with TEA | Job Title/Function with TEA | Employment Date(s) with subcontractor | Job Title/Function with subcontractor |
|------|---------------------------|-----------------------------|---------------------------------------|---------------------------------------|
| | | | | |
| | | | | |

SECTION C: GIFTS, DONATIONS, FAVORS, SERVICES, OR BENEFITS

State standards of conduct require TEA to rigorously evaluate whether a respondent has offered any gift, favor, or service that might reasonably tend to influence a state officer or employee in the discharge of official duties, or that the officer or employee knows or should know is being offered with the intent to influence the officer or employee's official conduct.

1. **Please list below any gift or donation the respondent has offered to TEA, an agency officer or agency employee during the two calendar years before submitting a response to this solicitation.** You are required to state the date the gift or donation was offered, to provide a description of the gift or donation, and to provide the monetary value. Indicated whether the value is an estimated or actual value. List the individual at TEA you corresponded with regarding the gift or donation. **(If respondent or the proposed subcontractors did not offer gifts or donations then enter a statement to confirm this information.)**

| Date of Gift or Donation | Description of Gift or Donation | Monetary Value (actual or estimated) | Agency Contact |
|--------------------------|---------------------------------|--------------------------------------|----------------|
| | | | |
| | | | |
| | | | |

2. **Has the respondent or any subcontractor related to this response requested a meeting with TEA senior officials in the past calendar year?** (Senior official is defined as Commissioner, Deputy Commissioner, Associate Commissioner, and/or Executive Director. If yes, list the date of meeting, the purpose of the meeting, and TEA staff member(s) attending. **(If respondent or the proposed subcontractors did not offer gifts or donations then enter statement to confirm this information.)**

| Date of Meeting | Description | TEA Senior Staff Member |
|-----------------|-------------|-------------------------|
| | | |
| | | |

Name and Title of Individual Completing this form: _____

Organization Name: _____

AFFIRMATION OF AVAILABILITY: FEATURES AND REQUIREMENTS

Respondents must complete this comparison chart and include it within their response. TEA expects respondents to review these requirements against their SaaS solution and mark the box appropriate to the availability in the proposed solution. (See Section 1.5 for more information.) Respondents may use the last column to enter additional details, as needed.

| 2.A. Ed-Fi 3.x ODS | | |
|---|--|--|
| 1. Offered as SaaS inclusive of hosting and basic maintenance | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Supports Ed-Fi Technical Suite 3 including TPDM extensions | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Allows each LEA/ESC/EPP to submit transactional data via Ed-Fi APIs | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Implements the Ed-Fi ODS schema for data storage | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. Supports multi-year submissions | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 6. Provides performant data loading options for beginning of year and large batch updates | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 7. Maintains historical data in the Ed-Fi ODS or related structures for current year and four prior years with the ability to archive after four years | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 8. Segregates most data by LEA with the ability for all LEAs to access common data, including state descriptors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 9. Provides TEA technology staff direct access (i.e., not through Ed-Fi APIs) to extract data for downstream reporting marts and application with preference for TEA staff to access a consolidated view of data across districts and not have to interact with individual district ODS schema. | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 10. Allows for queries to obtain data according to an 'as of' date. As-of-date query/access is a. for downstream workloads and not expected to be addressed by source systems (SIS) and b. not expected to be accessible via API | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |

ATTACHMENT H

| | | |
|--|--|--|
| 11. Allows the ability for TEA staff to design and implement TEA extensions in the Ed-Fi ODS | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 12. Supports integration of Ed-Fi version updates, as available | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 13. Incorporates a strategy for maintaining TEA-specific enhancements | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 14. Provides data validation capabilities | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.B. TEA Administrator User Interface | | |
| 1. Loading centralized data | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Managing global descriptors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Viewing connection status by LEA for each LEA vendor | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Viewing system level errors and data validation counts by organization | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. Updating and adding business rules | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 6. Deleting full data set by LEA/school year | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.C. External User Interface | | |
| 1. Provision key and secret for vendors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable | |

ATTACHMENT H

| | | |
|---|--|--|
| | <input type="checkbox"/> Requirement Requires Development | |
| 2. Manage vendor CRUD permissions | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. View connection status by vendor | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Manage local descriptors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. View and search record content and last update dates | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 6. View, search, and export API and data validation errors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.D. Data Validation | | |
| 1. Contains a base set of TSDS business rules | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Contains a base set of ECOS data business rules | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Contains a base set of 'data sanity' rules that detect major failures of LEA/EPP systems | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Allows TEA to define and add new collection-specific data validation rules | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. Provides LEA/EPP ability to execute validations on-demand | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 6. Provides the LEA/EPP the ability to schedule the execution of validations | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable | |

ATTACHMENT H

| | | |
|---|--|--|
| | <input type="checkbox"/> Requirement Requires Development | |
| 7. Surface data validation errors in an intuitive UI | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 8. Allows LEA/EPP to share data validation error reports within their organization | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 9. Have the ability to run validation checks against data stored in the Ed-Fi ODS schema as well as PEIMS data mart and ECOS databases | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.E. Technical Specifications | | |
| 1. Scalable as the data load and querying volume increases | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Provide a service level agreement (SLA) of 99%+ availability | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. UIs must conform to the following technical specifications: a. Include domain and secure socket layer (SSL) certificate b. Be operable on standard internet browsers (Chrome, Safari, Firefox, Edge), including current and one prior version (within the last two years) c. Be able to provide content and web page loading times in one second or less, per TEA standards d. Have third-party written verification that the website conforms to the WCAG 2.0 level II accessibility standards e. Be built with a responsive design that can be used with mobile devices | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.F. Security and Data Privacy | | |
| 1. Websites shall be accessible through a secure connection (HTTP-only, with HTTP Strict Transport Security (HSTS)), utilizing Transport Layer Security (TLS) version 1.2 or higher. TEA retains the right to scan websites for vulnerabilities and require remediation of identified issues in a timely manner not to exceed three months, compliant with the Payment Card Industry Data Security Standards (PCI DSS) at a minimum. | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Provide secure configuration guidelines that were utilized that fully describe all security relevant configuration options and their implications for the overall security of the software. The guidelines shall include a full description of dependencies on the supporting platform, including operating system, web server, and application server, and how they should be configured for security. | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. The following sample list of requirements is given to exemplify best application and development practices: | <input type="checkbox"/> Meets Requirements | |

ATTACHMENT H

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|--|--|--|
| i. Usage-limiting techniques and other protective countermeasures wherever a denial-of service or automated attack vulnerability is clearly inherent in the architecture. ii. Sufficiently strong encryption, per industry standards, wherever confidential data is at rest or traverses a network. | <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Effective error handling that does not return unnecessarily verbose message to the user that could be used to gain insight into the application internals or other privileged processes or data. | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. Additional consideration will be given to vendors that meet FedRAMP requirements | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.G. Accessibility Requirements | | |
| 1. All images and other non-text objects must contain appropriately descriptive alternative text and null alternative text | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Tables should only be used for tabular data and must include valid row and column header tags | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Header tags (h1, h2, etc.) must be used to convey document structure | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Users must be able to navigate the web pages, including all links, features, forms, navigations, and sub-navigation, using the keyboard only | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. All scripted features must be able to function using the keyboard only with losing focus | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 6. All form fields must have descriptive form labels | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 7. All information conveyed with color must also be available without color | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 8. Foreground and background color combinations must provide sufficient contrast when viewed by someone with color deficits or when viewed on a black and white screen; colors used in the design must be WCAG 2.0, Level AA standards for color/contrast ratio | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |

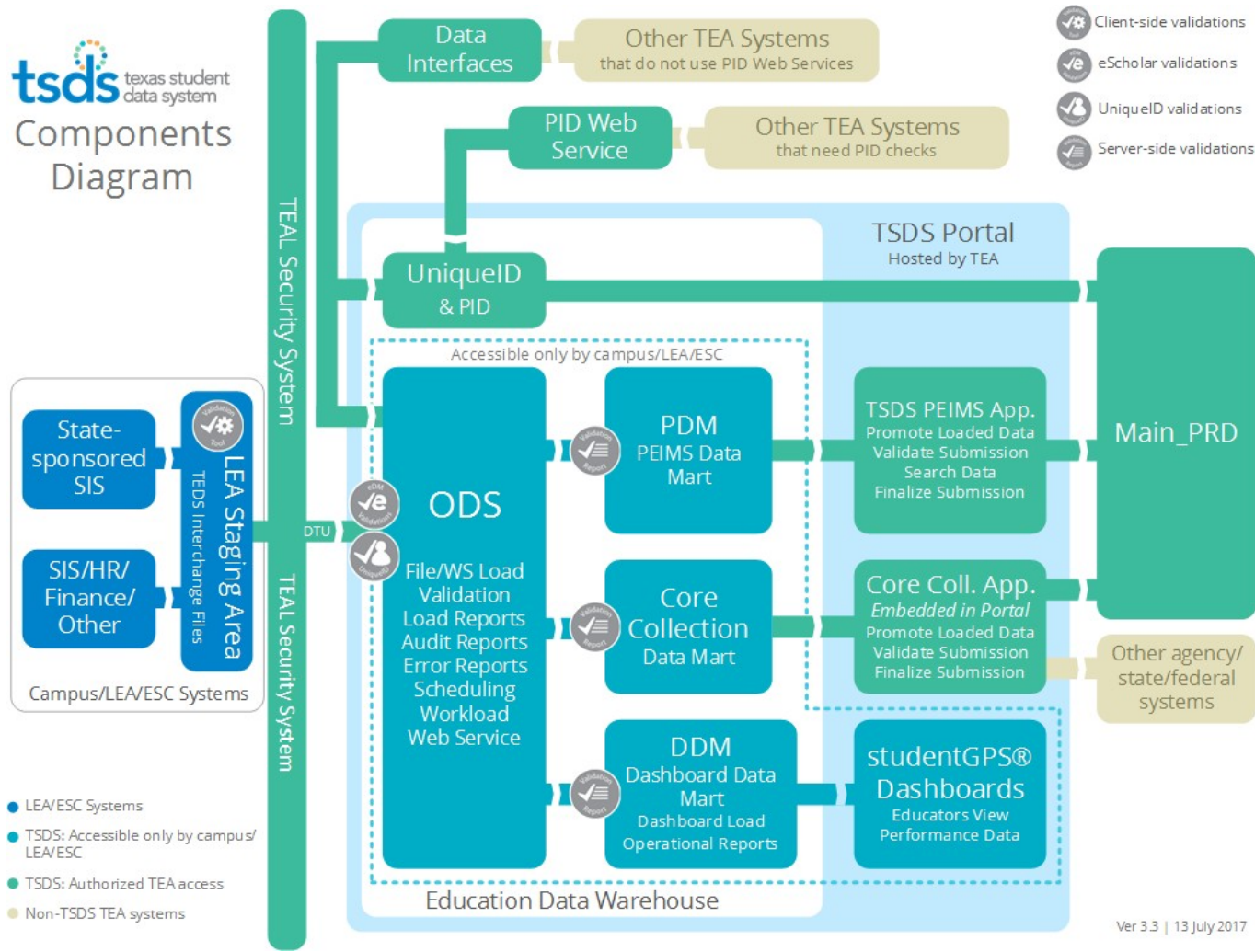
ATTACHMENT H

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| 9. Video and audio content must follow accessibility guidelines and include closed captioning and audio descriptions; audio files must include written transcripts; audio and video controls must be operable using a keyboard only | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.H. Implementation Support and Services | | |
| Integration | | |
| 1. Integration of Ed-Fi ODS with eScholar UID to validate student and staff identities when data is written to the ODS | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Integration of the solution UIs with TEAL to authenticate LEA and state users and obtain user authorization information | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Integration with TEA central organization data to populate initial education organizations | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Integration to push system outage notification to the TSDS global notification system | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| Implementation Support | | |
| 1. Implement the Ed-Fi TPDM Extension | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Implement TEA defined data model extensions; TEA will map the TEDS to Ed-Fi data standard version 3.1 and provide documentation outlining specific extensions that will be needed to fulfill TEA required data collections | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Deploy sandboxes for source system vendors to test their API integration as they prepare to support LEAs and Educator Prep Programs in complying with the updated TSDS/TPDM submission processes and standards | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Deploy sandboxes for select LEAs and EPPs to pilot the new TSDS & TPDM submission processes and standards. This will include supporting pilot LEAs in appropriately configuring API permissions for their source system vendors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.J. Training | | |
| 1. Training materials for ESCs and vendors on how to set-up, configure, and troubleshoot (business and technical training) the SaaS products | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Customer assistance and support for the solution, including basic help desk support for simple user questions concerning the base commercial solution and for any questions concerning TEA added-value components | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable | |

ATTACHMENT H

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| | <input type="checkbox"/> Requirement Requires Development | |
| 3. Production support and maintenance of the solution; specifically, support for TEA value-added components of the commercial product | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2.K. Ongoing Maintenance and Support | | |
| 1. Host the solution in Amazon Web Services or other govcloud (US) cloud provider approved by the Texas Department of Information Resources | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 2. Maintain the solution including identifying and correcting defects in a timely manner | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 3. Provide tier-4 help desk support for TEA who will escalate issues from TEA internal staff, LEAs, EPPs, and LEA/EPP vendors | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 4. Provide TEA administrators access to a ticketing system for issues to be logged, tracked, and resolved | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 5. Implement Ed-Fi version upgrades in a timely manner, generally within 6 to 12 months of public release while preserving TEA-specific enhancements and functionality | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |
| 6. Implement quarterly enhancements designed by TEA in response to regulatory and legal data collection and reporting requirements | <input type="checkbox"/> Meets Requirements <input type="checkbox"/> Requirement Unavailable <input type="checkbox"/> Requirement Requires Development | |

TSDS CURRENT SYSTEM DIAGRAM





GLOSSARY

| TITLE | DESCRIPTION |
|-----------------|---|
| BMGF | Bill and Melinda Gates Foundation |
| CCDM | Core Collection Data Marts data marts that house the data for the various data collections in Core. |
| CJIS | Criminal Justice Information Services |
| Core Collection | An application in TSDS that houses multiple data collections using a standard set of screens, processes, and workflows. |
| COTS | Commercial off-the-shelf. COTS is defined as software or hardware products that are ready-made and packaged software solution that is available for sale to the general public. COTS products are designed |
| CRUD | Create, Read, Update, and Delete |
| Data Loading | Copying of data from the user's local system to the ODS. |
| Data Mart | A subset of a data warehouse that provides access to data for a particular subsystem or program area. |
| Data Promotion | Copying of data from the ODS to the data marts. Promotion and Preparation are comparable, except that promotion is more customizable. |
| Data Warehouse | A central repository of data used for reporting and analysis. |
| DGB | Data Governance Board – responsible for oversight of the data elements collected by TEA. |
| ECDS | The Texas EARLY CHILDHOOD DATA SYSTEM, formerly the School Readiness Certification System (SRCS), is a voluntary system used to evaluate the effectiveness of Prekindergarten, Head Start, and community-based childcare programs in preparing children for kindergarten. |
| ECOS | The Educator Certification Online System. This database and associated applications currently hold EPP data. |
| Ed-Fi | Ed-Fi is a community effort to create a standard way to define and transport K-12 education data. TEA's data model (TEDS) is an extension of the Ed-Fi data standard. |
| eDM | eScholar Data Manager – software that allows LEAs to load data to TSDS. |
| EDW | Education Data Warehouse – The EDW refers to TEA's LEA-facing statewide education data warehouse into which LEA's will load their operational data for dashboard reporting and required data collections. |
| EIR | Electronic Information Resources |
| EPP | Educator Preparation Program |
| ERC | Education Research Center |
| ERC-DDA | ERC Data and Dissemination Assistance Project |
| ESC | Education Service Center – Twenty regional ESCs were created in Texas to provide school LEAs with services that enhance efficiency, effectiveness, and the performance of students, teachers, administrators, and school personnel. |
| FedRAMP | The Federal Risk and Authorization Management Program (FedRAMP) is a government-wide program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. |
| FERPA | Family Educational Rights and Privacy Act – This is a federal law that protects the privacy of student education records. Parents have a right of access to their children's education records. When a student turns 18 or enters college, the rights under FERPA transfer to the student. |
| HIPAA | Health Insurance Portability and Accountability Act – HIPAA protects the privacy of individually identifiable health information; the HIPAA Security Rule, which sets national standards for the security of electronic protected health information; and the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety. |
| ITF | Information Task Force |
| LEA | Local Education Agency – A public school district, open enrollment charter school, or regional education service center. Texas has over 1,200 LEAs. |
| MOU | Memorandum of Understanding – a formal agreement between two parties that has less force than a contract. |
| MSDF | Michael and Susan Dell Foundation – A charitable organization founded in 1999, The foundation's grant portfolio focuses on three programs: urban education, childhood health, and family economic stability-the factors essential to ensuring that underprivileged children escape poverty to become healthy, productive adults. MSDF has provided significant funding for the TSDS project. |
| ODS | Operational Data Store – the ODS is a database designed to integrate data from multiple sources for additional operations on the data. The data will be passed from the ODS into data marts used for |

APPENDIX B

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| | dashboards and data collection processing. |
| PCPEI | Policy Committee on Public Education Information |
| PEIMS | Public Education Information Management System – encompasses all data requested and received by TEA about public education, including student demographic and academic performance, personnel, financial, and organizational information. |
| POC | Proof of concept |
| RFT | Residential Facility Tracker – an application for collecting contact information for former special education students so that they may be surveyed as part of the state’s special education accountability process |
| QRIS | Quality Rating Improvement System - a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs. |
| SaaS | Software as a service |
| SIS | Student Information System – an application or suite of applications that allow LEAs to enter, manage, and report on the data they collect on their students. |
| SLA | Service level agreement |
| SSL | Secure socket layer |
| SPPI-14 | State Performance Plan Indicator 14 - a data collection in TSDS Core that gathers contact information for special education students who have left the public-school system. The contact information is used to comply with federal guidelines requiring Texas to sample special education leavers and identify the kind of careers/education/training they pursue after leaving the public-school system. |
| SRS | Software Requirements Specification - the collection of requirements that define the business and system needs for a given project. |
| TAC | Texas Administrative Code |
| TDCARSI | Texas Data Collection, Analysis, and Reporting System Investigation – an external study that formed the basis for the TSDS initiative |
| TEA | Texas Education Agency. |
| TEAL | Texas Education Agency Login is a TEA security application that provides user authorization through the assignment of roles and permissions for TEA applications both in-house developed or COTS. |
| TEC | Texas Education Code |
| TEDS | Texas Education Data Standards – the data standards, business rules, and validations that govern how data must be formatted for loading to TSDS. Based on MSDF’s national Ed-Fi standards. |
| THECB | Texas Higher Education Coordinating Board |
| TPDM | Teacher Preparation Data Model |
| TPEIR | Texas PK-20 Public Education Information Resource – a website that reports aggregated, anonymous education data for researchers and the general public. |
| TSDS | Texas Student Data System (TSDS) – A platform for LEAs, ESCs, and campuses to report education data to the state. TSDS is an integrated suite of applications that use consistent processes, vocabulary, workflows, and iconography as well as a centralized data warehouse to make the reporting process more efficient and effective. |
| TWC | Texas Workforce Commission |
| UI | User interface |
| UID | Under Integration on Page 8 |

Data Center Services

Data Center Services (DCS) Infrastructure Requirements

The Texas Legislature, by action of House Bill 1516, 79th Legislature (Regular Session), established the foundation of a shared technology infrastructure and directed DIR to coordinate a statewide program to consolidate infrastructure services. Section 2054.391 requires state agencies included in the Data Center Services (DCS) program to use such services, unless otherwise approved by the DIR Executive Director through a Data Center Services Exemption.

DIR currently has executed multi-vendor contracts to provide data center consolidation and operations for 27 designated state agencies required to participate by Statute.

The DCS program provides all server management functions including system administration, operating system management and patching, base security services, dedicated local area network connectivity, storage services, backup services and disaster recovery services.

All hosted solutions offered in response to this RFO (including custom developed application, COTS, and Portal or Website managed content) must include an offer to host the application or solution in a State Consolidated Data Center operating on DCS infrastructure.

Respondents should comprehensively list their infrastructure requirements for DCS infrastructure within a State Data Center for financial review by TEA. TEA will use the cost estimating tools available within the program to estimate the cost to host the solution within the DCS program.

As an alternative, DIR has determined that the use of Software as a Service (SaaS) as a managed service is consistent with the state strategic plan and DCS framework; however, if an agency is contemplating a SaaS solution outside the DCS program, an approved DCS Exemption is required. The solution must clearly meet the NIST standard definition of SaaS as interpreted by DIR. (*NIST Definition of Cloud Computing SP 800-145*) Note: All exemptions are temporary and will be periodically re-evaluated to determine if DCS Program services can be used.

More details about the DCS Vendor Contracts, MSAs and SOWs may be found at:
<https://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=45>

Alternatively, copies of the DCS Master Services Agreements can be obtained by contacting DIR's Public Information Office at PIO@dir.texas.gov.

A. Agency's Seeking SaaS

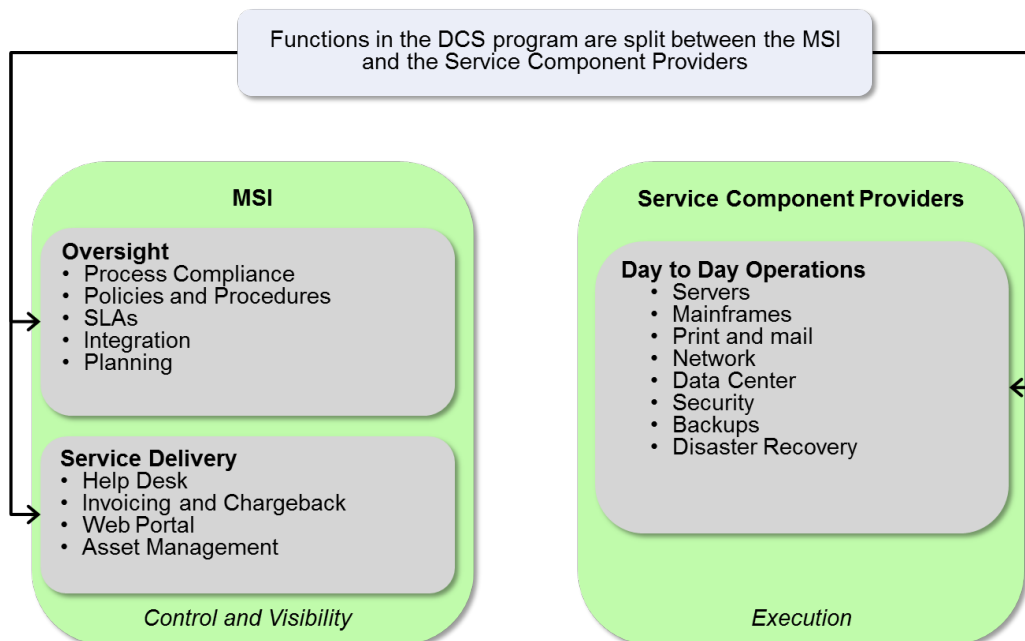
Respondents are encouraged to provide offers for a SaaS solution, and if not, for a hosted solution. If your offer is for a hosted solution, it will need to be hosted in the State of Texas Consolidated Data Center (locations in Austin or San Angelo) within the fully managed services program. This program provides all server management functions including system administration, operating system management and patching, base security services, dedicated local area network connectivity, storage services, backup services and disaster recovery services.

B. DCS Background Information

Collectively, the DCS contracts provide participating Customers mainframe and server operations, including hybrid public cloud services, disaster recovery, and bulk print and mail services in Customer data centers and two commercial-grade data center facilities: one located in San Angelo, Texas, and one located in Austin, Texas, with a goal to migrate all possible services to the two consolidated facilities.

C. DCS Service Provider Roles

There are two different service provider roles: multi-sourcing service integrator (MSI) and service component provider (SCP). Below is a high-level picture of how roles and responsibilities are divided within DCS.

APPENDIX C**D. Infrastructure**

The awarded vendor is required to work closely with the DCS Service Providers to establish the infrastructure for their hosted solution. Generally, all activities that require privileged access (i.e., root access) are performed by the SCP, unless otherwise delegated to the awarded vendor by the SCP through the DCS Change Management process.

The following is a high-level service description of fully managed services provided by DCS Service Providers through the DCS program. All server environments (private community cloud as well as public government cloud) including, but not limited to, production, test, and development are included and receive these services:

1. Server hardware on standardized Intel, AIX, Solaris shared and dedicated platforms.
2. Server hardware and operating system installation, support, and maintenance,
3. Server software installation, upgrades, support, and maintenance for infrastructure, middleware, application utility, and database software,
4. System administration for all in-scope server software,
5. Server administration administered remotely from central location,
6. Computer operations and monitoring,
7. Production control (batch scheduling, job scheduling),
8. Storage management (disk, tape),
9. Disaster recovery backups and offsite tape storage,
10. Physical database administration,
11. Data center print services (printer operations; report staging for distribution; ordering paper, special forms, etc.; inserts; and bulk print mailings),
12. Facility and environmental support within the State data centers,
13. Capacity planning,
14. Disaster recovery planning and testing for all data center services,
15. Business continuity planning (service provider processes),
16. Support Center (for in-scope data center services) using the MSI Service Now incident, problem tracking and resolution application,
17. Hardware/software procurement for in-scope services,
18. Support and maintenance for the LAN environment within the data center facility,
19. Standard security controls managed at the enterprise,
20. Vulnerability/threat/virus support,
21. Security software installation and maintenance,
22. Physical security within the State data centers,
23. Process management,
24. Incident management, problem management, change management, configuration management, release management, and
25. Standard infrastructure DCS Service Level Agreements.
26. Enterprise ADFS and Domain Controller Privileged ID services.
27. Hardware and Software Currency Standards and Refresh.
28. Enterprise technology standards and roadmap.

E. DCS Service Level Agreements

The TEA infrastructure will be subject to the standard infrastructure DCS Service Level Agreements (SLAs), which are described in the DCS Master Services Agreements, Exhibit 3. The goal of the DCS SLAs is quality performance from the DCS Service Providers through incentives for consistent quality behaviors that meet the State's expectations. The DCS SLAs are constructed to incent the DCS Service Providers to perform and allow the parties to modify the DCS SLAs without a contract change.

APPENDIX C

There are critical service levels (tied to financial credits for the State for performance failures) and additional key measurements. Key measurements can be promoted to critical service levels, allowing flexibility to focus attention on a particular area.

In addition, the DCS Master Services Agreements embrace the concept of continuous improvement. Each year, the Expected Value of the DCS SLA automatically increases in accordance with the methodology described in Exhibit 3 of the DCS Master Services Agreements.

F. DCS Disaster Recovery Overview

The DCS approach to restoration uses a dual-site solution, where each data center uses the other as a backup in case of a disaster. Each data center maintains the ability to restore critical data and applications from its sister site. Both data centers have bandwidth capacity to support restoration while maintaining current operations. The dual-site solution can also be expanded to the Public Government Clouds offered in a hybrid model for additional backup sites to support recovery.

Applications covered by the DCS infrastructure are prioritized into one of several recovery time objective (RTO) classifications—Class P, Class 1, Class 2A, Class 2B, Class 3, Class 4, Class 5, Class 6, or Class 7—based on criticality to business operations and other considerations. The RTO is the time in which systems, applications, or functions must be recovered after a disaster is declared and helps determine the recovery strategy.

The DCS Service Providers are required to conduct periodic simulation or tabletop exercises, according to the Disaster Recovery (DR) Class, to test the effectiveness of the disaster recovery response. Lessons learned from these exercises are incorporated into the disaster recovery planning. The DCS Master Services Agreements, Exhibit 16 and Exhibit 2.1, describe IT service continuity management and disaster recovery requirements, including the RTO classifications and eligibility for DR exercises. The DCS Master Services Agreements, Attachment 4-E describes the available tiers of Servers, tiers of storage, and the Recovery Point Objectives (RPO).

The awarded vendor will be required to work closely with DCS Service Providers to develop and update disaster recovery plans, periodically complete DR exercises, and restore services in the event of a declared disaster.

G. DCS Hardware and Software Acquisition

As a participating entity in the DCS program, TEA is required to acquire all in-scope infrastructure hardware and software through the DCS program. The awarded vendor is required to participate in the procurement process, including submitting the request for service into the DCS Service Now Tool, participating in the requirements gathering sessions, and validating the acquisition proposals received. As much as technically possible, the DCS program uses virtualized server instances on standard hardware configurations. Proper long-range planning is required in order to ensure that hardware and software is received to meet project schedules.

H. DCS Intel Based Configurations

Virtualized Intel based server instances in the ADC and SDC are VCE vBlock construction for both Windows and Linux O/S platforms.

- Vblock consists of EMC storage coupled with VMware virtualization and Cisco Network and Compute equipment. Additionally, Vblock incorporates EMC's Unified Infrastructure Manager (UIM) which enables automation and single point of management for most of the infrastructure components
 - VMware vSphere, virtualization platform private cloud infrastructure
- Virtualized AIX based server instances in the ADC and SDC are IBM Flex Systems with an associated IBM System Storage SAN.

Virtualized Solaris based server instances in the ADC and SDC are Oracle T5-4 chassis with storage on the EMC SAN.

I. Process Management

The awarded vendor will be required to participate in the defined DCS processes for incident management, problem management, change management, release management, configuration management, and request management. In the management plans described in this RFO Section 3.3, the awarded vendor must describe its interactions with the DCS program. The DCS Services Management Manual is available upon request.

J. Database Administration

The awarded vendor will be responsible for logical database administration.

The awarded vendor is required to work closely with SCPs, as SCPs perform physical database administration activities, including

- Install database management software (DBMS),
- Configure DBMS parameters,
- Apply DBMS operating system patches,
- Capacity planning of database instances,
- Performance tuning of database instances,
- Reorganize the database as necessary,
- Create instances in all environments, and
- Add/change/delete database objects in production and pre-production.

APPENDIX C**K. Hardware and Software Currency**

The DCS hardware infrastructure is refreshed on a 60-month refresh cycle. Operating software, database software, and application utility tools are required to be within n or $n-1$ of the currently supported versions of the software manufacturer. The awarded vendor is required to ensure the application software will support the DCS standard hardware and software platforms as described in the DCS Standard Configurations.

DCS Related Expenses

Programs that receive services through the DCS program are billed according to resources consumed. The DCS Resource Units are measured and billed on a monthly basis. Hardware Services Charges (HSC) and Software Services Charges (SSC) are charged based on hardware and software acquired to support application servers. Application servers are classified as Platinum, Gold, Silver, and Bronze, depending on the architecture and support requirements. The DCS Agreement, Exhibit 4 describes the pricing structure.

Respondents should comprehensively list their infrastructure requirements for DCS infrastructure within a State Data Center for financial review by TEA. TEA will use the cost estimating tools available within the program to estimate the cost to host the solution within the DCS program.

L. Functions Retained by Agencies – Out of Scope for Data Center Services

To provide context, the following services are considered Customer retained services because they are out of scope of the DCS Master Services Agreement (not provided by DCS Service Providers). In developing your response, the respondent should clearly understand that TEA performs these functions as needed:

- End-user computing, including desktop, mobile, and LAN-attached multi-function devices;
- Network support, including WAN/LAN support outside of the State data centers, voice/phone support;
- Help desk (Level I – all services);
- Expert troubleshooting and support for all non-DCS services;
- Technology planning, strategies, and visioning;
- Project management;
- Disaster recovery planning and testing for all retained services;
- Business continuity planning for agency processes;
- Packaged imaging systems (scanners, servers, optical disks, etc.);
- Coordination of data center print services, including coordinating form changes with business units, volume trending;
- Data security, security design and policy development, systems access requests (directory/file, ID creation and removal, determination of access rights);
- Logical database administration;
- Application development, support, maintenance, and monitoring;
- Electronic payment processing services;
- Data import and export to the environment (FTP services); and
- Reporting services.

M. Level I Help Desk

If needed for the solution, the awarded vendor is required to maintain a Level I help desk to triage all calls prior to submitting an incident to the DCS Support Center. Once the Vendor has determined or suspects the cause of an incident is related to a DCS infrastructure component, the Vendor will log into the DCS Support Center's system to report the incident in accordance with the DCS Services Management Manual.

Texas Education Agency
RFO 701-20-014, Texas Student Data System (TSDS) Operational Data Store (ODS) 3.x Upgrade
Addendum 1, April 13, 2020

This addendum incorporates the following changes to the above-referenced solicitation:

I. Page 14, Section 2.2, Anticipated Sequence of Events is modified as follows:

| DATE | EVENT |
|---|---|
| March 27, 2020 | Publication of solicitation in the Electronic State Business Daily (ESBD) at: http://www.txsmartbuy.com/sp |
| April 7, 2020 | Last day to submit written questions before 2:00 p.m. CT to TEASolicitations@tea.texas.gov . |
| April 14, 2020 April 13, 2020 | Final publication of questions and answers in the ESBD at: http://www.txsmartbuy.com/sp |
| April 14, 2020 April 13, 2020 | Notice of Intent to Submit an Offer (Preferred Date) |
| April 24, 2020 April 23, 2020 | Offers due in TEA Contracts and Purchasing Division before 2:00 P.M. CT. Offers MUST be submitted electronically through the ShareFile link https://tea.sharefile.com/r-r3b3c108878f46828 or by email to TEASolicitations@tea.texas.gov |
| April 24 – May 8, 2020 | Offer Check-In, Evaluation and Oral Presentations (if required) |
| May 2020 | Recommendation for Award, Contract Negotiation and Development |
| June 2020 | Anticipated start date of contract and commencement of work |

Posting date of Publication of Questions and Answers Addendum has been changed to April 14, 2020.

II. All other provisions of the solicitation remain the same.

Texas Education Agency
RFO 701-20-014, Texas Student Data System (TSDS) Operational Data Store (ODS) 3.x Upgrade
Addendum 2, April 14, 2020

This addendum incorporates the following changes to the above-referenced solicitation:

I. Page 14, Section 2.2, Anticipated Sequence of Events is modified as follows:

| DATE | EVENT |
|--|---|
| March 27, 2020 | Publication of solicitation in the Electronic State Business Daily (ESBD) at: http://www.txsmartbuy.com/sp |
| April 7, 2020 | Last day to submit written questions before 2:00 p.m. CT to TEASolicitations@tea.texas.gov . |
| April 15, 2020 April 14, 2020 April 13, 2020 | Final publication of questions and answers in the ESBD at: http://www.txsmartbuy.com/sp |
| April 15, 2020 April 14, 2020 April 13, 2020 | Notice of Intent to Submit an Offer (Preferred Date) |
| April 28, 2020 April 24, 2020 April 23, 2020 | Offers due in TEA Contracts and Purchasing Division before 2:00 P.M. CT. Offers MUST be submitted electronically through the ShareFile link https://tea.sharefile.com/r-r3b3c108878f46828 or by email to TEASolicitations@tea.texas.gov |
| April 29 – May 8, 2020 April 25 – May 8, 2020 April 24 – May 8, 2020 | Offer Check-In, Evaluation and Oral Presentations (if required) |
| May 2020 | Recommendation for Award, Contract Negotiation and Development |
| June 2020 | Anticipated start date of contract and commencement of work |

Posting date of Publication of Questions and Answers Addendum has been changed to April 15, 2020 and Offer Due Date.

II. All other provisions of the solicitation remain the same.

Texas Education Agency
RFO 701-20-014, Texas Student Data System (TSDS) Operational Data Store (ODS) 3.x Upgrade
Addendum 3, April 15, 2020

This addendum incorporates the following changes to the above-referenced solicitation:

I. Questions - The following questions and associated responses are hereby incorporated into the above-referenced solicitation:

- 1. QUESTION:** Is it possible to share the process-flow/workflow diagrams of the Texas Education Agency (TEA)? We have seen the Current System Diagram & the Infrastructure Architecture provided in APPENDIX A of the Bid Document. These diagrams are not enough to accurately estimate the development cost as well as production period of the new TSDS.

TEA RESPONSE: TEA will collaborate with the awarded vendor to develop new TSDS process-flow/workflow diagrams. However, we expect it to be close to what Ed-Fi recommends for state implementations. Refer to: <https://techdocs.ed-fi.org/>.
- 2. QUESTION:** Is there any SaaS Cloud Hosting that TEA prefers for the Texas Student Data System (TSDS)?

TEA RESPONSE: No, we can only use cloud solutions approved by the DCS program; currently they are AWS and Azure.
- 3. QUESTION:** What will be the expected duration of Training for LEAs, EPPs, ESCs (for all 3 tiers) after the implementation of the TSDS?

TEA RESPONSE: For TSDS, the ESCs will be trained prior to going live in the 2022-2023 school year. Our current project plan expects initial training to occur for our ESCs from February 1, 2021 – December 31, 2021. The ESCs will in turn train their LEAs on their own schedule, prior to going live in August 2022. TEA will solicit feedback and refine training, as needed, from February 2022 until September 2022. After September 2022, TEA will continue to train the ESCs on an annual basis to provide continuous improvement training and to certify new ESC TSDS Champions. EPP training is not part of this solicitation.
- 4. QUESTION:** What will be the duration & no. of participants for the Cyber Security Training?

TEA RESPONSE: When the contractors that need access to our state computer system are onboarded, they will be registered for our cybersecurity training. The number of participants depends on how many require login to our network. The duration is just under an hour.
- 5. QUESTION:** What Type/Format of Evidence is needed to prove the ability to perform the tasks described in this solicitation?

TEA RESPONSE: The type of evidence needed would be demonstration and documentation of current implementations and references.
- 6. QUESTION:** What Type/Format of Evidence is needed to prove successful past performance for projects of similar size and scope?

TEA RESPONSE: The type of evidence needed is demonstration and documentation of these implementations and references.
- 7. QUESTION:** This is the first week after the Covid outbreak, and we have team still coming onboard. We humbly request TEA to provide extension for – asking clarifications and submission of the Texas Student Data System (TSDS) RFP.

TEA RESPONSE: TEA cannot modify the deadline for written questions after the due date has passed. TEA does not have enough flexibility in the project schedule to extend the offer due date beyond the date published in Addendums 1 and 2 to this solicitation. Offers must be submitted electronically through the secure ShareFile link <https://tea.sharefile.com/r-r3b3c108878f46828> or by email to TEASolicitations@tea.texas.gov no later than April 28, 2020.
- 8. QUESTION:** What data migration will need to take place? For example, will the data in eScholar need to be migrated to the 3.x ODS? Will EPP data in the Educator Certification Online System (ECOS) need to be migrated to the 3.x ODS (TPMD)? If so, which party will be responsible for the data migration?

TEA RESPONSE: TEA will know more about the eScholar data migration when we are able to collaborate with the awarded vendor on the processes and design; currently we do not intent to migrate prior ODS data. The awarded vendor is responsible for setting up the current year ODS and perform initial loading of data for all LEAs. Supporting four prior years is also a requirement. EPP data in the Educator Certification Online System will not be migrated as part of this solicitation. The awarded vendor and TEA must work collaboratively on any identified data migration tasks.
- 9. QUESTION:** Page 3 under “Offers shall demonstrate the respondent’s ability to”. The 5th bullet down states that the offer should demonstrate the ability to provide PEIMS specific data validations and notifications. On page 6, under Section D (Data Validation), there’s mention that the data validation must contain a base set of TSDS rules and a base set of ECO rules. Can TEA clarify what

needs to be in the base solution, if the data validation requirements will extend beyond PEIMS and which party will be responsible for extending the rule set beyond PEIMS?

TEA RESPONSE: TEA expects the solution to be based on the Texas Education Data Standards (TEDS) found here: https://www.texasstudentdatasystem.org/TSDS/TEDS/TEDS_Latest_Release.

- 10. QUESTION:** Since the project requires a SaaS solution offering, where should the product subscription licensing be documented, 1.6.C? Is it correct that SaaS product licensing should remain separate from the TADBP (Attachment E) in Section 1.4 (Budget) and that the TADBP should only contain (i) additional feature builds on top of the current SaaS solution offering, and (ii) any implementation and/or integration tasks for the SaaS solution offering?

TEA RESPONSE: The subscription licensing fee should be included in pricing sheet in a separate tab in the TADBP workbook.

- 11. QUESTION:** Section 1.6.A has the pilot going until 8/31/22. Section 3.4 states the upgrade must be complete and ready for state-wide release by July 1, 2022. Can TEA confirm the desired production ready date?

TEA RESPONSE: Although the pilot will run through 8/31/22, we would like to have a production-ready version available by July 1, 2022.

- 12. QUESTION:** Section 1.3 states the initial contract term will be from contract execution through 8/31/21 with two additional annual options for TEA. However, the deliverables and milestones are spelled out in Section 1.6.A and these extended all the way through 8/31/23 and Section 1.5.K states the initial contract will be for 3 years and TEA would exercise renewal options after the initial 3 year term. Can you please clarify which statements about the initial contract term are correct, and if Section 1.3 is correct then does the contract term optionality in that section mean that respondents should assume and respond according to the possibility that the project could be terminated essentially at 8/31/21, or at 8/31/22 if the first annual contract extension is exercised but not the second one, etc.?

TEA RESPONSE: As set forth in the RFO, respondent should respond under the assumption that all renewals will be exercised.

- 13. QUESTION:** In addition to Amazon Web Services, are any other govcloud (US) cloud providers approved by Texas Department of Information Services?

TEA RESPONSE: Yes, AWS and Azure are approved govcloud providers.

- 14. QUESTION:** Does TEA anticipate any delays or postponements to the timeline outlined in Section 2.2 due to the current COVID-19 crisis?

TEA RESPONSE: TEA does not anticipate any delays or postponements to the solicitation timeline due to COVID-19.

- 15. QUESTION:** With respect to proposed SaaS offerings by respondent to TEA, these would be Contractor intellectual property-based products that would be licensed by Contractor to TEA, and furthermore they would be subject to ongoing enhancements with new features (some of which would be implemented to satisfy TEA requirements and others that are constantly being implemented to satisfy other general market requirements – i.e., school district desires on a national basis). As is customary in the technology industry, SaaS offerings and ongoing enhancements are owned by the company developing them and a subscription license is provided to customers/users of such products. To this end, can TEA clarify that it will consider pre-existing SaaS offering as well as all ongoing enhancements to the SaaS offering developed by the Contractor, whether developed to meet TEA requirements or other general market requirements, will be considered excluded from the definition of Works in Section A.21 of the Contract Terms (Attachment B) based on such SaaS offerings being “pre-existing materials of Contractor, or any licensed third-party materials provided by Contractor”.

TEA RESPONSE: As set forth in the RFO, “Works” does not include any pre-existing materials of Contractor, or any licensed third-party materials provided by Contractor. Therefore, SaaS offerings created prior to the effective date of any contract would not be considered “Works” under the resulting contract. If SaaS offerings are modified for TEA, following the effective date of the contract, then contractor is creating Works for TEA, which may contain preexisting rights, and contractor would, at the least, grant license rights thereto pursuant to Attachment B to the RFO.

- 16. QUESTION:** Paragraph XX.6 of the *Standard TEA Terms* states “In the event a subsequent competitive solicitation is awarded to a new contractor, Contractor shall hand-over to the new contractor all “Works” including but not limited to the following: data, materials, data base access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contractor to another.” Can TEA confirm that the aforementioned language excludes any Intellectual Property of the Contractor inclusive of the Contractor’s SaaS offering owned by the Contractor.

TEA RESPONSE: As set forth in the RFO, “Works” does not include any pre-existing materials of Contractor, or any licensed third-party materials provided by Contractor. Therefore, SaaS offerings created prior to the effective date of any contract would not be considered “Works” under the resulting contract.

17. QUESTION: Subscriptions for SaaS products/offerings are usually customarily paid in advance in technology industry either monthly, quarterly or annually. Given 5.4 talks about “payment upon performance of services”, can you advise how TEA is prepared to treat SaaS subscription license fee payments? Is TEA willing to pay these in advance, or only in arrears for a subscription period? An if in arrears, will TEA entertain monthly or quarterly payments where SaaS offerings have been provided to advance the overall milestones that in turn may partially rely on enhancements being developed for the SaaS offerings and/or implementation, integration and training that have longer delivery times than the frequency of the SaaS subscription payments (e.g., SaaS subscriptions being paid quarterly, but the overall pilot runs for a year)?

TEA RESPONSE: The “payment upon performance of services” refers to requested enhancements. For subscriptions, a state agency may make an advance payment to a vendor selling specialized or proprietary goods or services to the agency if the vendor requires the payment to be made in advance.

18. QUESTION: Can we deploy our SaaS solution to an Azure Government subscription owned by TEA, which is paid by TEA directly but managed/supported by us? There could be a cost benefit as a result of Azure Educational Pricing structures.

TEA RESPONSE: Respondent should provide a payment structure and more clarity on potential savings in the response.

19. QUESTION: If our SaaS solution cannot be deployed to TEA’s Azure subscription, is there detailed data usage/connection information for state reporting during peak and standard times? Real- world TEA usage is critical in us gaining an understanding towards hosting/infrastructure cost projections. Without this information, it will be difficult to provide a fixed pricing proposal as infrastructure cost fluctuates based on usage.

TEA RESPONSE: The numbers provided are based on a limited server capacity, and the average processing times are included in the chart below. The new application must process data at the same rate regardless of a high-volume day vs an average day. Please note, the new application will handle data at a transaction level compared to the batch level seen today. Processing data at the transaction level is expected to complete in milliseconds compared to seconds or minutes at the batch level.

| Processing Type | Peak Time | Standard Time | Average Batch Processing on Standard Time |
|---|-----------|---------------|---|
| ODS Batches | 1500 | 250 | 3 minutes |
| ODS Batch Deletes | 2100 | 175 | 15 seconds |
| Promoting from Ed-Fi ODS to Collection Data Marts | 2000 | 230 | 3 minutes |

20. QUESTION: Before a full commitment to our fixed pricing proposal, would TEA be open to a discovery phase to gather specific project requirements (the RFO states that full requirements gathering is due 10/31/2020, a few months after the contract is awarded)? There are several questions in relation to project scope that could considerably raise and lower the price.

a) As an example, in the RFO a requirement is listed that states we must “integrate with the Unique ID application and other TSDS applications”. Detailed discussions on the nature of these integrations would be beneficial towards providing an accurate and cost-effective fixed price proposal.

b) As another example, “TEA-defined data model extensions” could indicate a very wide range of potential effort.

TEA RESPONSE: The respondent should propose a solution and budget that best meets the requirements of the solicitation which may include assumptions, tiered pricing or other options to demonstrate alternatives and/or potential cost savings.

21. QUESTION: Is the intention for TEA to use our BI stack for downstream EPP reporting? If so, can we receive a sample report?

TEA RESPONSE: EPP reporting is not part of this solicitation.

22. QUESTION: Can we get information about TEA’s log-in system so we might better understand how to integrate with our SSO functionality?

TEA RESPONSE: TEA’s log-in system is a gateway application used to provide secure access and Single Sign-On (SSO) to web-based systems. It supports self-registration (which serves a user creating an identity or “user account”, user self-care (which includes updating user profile information, setting passwords and security questions, and managing accounts – requests for access etc.) and workflow-driven requests and approvals (which means users can submit profile change and account requests which are routed to the appropriate organization and service/application approvers). The underlying infrastructure (comprised of the IBM Tivoli Security Suite) serves as the (routing component, account provisioning workflow - creating and managing access to resources, and authentication and authorization mechanism for TEA applications.)

- 23. QUESTION:** Will TEA be requiring state reporting submissions to be done via direct connection to the API? Or will we need to support bulk file uploads as well? Only supporting direct API connections assumes that all districts have an SIS that is Ed-Fi certified. Would you require Ed-Fi certification for every SIS?
- TEA RESPONSE:** Yes, TEA will require state reporting submissions to be done to the API via direct connection. There are scenarios that will require the awarded vendor to support bulk file uploads such as the initial data loads. TEA requires Ed-Fi certification for every SIS.
- 24. QUESTION:** Is there any flexibility in the provided project timeline if COVID-19 has unexpected impact on TEA personnel availability?
- TEA RESPONSE:** TEA does not anticipate any delays to the project timeline due to COVID-19.
- 25. QUESTION:** Attachment B, item N refers to intellectual property ownership – with TEA claiming ownership of any custom developed source code performed by us during the contract terms. How should we customize a SaaS solution that merges our IP with Works provided specifically for this project? How do we delineate source code ownership?
- TEA RESPONSE:** As set forth in the RFO, “Works” does not include any pre-existing materials of Contractor, or any licensed third-party materials provided by Contractor. Therefore, SaaS offerings created prior to the effective date of any contract would not be considered “Works” under the resulting contract. If SaaS offerings are modified for TEA, following the effective date of the contract, then contractor is creating Works for TEA, which may contain preexisting rights, and contractor would, at the least, grant license rights thereto pursuant to Attachment B to the RFO. Source code created prior to the effective date of any contract would be subject to the foregoing.
- 26. QUESTION:** We understand that TEA will be migrating TEDS to the Ed-Fi 3.1 data standard and that the ODS must also be migrated to support the Ed-Fi Technical Suite 3.0. Is there a requirement to upgrade annually to the latest version? On what timescale does TEA plan on keeping pace with Ed-Fi revisions? Are you looking to archive past years’ data or upgrade all data to v3.0? If archiving, how many years of archived data should be retained?
- TEA RESPONSE:** TEA will continue to monitor and evaluate future releases of the Ed-Fi data standards but will expect to be one major Ed-Fi data standard version behind the current release.
- a. TEA will be one major release behind the current Ed-Fi version
 - b. TEA is unclear on the data migration needs currently. We will know more when we are able to collaborate with the awarded vendor on the processes and design.
 - c. If it is determined to archive, five years of data would need to be retained for the archival process.
- 27. QUESTION:** Will TEA accept Time and Material rates and a budgetary estimate instead of fixed price?
- TEA RESPONSE:** No, TEA will not accept Time and Material rates and a budgetary estimate instead of fixed price.
- 28. QUESTION:** In viewing the milestones set forth by TEA and the associated dates, will TEA accept monthly progress billing towards the milestones?
- TEA RESPONSE:** TEA will not make partial payments. TEA’s expectation is that the vendor defines milestones/deliverables to be broken down into tasks that can be completed during a sprint.
- 29. QUESTION:** The RFO states that it is TEA’s responsibility to conduct pilot implementation, training of ESC champions and LEA data steward, parallel testing, and results analysis. Other than supplying sandboxes, training materials, basic help desk support, and fixing defects, are there any other responsibilities of the awarded vendor as it relates to the pilot?
- TEA RESPONSE:** TEA would expect assistance on any technical challenges with pilot SIS/HR vendors, when applicable. There may be a need for the awarded vendor to provide technical training, support and resources to TEA technical staff expected to support the developed solution. TEA would also expect the outcome of pilot implementation to match with current data collection and reporting operations for LEAs participating in the pilot, and any discrepancies would need to be researched and remediated.
- 30. QUESTION:** What is meant by “basic help desk support” (knowledgebase, help desk call center, and days/hours of availability)?
- TEA RESPONSE:** “Basic help desk support” may include, but is not limited to, technical meetings/discussions with pilot vendors, ESCs, and LEAs; on-call support during critical deployments and/or updates; and providing and/or participating in effective methods of communication with TEA and other stakeholders for technical defects, guidance and challenges.
- 31. QUESTION:** The Implementation Support section of the RFO states that the awarded vendor will deploy sandboxes for source system vendors to test their API integration. What is the number of sandboxes that the awarded vendor is expected to provide and host for TEA, source system vendors, ESCs, LEAs?
- TEA RESPONSE:** There is no set number. Vendor should implement a solution that will be able to support onboarding and testing of source system vendors at any given time.

32. QUESTION: In the Service Level Agreement section of the RFO, the Initial Response Time for Severity 3 is 4 business hours and for Severity 4 it is 3 business days. Is this correct? It seems like these should be reversed, based on the other response times.

TEA RESPONSE: This is correct, as severity 1 is the most urgent, severity 4 is the least urgent. The initial response time is:

- Severity 1: 30 minutes
- Severity 2: 2 hours
- Severity 3: 4 business hours
- Severity 4: 3 business *days*

33. QUESTION: Is there a rough idea of the total number of LEAs, ESCs, and EPPs for the pilot?

TEA RESPONSE: For the TSDS pilot program, TEA will determine the actual number of LEAs and ESC during the selection phase scheduled for November 1, 2020 through January 31, 2021. It will probably be limited to manageable number, representing diverse size and demographics. Estimating less than 100 LEAs with up to 20 supporting ESCs. EPPs will not be part of this pilot.

34. QUESTION: Will the vendor have to provide a support team/maintenance for troubleshooting, tracking issues, defects, code fixes etc...; or is this collaborative with TEA during the pilot?

TEA RESPONSE: No, the vendor will not have to provide a support team/maintenance for troubleshooting; the vendor will work collaboratively with TEA during the pilot.

35. QUESTION: Will TEA or the Vendor be expected to handle the maintenance and support model of the cloud solution and SLAs for the 3-year commitment?

TEA RESPONSE: The Vendor is expected to handle the maintenance and support model of the cloud solution and SLAs throughout the contract.

36. QUESTION: Will TEA lead the Training, Change Management/Communication Strategy effort?

TEA RESPONSE: Yes, TEA will lead those efforts.

II. All other provisions of the solicitation remain the same.

Attachment E
Open Source Licensed Materials

The Data Connect SaaS product that makes up part of the licensed Technology Platform includes the EdFi Technology Suite provided by the Ed-Fi Alliance and licensed under an open source license.

Attachment F Service Level Agreement

The following Service Level Agreement will apply so long as Customer is in full compliance with the applicable license and/or service agreement between Customer and Certica.

SCOPE OF SUPPORT SERVICES. Certica shall provide the following services for the Certica Products ("Product") during Regular Hours:

- Maintain a center capable of receiving support requests and information from Customer by telephone, electronic mail, fax or postal mail.
- Provide support information on the World Wide Web.
- Enable standard telephone support for installation and use of the Products for up to two (2) concurrent systems administrator (or equivalent) contacts designated by Customer to Certica in writing to have access to the Certica support organization, and may change from time to time ("Named Support Contacts"). Additional contacts may be purchased, if so desired by Customer. All inquiries to the Certica support organization must be made by a Named Support Contact.
- Provide product updates and new releases that Certica, at its discretion, makes generally available to all its customers without additional charge, provided, however that Certica will provide Customer with a minimum of 10 (ten) days' notice prior to any product updates or new releases being promoted into a production environment.
- Notify Customer via email of new issues that might impact Customer.
- If Customer permits, and provides remote electronic access to their systems, Certica will connect directly to Customer's systems to diagnose problems ("Remote Diagnostics"). Remote Diagnostics will be provided when Certica reasonably determines that this is the most effective approach.
- Make reasonable effort to accommodate requests for modifications. Subject to those enhancements agreed to be completed by Certica in this Contract, Certica is under no obligation to incorporate modification requests from Customer in future releases of the Product.
- Implement Ed-Fi version upgrades in a timely manner, generally within 6 to 12 months of public release while preserving TEA-specific enhancements and functionality; Implement quarterly enhancements designated by TEA in response to regulatory and legal data collection and reporting requirements. For the avoidance of doubt, Certica agrees to provide at least, but not limited to, one release per year to accommodate legislatively mandated data standard changes, so that TEA can collect required data from districts.
- Security
 - All Certica servers are located behind a firewall with only essential ports enabled.
 - All firewalls have Intrusion Detection enabled.
 - TLS 1.2. encryption is used.

ERROR SEVERITY LEVELS. Certica shall exercise reasonable efforts to correct any Error reported by Customer in the current unmodified release of Product in accordance with the Severity level reasonably assigned to such Error by Certica.

A **Severity 1 Error** renders the Product inoperative in a production environment ("Production System Down") or causes an immediate major impact on the Customer's normal business operations. There is no acceptable Workaround.

Certica shall promptly commence the following procedures upon notification of the problem during Regular Hours:

1. Within the first thirty (30) Business Minutes, Certica will document and commence recreation and resolution of the problem;
2. Certica will work continuously on the problem during Regular Hours until the problem is resolved.
3. If the problem has not been resolved after the initial two (2) Business Hours Certica will mobilize a technical team to troubleshoot the problem and define solution options;

- a) Certica will assign a company representative to oversee and report on all corrective action activities;
 - b) Certica's company representative will initially notify Customer of problem resolution status;
 - c) Every twenty-four (24) hours thereafter until problem resolution, the Certica representative will continue to apprise Customer of problem resolution status.
4. Certica shall provide the Customer with a Fix as soon as the Error has been identified and the appropriate Fix developed.

While Certica is working on a Severity 1 problem, Customer must be available continuously during Customer's regular business hours to help gather information, apply and test fixes or workarounds in Customer's environment. If Customer is not available or is unable to provide required assistance, Certica may downgrade the Severity level appropriately, provided that when Customer becomes available, Customer may upgrade the Severity level back to Severity 1.

A **Severity 2 Error** is an Error which severely impairs major functionality in a production environment or which renders the Product inoperative in a development environment. A Workaround may exist but it has high user impact.

Certica will document and commence recreation of the problem within two (2) Business Hours. Certica shall exercise reasonable efforts to provide Customer with a Fix as soon as the Error has been identified and the appropriate Fix developed.

A **Severity 3 Error** is an Error in which an important function is experiencing an intermittent problem or a common non-essential operation is failing consistently. The problem has a minor impact on the Customer's normal business operations. Use of the Product in the manner in which it was intended is not materially affected.

Certica will document and commence recreation of the problem within four (4) Business Hours. Certica shall exercise reasonable efforts to include the Fix for the Error in a future Product release, provided that there is a work around so as not to disrupt Customer's normal business operations until such time of the future release.

A **Severity 4 Error** is an Error which has minimal impact on the Customer's business. The Error does not prevent normal operation of the Product.

Certica will document and commence recreation of the problem within three (3) Business Days. Certica shall exercise reasonable efforts to include the Fix for the Error in a future Product release.

A **Severity 5 Error** is an Error which has no impact on the Customer's business.

Certica will document and commence recreation of the problem within four (4) Business Days. Certica shall exercise reasonable efforts to include the Fix for the Error in a future Product release.

Customer is responsible for providing sufficient information and data to allow Certica to readily reproduce all reported Errors. If Certica reasonably believes that a problem reported by Customer may not be due to an Error in a Product, Certica will so notify Customer. Customer shall make reasonable efforts to notify Certica in advance of any upgrades to hardware or software (including Certica's software) that might produce a Production System Down issue.

Above and beyond the foregoing:

- Full database backups are performed by Certica every evening between the hours of 1am – 3 am Eastern Time in the USA. Backup files will be retained for thirty (30) days.
- 90% of issues responded to by Certica in one (1) Business Hour or less during Regular Hours.

- In the event of a major disaster event, such as flooding of the hosting facility or an earthquake that destroys the infrastructure, Certica will restore services at alternate location within three (3) Business Days.
- If production data needs to be restored from backup, it shall be done within forty-eight (48) hours.

SERVICE LEVEL METRICS. Certica shall ensure that Customer is provided with at least 24 x 7 x 365, 99.8% Percentage Uptime each calendar month during the Initial Term and any Renewal Term.

“Percentage Uptime” or “u” will be calculated per calendar month, as follows.

“t” (Total) is the total number of minutes in the applicable calendar month.

“p” (Planned Downtime) is the actual number of Planned Downtime minutes in the applicable calendar month.

“d” (Downtime) is the number of minutes in the applicable calendar month that any part of the system or Products is unavailable to Customer outside Planned Downtime.

$$\frac{t - p - d}{t - p} \times 100 = u \%$$

Planned Downtime is defined as a predefined period when the Products or any portion of the Products is taken offline or access or usage of the Products is negatively impacted related to Certica performing updates or modifications to the system or the Products. Planned Downtime will be kept to an absolute minimum and shall not exceed three hours per calendar month.

Certica must give at least two (2) Business Days notice to Customer of when a Planned Downtime is going to occur. Certica should endeavor to schedule Planned Downtime for the system and Products on a Sunday between 5 am and 2 pm, but certainly at a time other than between 6 am and 9 pm (all times specified as Central Time in the USA), and routine, scheduled maintenance will be performed inside Planned Downtime windows. Emergency maintenance may be performed outside the maintenance window and will be counted as unscheduled downtime.

The occurrence of the following events is hereby excluded from the Percentage Uptime calculation:

- The inability of the Customer to access the Products due to Internet, telecommunications, hardware or software or user error, but only to the extent not caused in whole or in part by Certica or its employees or agents, or
- Customer caused outages

Certica shall provide Customer with the Percentage Uptime calculation within ten days following the end of each calendar month.

SERVICE CREDITS FOR CORE FUNCTIONALITY.

Each 0.1% of Percentage Uptime below the target Percentage Uptime of 99.8% in a calendar month shall equal a Service Credit of \$500. Thus, for example, if the Percentage Uptime for August 2021 is 99.7%, for September 2021 is 99.8%, for October 2021 is 99.6% and the other months in the Initial Term have a Percentage Uptime of at least 99.8%, Customer shall be issued a Service Credit equal to \$1,500.

EXCLUSIONS. Certica shall have no obligation to support:

- (i) Altered or damaged Product caused by Customer or any portion of a Product incorporated with or into other software;
- (ii) Product that is not the then current release or immediately Previous Sequential Release;
- (iii) Product problems caused by Customer's breach of the Contract; or
- (iv) Product installed on any hardware or software platform that is not a Supported Platform for Certica's software. Certica shall have no liability for any changes in Customer's hardware or software which may be necessary to use Product due to a Workaround or Fix.

DEFINITIONS.

- "Business Day" means any day other than a Saturday, a Sunday or a Federal Holiday.
- "Error" means an error in a Product which significantly impairs such Product as compared to the Certica published product documentation.
- "Fix" means the repair or replacement of object or executable code versions of a Product to remedy an Error.
- "Previous Sequential Release" means the release of a Product which has been replaced by a subsequent release of the same Product.
- "Support Services" means Certica support services as described above.
- "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of a Product.
- "Regular Hours" means 8:00 AM to 8:00 PM Eastern Time in the USA on any Business Day.
- "Supported Platforms" means any hardware or software platform that appears in the Supported Platforms list for Certica's software or the Products.

Attachment G
Technology Platform Description

Description of Licensed Technology Platform

- Data Connect is a SaaS-based Ed-Fi ODS/API and will serve as the Ed-Fi 3.x ODS for TEA. Data Connect reserves a separate tenant per district to ensure logical and physical separation of data.
- Certify is a SaaS-based data validation product, with an integration to Data Connect/Ed-Fi as the source system, that contains an existing and comprehensive PEIMS rules library that is already deployed to many districts in Texas as well as many other districts, large and small, in other parts of the country. Certify also supports additional business rule writing capabilities that will be key in TEAs data quality goals.

ANNEX - A
Historically Underutilized Business Subcontracting Plan Instructions

- (1) Contractor's HUB Subcontracting Plan (HSP) is attached and incorporated herein.
- (2) Any changes to the HSP must be approved by the TEA HUB Coordinator before staffing changes are initiated. Requests must be submitted to the TEA HUB Office mailbox. If Contractor wishes to revise its approved HSP (i.e. change subcontractors), Contractor must first notify the TEA HUB Office, submit a revised HSP, and obtain TEA approval of the revised HSP before subcontracting any of the work under the Contract. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Texas Government Code, Chapter 2161, and/or other applicable state law including TEA reporting Contractor nonperformance to the Texas Comptroller of Public Accounts in accordance with 34 TAC §20.509 (relating to Performance Reporting).
- (3) Contractor must submit monthly compliance reports, known as the Prime Contractor Progress Assessment Report (PAR), to the TEA HUB Office, verifying its compliance with the HSP, including the use/expenditures Contractor has made to all subcontractors. Contact the TEA HUB Office for forms or visit our website at:

[https://tea.texas.gov/About TEA/Agency Finances/Contracts and Purchasing/Procurement and Historically Underutilized Business Program](https://tea.texas.gov/About%20TEA/Agency%20Finances/Contracts%20and%20Purchasing/Procurement%20and%20Historically%20Underutilized%20Business%20Program)

The PAR must be submitted monthly, even if no activity occurred for the month. Reports shall be submitted electronically to HUBOffice@tea.texas.gov. **Submission of the PAR is a condition for payment in accordance with 34 TAC §20.285.**

- (4) Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. **PARs are due no later than the 10th day of the following month.** During the term of the contract, TEA staff will monitor the HSP monthly to determine if the value of the subcontracts with HUBs meets or exceeds the HUB subcontracting provisions specified in the Contract. In accordance with 34 TAC §20.287(b), TEA shall require Contractor to report the identity and the amount paid to its subcontractors. If Contractor is meeting or exceeding the HUB subcontracting provisions specified in the Contract, TEA shall maintain documentation of Contractor's efforts in the Contract file. If Contractor fails to meet the HUB subcontracting provisions specified in the Contract, TEA shall notify Contractor of any deficiencies. TEA shall give Contractor an opportunity to submit documentation and why the failure to fulfill the HSP should not be attributed to a lack of good faith effort by Contractor. Additionally, if TEA is made aware that Contractor is subcontracting any part of the work in a manner that is not consistent with the HSP, Contractor shall be deemed to have breached the Contract and is subject to any remedial actions provided by Texas Government Code, Chapter 2161, and/or other applicable state laws.