

**CITY OF FORT WORTH
STANDARD PURCHASING TERMS AND CONDITIONS**

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PREPARED BY: Purchasing Division	APPROVED BY: City Attorney	

Revisions and Approvals

Revisions

Revision	Effective Date	Change Reference
Initial	2-1-2023	Not applicable
R.1	12-20-23	Updated Section 33, 43, 44

Approvals

Position	Name	Signature/Approval	Date
Assistant City Attorney	Jessika J. Williams	<i>Jessika Williams</i>	1/3/2024
City Attorney			

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1.0 DEFINITION OF BUYER

The City of Fort Worth, its officers, agents, servants, authorized employees, vendors and sub-vendors who act on behalf of various City departments, bodies or agencies.

2.0 DEFINITION OF SELLER

The consultant, contractor, supplier, or other providers of goods and/or services, its officers, agents, servants, employees, vendors and sub-vendors who act on behalf of the entity under a contract with the City of Fort Worth.

3.0 PUBLIC INFORMATION

Any information submitted to the City of Fort Worth (the "City") may be requested by a member of the public under the Texas Public Information Act. See TEX. GOV'T CODE ANN. §§ 552.002, 552.128(c) (West Supp. 2006). Seller must clearly mark each page it believes includes proprietary information by writing "PROPRIETARY" in bolded, yellow highlighted, 16-point font at the bottom of each page. Any pages that do not contain the required notification shall be deemed public and Seller agrees to its release to the public. If the City receives a request for a Seller's proprietary information, as indicated by following the instructions above, the Seller listed in the request will be notified and given an opportunity to make arguments to the Texas Attorney General's Office (the "AG") regarding reasons the Seller believes that its information may not lawfully be released. If Seller does not make arguments or the AG rejects the arguments Seller makes, Seller's information will be released without penalty to the City.

4.0 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS

No officer or employee of Buyer shall have a financial interest, direct or indirect, in any contract with Buyer or be financially interested, directly or indirectly, in the sale to Buyer of any land, materials, supplies or services, except on behalf of Buyer as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the City Council shall render the contract invalid by the City Manager or the City Council. (Chapter XXVII, Section 16, City of Fort Worth Charter).

5.0 ORDERS

5.1 No employees of the Buyer or its officers, agents, servants, vendors or sub-vendors who act on behalf of various City departments, bodies or agencies are authorized to place orders for goods and/or services without providing approved contract numbers, purchase order numbers, or release numbers issued by the Buyer. The only exceptions are Purchasing Card orders and emergencies pursuant to Texas Local Government Code Section 252.022(a)(1), (2), or (3). In the case of emergencies, the Buyer's Purchasing Division will place such orders.

5.2 Acceptance of an order and delivery on the part of the Seller without an approved contract number, purchase order number, or release number issued by the Buyer may result in rejection of delivery, return of goods at the Seller's cost

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and/or non-payment.

6.0 SELLER TO PACKAGE GOODS

Seller will package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase change order number; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) Number of the container bearing the packing slip. Seller shall bear the cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

7.0 SHIPMENT UNDER RESERVATION PROHIBITED

Seller is not authorized to ship the goods under reservation, and no tender of a bill of lading will operate as a tender of goods.

8.0 TITLE AND RISK OF LOSS

The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery after inspection and acceptance of the goods.

9.0 DELIVERY TERMS AND TRANSPORTATION CHARGES

9.1 Freight terms shall be F.O.B. Destination, Freight Prepaid and Allowed, unless delivery terms are specified otherwise in Seller's proposal and the City has expressly accepted the Seller's delivery terms in writing. Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's proposals or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs; provided, Buyer shall have the right to designate what method of transportation shall be used to ship the goods.

9.2 Unit prices shall include all costs associated with the specified work, including but not limited to handling, freight, delivery, fuel charges, fees and certifications fees. No additional charges will be accepted or paid by Buyer.

10.0 PLACE OF DELIVERY

The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery after inspection and acceptance of the goods.

11.0 RIGHT OF INSPECTION

Buyer shall have the right to inspect the goods upon delivery before accepting them. Seller shall be responsible for all charges for the return to Seller of any goods rejected as being nonconforming under the specifications.

12.0 INVOICES

12.1 Seller shall submit separate invoices in duplicate, on each purchase order or purchase change order after each delivery. Invoices shall indicate the purchase

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order or purchase change order number. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, must be attached to the invoice. Seller shall mail or deliver invoices to Buyer's Department and address as set forth in the block of the purchase order, purchase change order or release order entitled "Ship to." Payment shall not be made until the above instruments have been submitted after delivery and acceptance of the goods and/or services.

- 12.2 Seller shall not include Federal Excise, State or City Sales Tax in its invoices. Buyer shall furnish a tax exemption certificate upon Seller's request.

13.0 PRICE WARRANTY

13.1 The price to be paid by Buyer shall be that contained in Seller's proposals which Seller warrants to be no higher than the lesser of either (i) the Seller's current rates on valid cooperative agreements for products and services of the kind and specification covered by this agreement or (ii) Seller's current prices on orders by others for products and services of the kind and specification covered by this agreement for similar quantities under like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the prices contained in Seller's proposals, or in the alternative upon Buyer's option, Buyer shall have the right to cancel this contract without any liability to Seller for breach or for Seller's actual expense. Such remedies are in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13.2 Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee, excepting employees of an established commercial or selling agency that is maintained by Seller for the purpose of securing business. For breach or violation of this warranty, Buyer shall have the right, in addition to any other right or rights arising pursuant to said purchase(s), to cancel this contract without liability and to deduct from the contract price such commission percentage, brokerage or contingent fee, or otherwise to recover the full amount thereof.

14.0 PRODUCT WARRANTY

14.1 Seller shall not limit or exclude any express or implied warranties, and any attempt to do so shall render this contract voidable at the option of Buyer. Seller warrants that the goods furnished will conform to Buyer's specifications, drawings and descriptions listed in the proposal invitation, and the sample(s) furnished by Seller, if any. In the event of a conflict between Buyer's specifications, drawings, and descriptions, Buyer's specifications shall govern.

14.2 In addition to any other warranties in this contract, the Seller warrants that all work and products supplied under this agreement conform to the agreement requirements and are free from any defect in workmanship, equipment, material, or design furnished by the Seller or any supplier at any tier.

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- 14.3 Seller agrees to repair or replace promptly, on a one-for-one basis without additional cost to Buyer, any and all defective work and products. Buyer defines "prompt" repair or replacement to be within twenty-four (24) hours after notification by Buyer's authorized personnel.
- 14.4 This warranty shall continue at least for a period of 90 days from the date of acceptance of products and work by Buyer.
- 14.5 Seller shall remedy at the Seller's expense any non-conforming or defective products or work. In addition, the Seller shall remedy at Seller's expense any damage to real or personal property owned by Buyer, when that damage is the result of a defect of products furnished.
- 14.6 Seller's warranty with respect to products repaired or replaced will run for 90 days from date of installation and acceptance of such by Buyer.
- 14.7 Buyer shall notify the Seller, within a reasonable time after the discovery of any failure, defect, or damage.
- 14.8 If the Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Buyer shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Seller's expense.
- 14.9 This warranty shall not include failures attributable to accident, fire, or negligence on the part of Buyer's personnel.

15.0 SAFETY WARRANTY

Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970, as amended. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at Seller's expense. In the event Seller fails to make appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense. Where no correction is or can be made, Seller shall refund all monies received for such goods within thirty (30) days after request is made by Buyer in writing and received by Seller. Notice is considered to have been received upon hand delivery, or otherwise in accordance with Section 31.0 of these terms and conditions. Failure to make such refund shall constitute breach and cause this contract to terminate immediately.

16.0 SOFTWARE LICENSE TO SELLER

If this purchase is for the license of software products and/or services, and unless otherwise agreed, Seller hereby grants to Buyer a perpetual, irrevocable, non-exclusive, nontransferable, royalty free license to use the software. This software is "proprietary" to Seller, and is licensed and provided to the Buyer for its sole use for purposes under this agreement and any attached work orders or invoices. The Buyer may not use or share this software without permission of the Seller; however Buyer may make copies of the software expressly for backup purposes.

17.0 WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY

17.1 The SELLER warrants that all Deliverables, or any part thereof, furnished

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hereunder, including but not limited to: programs, documentation, software, analyses, applications, methods, ways, and processes (in this Section each individually referred to as a “Deliverable” and collectively as the “Deliverables,”) do not infringe upon or violate any patent, copyrights, trademarks, service marks, trade secrets, or any intellectual property rights or other third party proprietary rights, in the performance of services under this Agreement.

17.2 SELLER shall be liable and responsible for any and all claims made against the Buyer for infringement of any patent, copyright, trademark, service mark, trade secret, or other intellectual property rights by the use of or supplying of any Deliverable(s) in the course of performance or completion of, or in any way connected with providing the services, or the Buyer’s continued use of the Deliverable(s) hereunder.

17.3 SELLER agrees to indemnify, defend, settle, or pay, at its own cost and expense, including the payment of attorney’s fees, any claim or action against the Buyer for infringement of any patent, copyright, trade mark, service mark, trade secret, or other intellectual property right arising from Buyer’s use of the Deliverable(s), or any part thereof, in accordance with this Agreement, it being understood that this agreement to indemnify, defend, settle or pay shall not apply if the Buyer modifies or misuses the Deliverable(s). So long as SELLER bears the cost and expense of payment for claims or actions against the Buyer pursuant to this section 8, SELLER shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, Buyer shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect the Buyer’s interest, and Buyer agrees to cooperate with SELLER in doing so. In the event Buyer, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against the Buyer for infringement arising under this Agreement, the Buyer shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, SELLER shall fully participate and cooperate with the Buyer in defense of such claim or action. Buyer agrees to give SELLER timely written notice of any such claim or action, with copies of all papers Buyer may receive relating thereto. Notwithstanding the foregoing, the Buyer’s assumption of payment of costs or expenses shall not eliminate SELLER’s duty to indemnify the Buyer under this Agreement. If the Deliverable(s), or any part thereof, is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, SELLER shall, at its own expense and at Buyer’s election, either: (a) procure for Buyer the right to continue to use the Deliverable(s); or (b) modify the Deliverable(s) to make them/it non-infringing, provided that such modification does not materially adversely affect Buyer’s authorized use of the Deliverable(s); or (c) replace the

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Deliverable(s) with equally suitable, compatible, and functionally equivalent non-infringing Deliverable(s) at no additional charge to Buyer; or (d) if none of the foregoing alternatives is reasonably available to SELLER, terminate this Agreement, and refund all amounts paid to SELLER by the Buyer, subsequent to which termination Buyer may seek any and all remedies available to Buyer under law.

18.0 OWNERSHIP OF WORK PRODUCT

Seller agrees that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Seller for the Buyer pursuant to a Work Order, including all such developments as are originated or conceived during the term of the agreement and that are completed or reduced to writing thereafter (the "Work Product") and Seller acknowledges that such Work Product may be considered "work(s) made for hire" and will be and remain the exclusive property of the Buyer. To the extent that the Work Product, under applicable law, may not be considered work(s) made for hire, Seller hereby agrees that this agreement effectively transfers, grants, conveys, and assigns exclusively to Buyer, all rights, title and ownership interests, including copyright, which Seller may have in any Work Product or any tangible media embodying such Work Product, without the necessity of any further consideration, and Buyer shall be entitled to obtain and hold in its own name, all Intellectual Property rights in and to the Work Product. Seller for itself and on behalf of its vendors hereby waives any property interest in such Work Product.

19.0 NETWORK ACCESS

The Buyer owns and operates a computing environment and network (collectively the "Network"). If Seller requires access, whether onsite or remote, to the Buyer's network to provide services hereunder, and the Seller is required to utilize the Internet, Intranet, email, Buyer database, or other network application, Seller shall separately execute the Buyer's Network Access Agreement prior to providing such services. A copy of the Buyer's standard Network Access Agreement can be provided upon request.

20.0 CANCELLATION

Buyer shall have the right to cancel this agreement immediately for default on all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof, including warranties of Seller. Such right of cancellation is in addition to and not in lieu of any other remedies, which Buyer may have in law or equity.

21.0 TERMINATION

The performance of work or purchase of goods under this order may be terminated in whole or in part by Buyer, with or without cause, at any time upon the delivery to Seller of a written "Notice of Termination" specifying the extent to which performance of work or the goods to be purchased under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of any other termination rights of Buyer as set forth herein.

22.0 ASSIGNMENT / DELEGATION

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No interest, obligation or right of Seller, including the right to receive payment, under this agreement shall be assigned or delegated to another entity without the express written consent of Buyer. Any attempted assignment or delegation of Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph. Prior to Buyer giving its consent, Seller agrees that Seller shall provide, at no additional cost to Buyer, all documents, as determined by Buyer, that are reasonable and necessary to verify Seller's legal status and transfer of rights, interests, or obligations to another entity. The documents that may be requested include, but are not limited to, Articles of Incorporation and related amendments, Certificate of Merger, IRS Form W-9 to verify tax identification number, etc. Buyer reserves the right to withhold all payments to any entity other than Seller, if Seller is not in compliance with this provision. If Seller fails to provide necessary information in accordance with this section, Buyer shall not be liable for any penalties, fees or interest resulting therefrom.

23.0 WAIVER

No claim or right arising out of a breach of this agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration in writing and is signed by the aggrieved party.

24.0 MODIFICATIONS

This agreement can be modified or rescinded only by a written agreement signed by both parties.

25.0 THE AGREEMENT

In the absence of an otherwise negotiated contract, or unless stated otherwise, the Agreement between Buyer and Seller shall consist of these Standard Terms and Conditions together with any applicable proposal documents published by the Buyer and Seller's Response to such proposal (the "contract documents"). This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance of or acquiescence in a course of performance under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code (UCC) is used in this Agreement, the definition contained in the UCC shall control. In the event of a conflict between the contract documents, the order of precedence shall be these Standard Terms and Conditions, the Buyer's published proposal documents and the Seller's response. If Buyer and Seller have otherwise negotiated a contract, this Agreement shall not apply.

26.0 APPLICABLE LAW / VENUE

This agreement shall be governed by the Uniform Commercial Code wherever the term "Uniform Commercial Code" or "UCC" is used. It shall be construed as meaning the Uniform Commercial Code as adopted and amended in the State of Texas. Both parties agree that venue for any litigation arising from this agreement shall be in Fort Worth, Tarrant County, Texas.

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27.0 INDEPENDENT CONTRACTOR(S)

Seller shall operate hereunder as an independent contractor(s) and not as an officer, agent, servant or employee of Buyer. Seller shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, vendors and sub-vendors. The doctrine of respondeat superior shall not apply as between Buyer and Seller, its officers, agents, employees, vendors and sub-vendors. Nothing herein shall be construed as creating a partnership or joint enterprise between Buyer and Seller, its officers, agents, employees, vendors and sub-vendors.

28.0 LIABILITY AND INDEMNIFICATION

28.1 LIABILITY - SELLER SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF SELLER, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

28.2 INDEMNIFICATION - SELLER HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE BUYER (ALSO REFERRED TO AS BUYER), ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO SELLER'S BUSINESS, AND ANY RESULTING LOST PROFITS) PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, AND DAMAGES FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SELLER, ITS OFFICERS, AGENTS, SUBCONTRACTOR(S), SERVANTS OR EMPLOYEES.

29.0 SEVERABILITY

In case any one or more of the provisions contained in this agreement shall for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, which agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

30.0 FISCAL FUNDING LIMITATION

In the event no funds or insufficient funds are appropriated and budgeted in any fiscal period for payments due under this agreement, then Buyer will immediately notify Seller of such occurrence, and this agreement shall be terminated on the last day of the fiscal period for which funds have been appropriated without penalty or expense to Buyer of any kind whatsoever, except to the portions of annual payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available.

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31.0 NOTICES TO PARTIES

Notices addressed to Buyer pursuant to the provisions hereof shall be conclusively determined to have been delivered three (3) business days following the day such notice is deposited in the United States mail, in a sealed envelope with sufficient postage attached, addressed to Purchasing Manager, City of Fort Worth, Purchasing Division, 200 Texas Street, Fort Worth, Texas 76102. Notices to Seller shall be conclusively determined to have been delivered three (3) business days following the day such notice is deposited in the United States mail, in a sealed envelope with sufficient postage attached, addressed to the address given by Seller in its response to Buyer's invitation to proposals. Or if sent via express courier or hand delivery, notice is considered received upon delivery.

32.0 NON-DISCRIMINATION

This agreement is made and entered into with reference specifically to Chapter 17, Article III, Division 3 ("Employment Practices"), of the City Code of the City of Fort Worth (1986), as amended, and Seller hereby covenants and agrees that Seller, its employees, officers, agents, vendors or sub-vendors, have fully complied with all provisions of same and that no employee, participant, applicant, contractor(s) or sub-contractor(s) has been discriminated against according to the terms of such Ordinance by Seller, its employees, officers, agents, contractor(s) or sub-vendors herein.

33.0 IMMIGRATION NATIONALITY ACT

Buyer must verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by Buyer, Buyer will provide Buyer with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Buyer must adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Buyer employee who is not legally eligible to perform such services. **BUYER WILL INDEMNIFY BUYER AND HOLD BUYER HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY BUYER, BUYER'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR AGENTS.** Buyer, upon written notice to Buyer, will have the right to immediately terminate this Agreement for violations of this provision by Buyer.

34.0 HEALTH, SAFETY, AND ENVIRONMENTAL REQUIREMENTS

Services, products, materials, and supplies provided by the Seller must meet or exceed all applicable health, safety, and the environmental laws, requirements, and standards. In addition, Seller agrees to obtain and pay, at its own expense, for all licenses, permits, certificates, and inspections necessary to provide the products or to perform the services hereunder. Seller shall indemnify Buyer from any penalties or liabilities due to violations of this provision. Buyer shall have the right to immediately terminate this Agreement for violations of this provision by Seller.

35.0 RIGHT TO AUDIT

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Seller agrees that the Buyer, or Buyer's authorized representative, shall, until the expiration of three (3) years after final payment under this agreement, and at no additional cost to Buyer, have access to and the right to examine and copy any directly pertinent books, computer disks, digital files, documents, papers and records of the Seller involving transactions relating to this agreement, including any and all records maintained pursuant to Section 31 of this Agreement. Seller agrees that the Buyer shall have access, during normal working hours, to all necessary Seller facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. Buyer shall pay Seller for reasonable costs of any copying in accordance with the standards set forth in the Texas Administrative Code. The Buyer shall give Seller reasonable advance written notice of intended audits, but no less than ten (10) business days.

36.0 DISABILITY

In accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), Seller warrants that it and any and all of its sub-vendors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Seller or any of its sub-vendors. Seller warrants it will fully comply with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold Buyer harmless against any claims or allegations asserted by third parties or sub-vendors against Buyer arising out of Seller's and/or its sub-vendor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this agreement.

37.0 DISPUTE RESOLUTION

If either Buyer or Seller has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, either through email, mail, phone conference, in person meetings, or other reasonable means to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Industry Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

38.0 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding eCFR — Code of Federal Regulations agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of

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parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

39.0 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

40.0 DEBARMENT AND SUSPENSION

Per Executive Orders 12549 and 12689, a contract award (see 2 CFR 180.220) shall not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

41.0 BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

Firms that apply or bid for an award exceeding \$100,000.00 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Bidders shall provide proof of Byrd Anti-Lobbying Amendment certification filings with their bid, if the bid exceeds \$100,000.00.

42.0 NO BOYCOTT OF ISRAEL

If the Seller has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply. The Seller acknowledges that in accordance with Chapter 2271 of the Texas Government Code, the Buyer is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” has the meanings ascribed to those terms in Section 2271 of the Texas Government Code. **By signing this Agreement, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.**

43.0 PROHIBITION ON BOYCOTTING ENERGY COMPANIES

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Seller acknowledges that in accordance with Chapter 2276 of the Texas Government Code, the Buyer is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the Buyer with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. To the extent that Chapter 2276 of the Government Code is applicable to this Agreement, by signing this Agreement, Seller certifies that Seller's signature provides written verification to the Buyer that Seller: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.

44.0 PROHIBITION ON DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES

Seller acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code, the Buyer is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the Buyer with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Seller certifies that Seller's signature provides written verification to the Buyer that Seller: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.

45.0 CHANGE IN COMPANY NAME OR OWNERSHIP

The Seller shall notify the Buyer's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated Buyer's records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied by supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, a copy of the board of directors' resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46.0 LAWS, REGULATIONS, AND ORDINANCES

The Seller shall be responsible for meeting all Federal: laws, ordinances, and regulations; State: laws, ordinances, and regulations; County: laws, ordinances, and regulations; and City: laws, ordinances, and regulations. This includes, but is not limited to, all Federal, State, County, and City Agencies, Administrations, and Commissions such as the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Texas Commission on Environmental Quality (TCEQ). In the event any law, regulation, or ordinance becomes effective after the start of this Agreement, the Seller is required to comply with the new policy. Any mandates requiring Buyer to comply with new guidelines will also require the Seller to comply.

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47.0 INSURANCE REQUIREMENTS ¹

47.1 The Seller shall assume all risk and liability for accidents and damages that may occur to persons or property during the prosecution of work under this Agreement. The Seller shall file with Buyer, prior to the commencement of services, a certificate of insurance documenting the following required insurance.

47.1.1 Failure to provide such information within five (5) calendar days may be grounds for Agreement termination.

47.2 Policies shall have no exclusions by endorsements which nullify the required lines of coverage, nor decrease the limits of said coverage unless such endorsements are approved by Buyer. In the event a contract has been bid or executed and the exclusions are determined to be unacceptable or Buyer desires additional insurance coverage, and Buyer desires the Seller to obtain such coverage, the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.

47.2.1 Statutory Workers' Compensation Insurance and Employer's Liability Insurance at the following limits:

- \$100,000 Each Accident
- \$500,000 Disease – Policy limit
- \$100,000 Disease – Each Employee

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee.

47.2.2 Commercial General Liability Insurance including Explosion, Collapse, and Underground Coverage shall be provided as follows:

- \$1,000,000 Each Occurrence
- \$2,000,000 Annual Aggregate

Coverage shall include but not be limited to the following: premises/operations, independent Sellers, products/completed operations, personal injury, and contractual liability. Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy.

47.2.3 Auto Liability Insurance shall be provided as follows:

¹ This is the Standard Provision regarding Insurance Requirements. If the Buyer determines that additional insurance is required, those additional requirements will be listed in the actual bid issued.

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\$1,000,000 Combined Single Limit Each Accident

A commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

47.2.4 The Seller shall furnish Buyer's Purchasing Manager, with a certificate of insurance documenting the required insurance prior to the commencement of services.

47.2.5 Policies shall be endorsed to provide Buyer a thirty- (30) day notice of cancellation, material change in coverage, or non-renewal of coverage.

47.2.6 Applicable policies shall also be endorsed to name Buyer as an additional insured, as its interests may appear (ATIMA).

48.0 ADDITIONAL INSURANCE REQUIREMENTS²

48.1 Buyer, its officers, employees and servants shall be endorsed as an additional insured on Seller's insurance policies excepting employer's liability insurance coverage under Seller's workers' compensation insurance policy.

48.2 Certificates of insurance satisfactory to Buyer and Worker's Compensation Affidavit must be received before Seller can begin work. Failure to supply and maintain such insurance shall be a breach of contract. Seller shall provide complete copies of all insurance policies required by this Agreement. Certificates of insurance must be supplied to:

Financial Management Services Department

Attention: Purchasing Division Bid # YR-NNNN

200 Texas Street, Fort Worth, Texas 76102

48.3 Any failure on part of Buyer to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein. Each insurance policy shall be endorsed to provide Buyer a minimum 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.

48.4 Insurers must be authorized to do business in the State of Texas and have a current A.M. Best rating of A: VII or equivalent measure of financial strength and solvency.

48.5 Deductible limits, or self-funded retention limits, on each policy must not exceed \$10,000.00 per occurrence unless otherwise approved by Buyer.

48.6 Other than worker's compensation insurance, in lieu of traditional insurance, Buyer may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups. Buyer must approve in writing any alternative coverage.

² This is the Standard Provision regarding Insurance Requirements. If the Buyer determines that additional insurance is required, those additional requirements will be listed in the actual bid issued.

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- 48.7 Workers' compensation insurance policy(s) covering employees of the Seller shall be endorsed with a waiver of subrogation providing rights of recovery in favor of Buyer.
- 48.8 Buyer shall not be responsible for the direct payment of insurance premium costs for Seller's insurance.
- 48.9 Seller's insurance policies shall each be endorsed to provide that such insurance is primary protection and any self-funded or commercial coverage maintained by Buyer shall not be called upon to contribute to loss recovery.
- 48.10 While the purchase order is in effect, Seller shall report, in a timely manner, to Buyer's Purchasing Department any known loss occurrence that could give rise to a liability claim or lawsuit or which could result in a property loss.

49.0 PERFORMANCE

Failure of Buyer to insist in any one or more instances upon the performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any terms and conditions, but the Seller's obligation with respect to such performance shall continue in full force and effect.