

ATTACHMENT B

CONTRACT TERMS, CONDITIONS AND AFFIRMATIONS

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,

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.

With regard to information relating to students, the term also includes:

- (i) The student's name;
- (ii) The name of the student's parents or other family members;
- (iii) The address of the student's parent or other family members;
- (iv) A personal identifier, such as the student's social security number, student number, or [biometric record](#)

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 (i)-0.7 (f)16 (e) J0.g J0.164 Tw T[G]10.6 ()

- (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

- (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 48 (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 to 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.

will or may access the TEA Confidential Information and (iv) Contractor obtains express, written consent from the Contract Manager to release the

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.

- 25. 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.

- 26. TEA Property:** In the event of loss, damage or destruction of any property owned by or lieve

- (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-

40. 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.

41. 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.

42. 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 (S)46 (S)46 (S)46t4 0.293 (nder)1

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.

Contractor shall submit one original copy of an itemized invoice including all required information detailed in 34 TAC § 20.487. Invoices must include, at a minimum, the following information:

- (a) the contractor's mailing and e-mail (if applicable) address,
- (b) the contractor's telephone number,
- (c) the name and telephone number of a person designated by the contractor to answer questions regarding the invoice,
- (d) the state agency's name, agency number, and delivery address,
- (e) the state agency's purchase order number, if applicable,
- (f) the contract number or other reference number, if applicable,
- (g) a valid Texas identification number (TIN) issued by the comptroller,
- (h) a description of the goods or services as outlined in the Contract, including relevant delivery dates and the service period,
- (i) unit numbers corresponding to the amount of the invoice,
- (j) if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor, and
- (k) other relevant information supporting and explaining the payment requested.

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 d

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

- 50. 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.
- 51. 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.
- 52. 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->

(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

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.

58. Insurance:

59. Force Majeure: Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement

the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes, unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company,

- 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 appointment.

90. Headings: