

COPY

Contract No. CCG-GIS-2008-001

CONTRACT
between
STATE COUNCIL ON COMPETITIVE GOVERNMENT
and
CONTRACTOR
For
High Priority Imagery and Data Sets (HPIDS)

This CONTRACT is entered into by the Council on Competitive Government (CCG), an entity of the State of Texas, located at 111 E. 17th Street, Austin, Texas 78711 and Terrapoint USA Inc. (CONTRACTOR), located at 25216 Grogan's Park Drive, The Woodlands, Texas 77380.

The CCG and the CONTRACTOR are the Parties to this the CONTRACT.

Whereas, on December 18, 2008 the CCG issued Requests for Offer, No. CCG-GIS-2008-001 to acquire High Priority Imagery and Data Sets from qualified entities;

Whereas, on February 17, 2009, the CONTRACTOR submitted a proposal for:
High Priority Imagery and Data Sets, CCG-GIS-2008-001;

Whereas, on March 11, 2009, the CCG selected CONTRACTOR to perform and provide services relating to:
High Priority Imagery and Data Sets, CCG-GIS-2008-001;

Whereas, on April 3, 2009, the CCG approved the award of this CONTRACT;

Whereas, the CCG and CONTRACTOR intend to make High Priority Imagery and Data Sets Services available to state agencies, units of local government and institutions of higher education;

Whereas, the CONTRACTOR understands and agrees to be responsible for the execution of and compliance with all of the obligations contained in this CONTRACT; and

Now Therefore, the CCG and CONTRACTOR hereby agree as follows,

ARTICLE I. INTRODUCTION

1.01. **AUTHORITY TO CONTRACT.** This CCG is authorized to enter into this contract pursuant to Government Code, chapter 2162. The person signing and executing this contract on behalf of the CONTRACTOR, or representing himself as signing and executing this contract on behalf of the CONTRACTOR, warrants and guarantees that he has been duly authorized to execute this contract and to validly and legally bind the CONTRACTOR to all of its terms, performances, and provisions.

1.02. **ABILITY TO PERFORM.** The execution, delivery and performance of this contract has been duly authorized by CONTRACTOR and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for CONTRACTOR to enter into and perform its obligations under this contract.

1.03. AUTHORITY TO PERFORM. CONTRACTOR has obtained all licenses, certifications, permits, and authorizations necessary to provide the deliverables and to perform the services under this contract, and currently is in good standing with all regulatory agencies that regulate any or all aspects of CONTRACTOR's performance of this contract. CONTRACTOR will maintain all required licenses, certifications, permits, and authorizations during the term of this contract.

1.04. NO IMPLIED AUTHORITY. The authority delegated to CONTRACTOR by CCG is limited to the terms of this contract. CCG is authorized by the Texas Legislature to enter into and administer contracts for use by Texas governmental entities, and no other agency of the State may grant CONTRACTOR any authority related to this contract, unless specifically directed to do so by the CCG. CONTRACTOR is required to cooperate to the fullest extent possible to assist CCG in communications and negotiations with other state agencies, units of local government, institutions of higher education, and federal agencies as directed by CCG. CONTRACTOR may not rely upon implied authority, and specifically is not delegated authority under this contract to:

- (A) make public policy;
- (B) promulgate, amend or disregard administrative regulations or program policy decisions made by local governmental entities, state and federal agencies or institutions of higher education who may procure CONTRACTOR's services under this contract;; or
- (C) unilaterally communicate or negotiate with any unit of local government, state or federal agencies or institutions of higher education or the Texas Legislature on behalf of CCG regarding this contract or any Deliverable due hereunder.

1.05. CONTRACTOR'S ASSURANCES. CONTRACTOR makes the following assurances:

- (a) CONTRACTOR and its agents and Subcontractors regularly provide the types of services described in the Request for Offers (RFO) to other public or private entities;
- (b) CONTRACTOR and its agents and Subcontractors have the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the RFO, the CONTRACTOR's Proposal, and this contract in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar services for other public or private entities;
- (c) CONTRACTOR has thoroughly reviewed, analyzed, and understood the RFO, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully understand the CCG's requirements for the activities that are the subject of this contract and the needs and requirements of the State during this contract's term;
- (d) CONTRACTOR has had the opportunity to review and understand the State's stated objectives in entering into this contract and, based on such review and understanding, CONTRACTOR currently has the capability to perform in accordance with the terms and conditions of this contract.
- (e) CONTRACTOR has reviewed and understands all of the risks associated with the CCG Programs or other State Programs as described in the RFO, including the risk of non-appropriation of funds;
- (f) CONTRACTOR warrants that it has the financial resources to fund the capital expenditures required under this contract without advances by CCG or assignment of any payments by CCG to a financing source;
- (g) CONTRACTOR shall be solely and entirely responsible for securing all appropriate licenses and permits, which may be required by any competent authority for the CONTRACTOR to perform the subject work; and
- (h) CONTRACTOR will not take any action substantially or materially inconsistent with any of the terms and conditions set forth in this contract without the express written approval of CCG, as appropriate.

ARTICLE II. DEFINITIONS AND CONSTRUCTION OF CONTRACT

2.01. **DEFINITIONS.** The Definitions in Appendix A of the CCG RFO #CCG-GIS-2008-001 apply to this contract, except as specifically noted otherwise.

CCG means the State of Texas Council on Competitive Government and any governmental entity procuring goods or services under this contract.

DELIVERABLES means statement of work, work, work product, task, service and project conducted under this contract.

2.02. **SEVERABILITY.** If any provision of this contract is construed to be illegal or invalid, such interpretation will not affect the legality or validity of any other provisions. The illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never included in or incorporated into this contract, but all other provisions will remain in full force and effect.

2.03. **SURVIVAL OF TERMS.** (a) Termination or expiration of this contract for any reason will not release either Party from any liabilities or obligations set forth in this contract that:

(1) The Parties have expressly agreed will survive any such termination or expiration or

(2) Remain to be performed or by their nature would be intended to be applicable

following any such termination or expiration.

(b) The Parties expressly agree that the following articles and sections survive termination or expiration of this contract:

2.06 relating to Precedence of Documents

7.05 relating to Dispute Resolution

Article IX relating to Intellectual Property

Article XI relating to Warranties

12.04 relating to Publicity

12.08 relating to Errors or Omissions

12.10 relating to Contractor's Personnel

12.13 relating to Responsibility for Subcontractors

12.21, 12.23, and 12.23 relating to records retention, audits, access to books, records and documents, and State Auditor's Office.

2.04. **HEADINGS.** The article and section headings in this contract are for reference and convenience only and are not intended to be considered in the interpretation of this contract.

2.05. **GLOBAL DRAFTING CONVENTIONS.** (a) The terms "include," "includes," and "including" are terms of inclusion, and where used in this contract, are deemed to be followed by the words "without limitation."

(b) Any references to "sections," "appendices," or "attachments" are deemed to be references to sections, appendices, or attachments to this contract or to the RFO if so identified.

(c) Any references to other contracts or contracts, statutes, and administrative rules in this contract are deemed references to these documents as amended, modified, or supplemented from time to time during the term of this contract. Statutory references are to Texas statutes, except where otherwise noted.

(d) The singular form includes the plural; terms in the male gender include the female.

2.06. **PRECEDENCE OF DOCUMENTS.** This contract consists of the documents listed in this section. All exhibits, appendices and other documents referenced in this section are a part of this contract and incorporated herein for all purposes. In the event of any inconsistency or conflict among the parts of this contract, the documents shall have the following order of precedence:

1. This CONTRACT and all Exhibits to the CONTRACT;
2. RFO No. CCG-GIS-2008-002B as amended and clarified by CONTRACTOR's questions and CCG's official responses thereto, and all Appendices to the RFOs.
3. The CONTRACTOR's Offer in response to CCG's RFO

ARTICLE III. TERM and TERMINATION

3.01. TERM. The term of this contract shall begin upon execution by the CCG. This contract shall terminate on August 31, 2011. The CCG, in its sole discretion, may renew the contract for up to two additional two-year terms.

3.02. TERMINATION. This contract may be terminated at any time upon written contract by the Parties or terminated by the CCG at any time by written notice to the CONTRACTOR. The CONTRACTOR shall, upon receipt of termination, unless otherwise directed, immediately discontinue all work in connection with the performance of this contract and shall proceed to cancel promptly all existing orders chargeable to this contract. The CONTRACTOR shall submit a final invoice, a detailed statement of the work completed under this contract, and a copy of all work performed, including partially completed work. The CCG, upon acceptance of the work completed and performed, shall promptly pay the CONTRACTOR the proportional amount due. CCG may terminate this Contract at any time when, in its sole discretion, CCG determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in CCG's notice of termination.

3.03. PAYMENT UPON TERMINATION. (a) If CCG terminates this Contract, CCG will pay CONTRACTOR as soon as practical thereafter taking into account appropriation and fund accounting requirements any undisputed amounts due for all partially completed, completed, approved, and accepted Services or Deliverables.

(b) CONTRACTOR must provide CCG all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under this Contract.

ARTICLE IV. STANDARDS OF PERFORMANCE AND CONTRACT ADMINISTRATION

4.01. STANDARDS OF PERFORMANCE.

A. Satisfactory performance will be measured by:

- (1) Adherence to this contract, including all representations and warranties;
- (2) Compliance with statements of work, schedules, and milestones as proposed by CONTRACTOR's Offer and as finally approved by CCG;
- (3) Delivery of the Services and Deliverables in accordance with the specifications detailed in the statement of work and in the CONTRACTOR's response to the statement of work as finally accepted by the CCG;
- (4) Results of audits performed by CCG or its representatives in accordance with Sections 12.21, 12.22, and 12.23 and any other performance or financial audits;
- (5) Timeliness, completeness, and accuracy of required deliverables and reports; and
- (6) Achievement of performance measures developed by CCG and as modified from time to time by written contract.

B. Professional Standards: CONTRACTOR shall provide the services and deliverables required by this Contract in accordance with applicable professional standards. CONTRACTOR represents and warrants that he is authorized and able to acquire subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

- C. **Key Personnel:** CONTRACTOR shall assign only qualified personnel to perform the services required under this contract. CONTRACTOR shall be responsible for ensuring that any subcontractor utilized shall also assign only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skills and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession. CONTRACTOR shall provide the names of key personnel assigned to each Statement of Work. CONTRACTOR shall notify CCG, in writing, when key personnel are not available to perform the tasks and shall provide the name and credentials of substituted personnel.

CONTRACTOR agrees to maintain the organizational and administrative capacity and capabilities to carry out all duties and responsibilities under this Contract. The personnel CONTRACTOR assigns to perform the duties and responsibilities under this Contract will be properly trained and qualified for the functions they are to perform. Notwithstanding transfer or turnover of personnel, CONTRACTOR remains obligated to perform all duties and responsibilities under this contract without degradation and in accordance with the terms of this contract.

D. **Technology Assets:** CONTRACTOR warrants and represents that it owns or has timely access to the technological assets necessary to meet the standards of performance under this contract. CONTRACTOR agrees to advise CCG, in writing, about any changes in its technology assets that may affect its performance under this contract.

E. **Proprietary and Confidential Information:** CONTRACTOR warrants and represents that any information that is proprietary or confidential, and is received by CONTRACTOR from the CCG or any governmental entity, shall not be disclosed to third parties without the written consent of the CCG or applicable governmental entity, whose consent shall not be unreasonably withheld.

F. **Contract Administration:** (1) *Contract Administrator:* CCG designates the TWDB as the Contract Administrator. TWDB, in coordination with CCG, shall manage the CONTRACTOR's compliance with the terms of this contract and shall manage any amendments, renewals or termination of this contract.

(2) *Point of Contact:* The CONTRACTOR shall designate a Point of Contact for this CONTRACT and for any task or statement of work (SOW) issued pursuant to this contract. The Point of Contact shall coordinate the work under this contract, shall be a liaison to the CCG, and shall provide timely responses to the CCG's requests for information necessary to ensure compliance with this contract. The CCG and the CONTRACTOR agree to advise each other promptly of any change in the designation of their Point of Contact.

ARTICLE V. STATEMENT OF WORK (SOW)

5.01. **MASTER CONTRACT.** This CONTRACT is a Master Contract under which the CCG shall, from time to time, issue SOW describing the specific work to be performed. All the terms and conditions of this CONTRACT shall be applicable to each SOW.

5.02. **RESPONSE TO STATEMENT OF WORK.** Each CONTRACTOR who is a party to this contract may provide a proposal for any SOW issued under this contract.

5.03. The CCG shall issue detailed procedures on procurements under this contract.

ARTICLE VI. REQUIRED REPORTS

6.01. **REPORTS.** At the discretion of the CCG, the CONTRACTOR shall provide Interim Progress Reports, as more fully described in the written communication requesting such reports.

6.03. **CCG Review of DRAFT FINAL REPORT:** The CCG may, in its discretion, request an opportunity to review the CONTRACTOR's final report prior to submission.

ARTICLE VII. REMEDIES, DISPUTES, STOP WORK ORDERS

7.01. UNDERSTANDING AND EXPECTATIONS. The remedies described in this Section contemplate CONTRACTOR's timely and responsive performance of the services and production of deliverables, and the creation of a flexible and responsive relationship between the Parties.

7.02. REMEDIES.

A. Notice and opportunity to cure breach or deficiency.

- (1) CCG shall provide written notification to the CONTRACTOR of a breach of contract or a deficiency in performance and shall include specific areas of CONTRACTOR performance that fail to meet expectations, standards, or schedules in the statement of work.
- (2) CONTRACTOR will, within three (3) business days of receipt of written notice of a breach or deficiency, provide the CCG a written response that:
 - (a) Explains the reasons for the breach or deficiency, CONTRACTOR's corrective action plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or
 - (b) If CONTRACTOR disagrees with CCG's findings, its reasons for disagreeing with CCG's findings.
- (3) CONTRACTOR's proposed cure of a breach or deficiency is subject to the approval of CCG. CONTRACTOR's repeated commission of breaches or deficiencies or repeated failure to resolve any such deficiencies may result in termination under Article III of this contract and any purchase order executed hereunder at no cost to the state.

B. Corrective action plan.

- (1) The CONTRACTOR shall submit a detailed, written Corrective Action Plan (Plan) to correct any deficiency or breach of this contract.
- (2) The Plan must provide:
 - (a) A detailed explanation of the reasons for the cited deficiency;
 - (b) CONTRACTOR's assessment or diagnosis of the cause; and,
 - (c) A specific proposal to cure or resolve the deficiency.
- (3) The Plan must be submitted to the CCG by the date in CCG's request and the Plan must be approved by CCG prior to any action on the plan by CONTRACTOR.
- (4) Upon receipt of the Plan, CCG may:
 - (a) Reject all of any part of the Plan;
 - (b) Condition such approval on completion of tasks in the order or priority that CCG may reasonably prescribe; and
 - (c) Require additional or amended parts of the Plan.
- (5) At any time during this process, CCG reserves the right to:
 - (a) Suspend all, or part of, this contract pursuant to subsection (c), and to withhold further payment for the suspended portions of this contract; or
 - (b) Prohibit CONTRACTOR from incurring additional obligations of funds during investigation of the corrective action, if necessary, by CONTRACTOR or a decision by CCG to terminate for cause.
- (6) If CCG rejects CONTRACTOR's written explanation or proposed Plan, CCG may issue a written Stop Work Order on some or all portions of the work to CONTRACTOR or any of its agents, or Subcontractors or suppliers. CCG may delay the implementation of the Stop Work Order if it affects the completion of any of the Services in accordance with the approved Schedule or Work Plan.
- (7) CCG's acceptance of a Corrective Action Plan shall not:
 - (a) Excuse CONTRACTOR's prior substandard performance;
 - (b) Relieve CONTRACTOR of its duty to comply with performance standards; or
 - (c) Prohibit CCG from pursuing other appropriate remedies for continued substandard performance.

C. Stop Work Order

(1) Stop Work Order. The CCG may issue a Stop Work Order (SWO), in writing, to the CONTRACTOR at any time. The Stop Work Order shall provide the CONTRACTOR with notice of the facts underlying the determination to issue the SWO. The SWO may require an immediate cessation of work or the cessation of work at a definite future date. The SWO shall provide the CONTRACTOR with a definite reasonably limited time to cure the conditions underlying the SWO.

(2) CONTRACTOR'S Response. CONTRACTOR shall respond to the SWO, in writing, and shall provide the CCG with a detailed plan to address and cure the conditions underlying the SWO. The CONTRACTOR shall provide the response within three (3) business days from his receipt of the SWO.

(3) CCG's Reply. The CCG may accept, reject upon a reasonable basis, or amend the CONTRACTOR'S request for opportunity to cure and shall provide notice of such action to the CONTRACTOR within three business days of receipt of the response. The CCG may issue an amended SWO that allows resumption of work contingent upon the CONTRACTOR'S execution of the plan to cure. The amended SWO may modify the CONTRACTOR's plan to cure only in a manner consistent with the terms and conditions of this CONTRACT.

(4) CONTRACTOR's Option. CONTRACTOR shall notify the CCG within three (3) business days whether he accepts the amended SWO. If CONTRACTOR does not accept the amended SWO, the CCG shall terminate this CONTRACT. Upon successful completion of the plan to cure the conditions underlying the SWO, CONTRACTOR shall continue work to complete all obligations under this CONTRACT.

7.03. CONTRACTOR'S PERFORMANCE. (1) A complete failure of performance means that the CONTRACTOR does not deliver the product or services within the time required.

(2) A partial failure of performance means that the CONTRACTOR delivers a partial product or service within the time required and the CONTRACTOR advises that no further services or products will be forthcoming under this Contract or any purchase order hereunder.

(3) Failure to meet a critical deadline means that the CCG has specified that time is of the essence in the performance of a particular service or delivery of particular goods and that the CONTRACTOR does not meet the critical time deadline.

(4) Failure to properly cure a material breach or deficiency means that CONTRACTOR, after notice and opportunity to cure under this Article VII has failed to meet the requirements of the CCG.

7.04. DAMAGES. CCG will be entitled to actual and all other damages allowed by law resulting from the CONTRACTOR'S failure to comply with any of the terms of this contract.

7.05. CONTRACTOR RESPONSIBILITY FOR RE-PROCUREMENT COSTS. If CCG terminates this contract for CONTRACTOR'S complete or partial failure to perform, the CONTRACTOR will be responsible to CCG for all reasonable costs incurred by CCG to replace the CONTRACTOR. These costs include, but are not limited to, the costs of procuring a substitute CONTRACTOR and the cost of any claim or litigation that is reasonably attributable to CONTRACTOR'S material failure to perform any service or provide any deliverable in accordance with the terms of this contract. This section does not require CONTRACTOR to pay for work performed by a substitute contractor, other than contract damages allowed by law.

7.06. DISPUTE RESOLUTION. The Parties agree to undertake good faith negotiations in response to any dispute about the responsibilities of either Party under this contract. Prior to formally instituting a claim or litigation, the Parties will engage in appropriate alternative dispute resolution processes. CONTRACTOR'S legal remedies for any dispute arising out of this contract are contained in Texas Government Code, chapter 2260.

ARTICLE VIII. COMPENSATION, REIMBURSEMENT AND REPAYMENT

8.01. **GENERAL TERMS OF COMPENSATION.** The CCG agrees to compensate the CONTRACTOR in a total amount not to exceed the amount agreed in a purchase order relating to a particular statement of work.

8.02. **RETAINAGE.** The CCG shall reimburse the CONTRACTOR for ninety percent (90%) of each invoice for the CONTRACTOR's performance of work. Upon completion of an acceptable final report and, within ninety (90) days of CCG's written acceptance of the final deliverables the CCG shall release the remaining ten percent (10%) of each invoice to the CONTRACTOR. However, if the final deliverables require major revisions or contain material errors, then CCG shall withhold final payment and release of retainage pending receipt of any further required work and corrections to the final deliverables.

8.03. **MOST FAVORED CUSTOMER.** The CONTRACTOR agrees that if during the term of this Contract, the CONTRACTOR enters into any contract with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, this Contract will, at CCG's option, be amended to accord equivalent lower prices to CCG's and Participating Agencies.

8.04. **EXPENSES.** Except as provided in its Offer, all other expenses incurred by the CONTRACTOR in connection with its provision of the Services or Deliverables will not be reimbursed by CCG unless agreed upon by CCG. CONTRACTOR will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its employees, agents and Subcontractors. In addition, the costs associated with transportation, delivery, and insurance for each Deliverable will be paid for by CONTRACTOR.

8.05. **PROMPT PAYMENT.** Properly prepared invoices shall be processed for payment in accordance with State procedures and the Texas Government Code, chapter 2251.

8.06. **DISPUTED FEES OR PAYMENTS.** If CCG disputes payment of all or any portion of an invoice from the CONTRACTOR, CCG will notify the CONTRACTOR of such dispute and both Parties will attempt in good faith to resolve the dispute. CCG will not be required to pay any disputed portion of a CONTRACTOR invoice. Notwithstanding any such dispute, the CONTRACTOR must continue to perform the Services and produce Deliverables in compliance with the terms of this Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to CONTRACTOR. CONTRACTOR may dispute the amounts of payments received through the procedures in the Texas Government Code, chapter 2251.

ARTICLE IX. INTELLECTUAL PROPERTY Ownership, Publication, Acknowledgement

9.01. **OWNERSHIP OF GOODS AND SERVICES.** (a) Subject to CCG's compliance with its payment obligations as set forth herein, the CCG shall own, and CONTRACTOR hereby assigns to the CCG, all right, title, and interest in all goods to be delivered; and all other related work product prepared, or in the course of preparation, by CONTRACTOR (or its subcontractors) pursuant to this Contract, together with all related worldwide intellectual property rights of any kind or character (collectively, the "Work Product"). Under no circumstance will any license fee, royalty, or other consideration not specified in this Contract be due to CONTRACTOR for the assignment of the Work Product to the CCG or for the CCG's use and quiet enjoyment of the Work Product in perpetuity. CONTRACTOR shall promptly submit all Work Product to the CCG upon request or upon completion, termination, or cancellation of this Contract for any reason, including all copies in any form or medium.

(b) CONTRACTOR shall not use, willingly allow, or cause such Work Product to be used for any purpose other than performance of CONTRACTOR's obligations under this Contract without the prior written consent of the CCG. Work Product is for the exclusive use and benefit of, and may be relied upon only by, the CCG. Prior to distributing any Work Product to any third party, the CCG shall advise such third parties that if it relies upon or uses such Work Product, it does so entirely at its own risk without liability to CONTRACTOR or the CCG.

9.02. INFRINGEMENT AND MISAPPROPRIATION. (a) CONTRACTOR warrants that all Deliverables provided by CONTRACTOR will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trademark, trade secret, or other intellectual property rights.

(b) CONTRACTOR will, at its expense, defend with counsel approved by CCG, who shall not unreasonably withhold such approval, indemnify, and hold harmless the State, the CCG and Participating Agencies, their employees, officers, directors, and agents from and against any losses, liabilities, damages, penalties from any claim or action against the State, the CCG that is based on a claim of breach of the warranty set forth in the preceding paragraph. CCG will promptly notify CONTRACTOR in writing of the claim, provide CONTRACTOR a copy of all information received by CCG with respect to the claim, and cooperate with CONTRACTOR in defending the claim.

(c) In case the Deliverables, or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to CONTRACTOR to be likely to be brought, CONTRACTOR will, at its own expense, either:

- (1) Procure for CCG the right to continue using the Deliverables; or
- (2) Modify or replace the Deliverables to comply with the Specifications and to not violate any intellectual property rights.

9.03. EXCEPTIONS. CONTRACTOR is not responsible for any claimed breaches of the warranties set forth in Article XI to the extent caused by:

(a) Modifications made to the Services or Deliverables in question by anyone other than CONTRACTOR or its agents or Subcontractors, the State, the CCG or any person working at CONTRACTOR's direction or in accordance with the specifications; or

(b) The combination, operation, or use of the item with other items if CONTRACTOR did not supply or approve for use with the item; or

(c) The State's, the CCG's failure to use any new or corrected versions of the item made available by CONTRACTOR.

9.04. RIGHTS IN DATA. (a) CCG will be and remain the owner of all data made available by CCG to CONTRACTOR or its agents, Subcontractors or representatives pursuant to the Contract. CONTRACTOR will not use CCG data for any purpose other than providing the Services or Deliverables. The CONTRACTOR shall not allow any part of CCG data to be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of CONTRACTOR, nor will any employee of CONTRACTOR other than those on a strictly need to know basis have access to CCG or Participating Agency data. CONTRACTOR will not possess or assert any lien or other right against CCG data. Without limiting the generality of this Section, CONTRACTOR will only use personally identifiable information as strictly necessary to provide the Services and will disclose such information only to its employees who have a strict need to know such information. CONTRACTOR will comply at all times with all State and Federal laws and regulations applicable to such personally identifiable information.

(b) CCG is and will remain the owner of all CCG data pursuant to the Contract. CCG or may use the data provided by the CONTRACTOR for any purpose. CCG will not possess or assert any lien or other right against the CONTRACTOR's data.

9.05. OWNERSHIP OF PRE-EXISTING MATERIALS. CCG and CONTRACTOR will continue to own their respective proprietary technologies developed before entering into the Contract. Any equipment bought through the CONTRACTOR by CCG and paid for by CCG will be owned by CCG. Any software licensed through the CONTRACTOR and sold to CCG will be licensed directly to CCG.

9.06. THIRD PARTY COMMERCIAL SOFTWARE. Where applicable and necessary, all third-party commercial software used in performing the Services will be provided to CCG under a separate license contract between the CCG and the owner (or authorized licensor) of such software.

9.07. PRE-EXISTING MATERIALS FOR CUSTOM SOFTWARE. Neither CONTRACTOR nor any of its agents, or representatives, or its Subcontractors will incorporate any pre-existing materials (including third-party commercial software) into Deliverables or Services or use any pre-existing materials to produce Deliverables or Services if such pre-existing materials will be needed by CCG in order to use the Deliverables or Services unless (i) such pre-existing materials and their owners are identified to CCG in writing, and (ii) such pre-existing materials are either readily commercially available products for which CONTRACTOR or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by CCG) in the name of CCG, or are materials that CONTRACTOR or its Subcontractor, as the case may be, has the right to license to CCG and has licensed to CCG on terms and conditions approved by CCG prior to using such pre-existing materials to perform the Services or Deliverables.

ARTICLE X. INSURANCE and INDEMNIFICATION

10.1. INSURANCE: CONTRACTOR shall acquire, for the duration of this Contract, insurance and/or bonds, with financially sound and reputable independent insurers authorized or licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry. Furthermore, CONTRACTOR shall submit evidence of insurance as required under this Contract, including (if requested) a schedule of coverage (or "underwriter's schedules") establishing to the satisfaction of the CCG the nature and extent of coverage granted by each such policy. In the event that any policy is determined to be deficient to comply with the terms of this Contract, CONTRACTOR shall secure such additional policies or coverage as the CCG may reasonably request or that are required by law or regulation. If coverage expires during the term of this contract, CONTRACTOR must produce within a reasonable time renewal certificates for each type of coverage.

10.2. TYPES OF INSURANCE. CONTRACTOR shall acquire:

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

The limits of liability of Workers' Compensation Insurance will be not less than the limits required by applicable Law.

The limit of liability of Employer's Liability Insurance with minimum limits of \$1,000,000 per employee by accident / \$1,000,000 per employee by disease (or, if higher, the policy limits required by applicable Law).

(b) Commercial General Liability Insurance (including coverage for Contractual Liability assumed by CONTRACTOR under this Contract, Premises-Operations, Completed Operations-Products, Independent Contractors, and explosion, collapse, and underground property damage hazards) providing coverage for bodily injury, personal injury and property damage with combined single limits of not less than \$5,000,000 per occurrence. This coverage may be provided with a combination of primary and excess insurance policies.

- (c) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, except as may otherwise be required by Law.
- (d) Professional Liability (also known as Errors and Omissions Liability) covering acts, errors and omissions arising out of CONTRACTOR's operations or Services in an amount not less than \$5,000,000 per claim or per occurrence.
- (e) All-risk property insurance covering loss or damage to CONTRACTOR owned or leased Equipment and other assets in an amount not less than the full replacement cost of such Equipment and assets.
- (f) Furthermore, CONTRACTOR shall submit evidence of insurance as required under this Contract, including (if requested) a schedule of coverage (or "underwriter's schedules") establishing to the satisfaction of CCG the nature and extent of coverage granted by each such policy. In the event that any policy is determined to be deficient to comply with the terms of this Contract, CONTRACTOR shall secure such additional policies or coverage as the CCG may reasonably request or that are required by law or regulation. If coverage expires during the term of the contract, CONTRACTOR must produce renewal certificates for each type of coverage.

10.3 APPROVED COMPANIES. All such insurance will be procured with reputable insurance companies and in such form as is usual and customary to CONTRACTOR's business. Such insurance companies will maintain a rating of at least "A" and be at least a Financial Size Category VIII as both criteria are defined in the most current publication of Best's Policyholder Guide.

10.4. ENDORSEMENTS. Contractor will obtain the following endorsements to its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements stated herein.

(a) CONTRACTOR's Commercial General Liability and Automobile Liability insurance policies as required herein shall name CCG and any other applicable governmental entity, as requested, and their respective officers, directors, and employees as Additional Insured's for any and all liability arising at any time in connection with the performance of CONTRACTOR or CONTRACTOR Personnel under this Contract. These policies will have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

CONTRACTOR insurance policies required herein will name CCG and Customers and their respective officers, directors and employees as loss payees for any and all liability arising at any time in connection with the performance of CONTRACTOR or CONTRACTOR Personnel under this Contract.

(b) Each policy will provide that it will not be canceled or materially altered except after ten (10) days advance written notice to CCG. Should any policy expire or be canceled during the Term and should CONTRACTOR thereafter fail to immediately procure replacement insurance as specified, CCG reserves the right (but not the obligation) to procure such insurance and to deduct the cost thereof from any sums due CONTRACTOR under this Contract.

(c) All insurance required under this article will be primary insurance and any other valid insurance existing for CCG's benefit will be excess of such primary insurance.

10.5. MINIMUM AMOUNTS, SELF-INSURANCE. These insurance provisions set forth the minimum amounts and scopes of coverage to be maintained by CONTRACTOR and are not to be construed in any way as a limitation on CONTRACTOR's liability under this Contract. CONTRACTOR will not self-insure any of its obligations under this Contract without full disclosure to CCG of its intention to self-insure. Any and all deductibles in the above-referenced insurance policies will be assumed by, for the account of, and at the sole risk of the CONTRACTOR.

10.6. CERTIFICATES. CONTRACTOR will provide CCG with certificates of insurance evidencing compliance with this article and evidence of renewal of insurance signed by authorized representatives of the respective carriers for each year that this contract is in effect. The failure of CCG to obtain such evidence from CONTRACTOR before permitting CONTRACTOR to commence work will not be deemed to be a waiver by CCG and CONTRACTOR will remain under continuing obligation to maintain and provide proof of the insurance coverage.

10.7. NO IMPLIED LIMITATION. The obligation of CONTRACTOR to provide the insurance specified herein will not limit or expand in any way any obligation or liability of CONTRACTOR provided elsewhere in this contract. The rights of CCG to insurance coverage under policies issued to or for the benefit of one or more of them are independent of this Contract will not be limited by this Contract.

10.8. WAIVER OF SUBROGATION. With respect to insurance coverage to be provided by CONTRACTOR pursuant to this article, the insurance policies will provide that the insurance companies waive all rights of subrogation against CONTRACTOR, the State, CCG and its respective officers, directors and employees. CONTRACTOR waives its rights to recover against CCG its respective officers, directors, employees, agents, successors and assigns in subrogation or as subrogee for another party.

10.9. RISK OF LOSS. Each Party will be responsible for risk of loss of, and damage to, any Equipment Materials, or other items in its possession or under its control. CONTRACTOR will be deemed to possess and control all Equipment, Materials, and other items located in CONTRACTOR Facilities or in CCG Facilities used by CONTRACTOR to provide the Services. Each Party will promptly notify the other of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of any such Equipment, Materials, and other items in the possession or under the control of such Party, whether or not insured against by such Party, whether partial or complete, which is caused by any act, omission, fault or neglect of such Party ("Event of Loss"). Each Party will promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party's tangible property or real property (whether owned or leased).

10.10. WAIVER. CONTRACTOR and CCG each waive all rights to recover against the other Party for damage, destruction, loss, theft, or governmental taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. CONTRACTOR will cause its insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies.

10.11. ALTERNATE METHODS FOR INSURANCE. Notwithstanding the preceding, the CCG reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies customarily required. It will be Respondent's responsibility to recommend to the CCG alternative methods of insuring the contract. Any alternatives proposed by Respondent should be accompanied by a detailed explanation regarding Respondent's inability to obtain the required insurance and/or bonds. The CCG shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

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10.12. INDEMNIFICATION: THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE CCG AND THE STATE OF TEXAS HARMLESS, FROM ANY AND ALL LOSSES, DAMAGES, LIABILITY, OR CLAIMS THEREFORE, FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER TO THE EXTENT CAUSED BY THE CONTRACTOR'S PERFORMANCE OF SERVICES ARISING OUT OF THE ACTIVITIES AND WORK CONDUCTED PURSUANT TO THIS CONTRACT.

ARTICLE XI. WARRANTIES

11.01. WORKMANSHIP AND PERFORMANCE. CONTRACTOR warrants that all services provided by CONTRACTOR under this Contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. CONTRACTOR warrants that all Deliverables, and work products under this Contract shall be completed in a manner consistent with standards in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments, and shall be fit for ordinary use, of good quality, and with no material defects. If CONTRACTOR fails to provide or satisfactorily perform any of the conditions, work, or Deliverables called for by this Contract within the time requirements specified in this Contract the CCG may require CONTRACTOR to: (i) repair or replace, at CONTRACTOR's expense, any or ;all defective or damaged Deliverables; and/or (ii) take necessary action to ensure that future performance conforms to the Contract requirements at CONTRACTOR's sole expense.

11.03. MANUFACTURER'S WARRANTIES. CONTRACTOR assigns to the State all of the manufacturers' warranties and indemnities relating to all products, including without limitation, Third Party Software to the extent CONTRACTOR is permitted by the manufacturers to make such assignments to the State. Such assignment is subject to all of the terms and conditions imposed by the manufacturers with respect thereto. CONTRACTOR shall comply with any conditions required to ensure the coverage under such warranties.

ARTICLE XII. GENERAL TERMS AND CONDITIONS

12.01. FUNDING. Based on the limits of the Texas Constitution, this contract is expressly conditioned on the availability of State and Federal appropriated funds. CONTRACTOR will have no right of action against CCG in the event that CCG is unable to perform its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to CCG or lack of sufficient funding of CCG for any activities or functions contained within the scope of this contract.

12.02. NO WAIVER OF SOVEREIGN IMMUNITY. The Parties expressly agree that no provision of this contract is in any way intended to constitute a waiver by CCG or the State of Texas or any agency of the State of Texas of any immunities from suit or from liability that CCG or the State of Texas may have by operation of law.

12.03. *FORCE MAJEURE*. Neither Party will be liable for any failure or delay in performing its obligations under this Contract if such failure or delay is due a *Force Majeure* event. *Force Majeure* includes, but is not limited to, acts of God, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, and any other inability of either party to carry out its obligations under this Contract,

except strikes or labor disputes and breakage or damage to machinery or equipment, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, and which by exercise of due diligence and care such party could not have avoided. In the event either party is rendered unable, wholly or in part, by *Force Majeure* to carry out its obligations under this Contract, it is agreed that upon such party giving notice and full particulars of such *Force Majeure* in writing to the other party as soon as possible, but no later than 5 business days after the occurrence of the *Force Majeure*, then the obligations of the party giving such notice, to the extent it is affected by *Force Majeure* and the extent that due diligence is being used to resume performance, shall be suspended for the duration of the *Force Majeure*. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

12.04. PUBLICITY. (a) Except as provided in the paragraphs below, CONTRACTOR must not use the name of CCG, the State of Texas, or any other State agency, or refer to CCG or any such agency directly or indirectly in any media release, public announcement, or public disclosure relating to this Contract or its subject matter, including, but not limited to, in any promotional or marketing materials, customer lists, or business presentations (except for proposals or reports required to be submitted to CCG or a governmental agency or unit of another State or the Federal government).

(b) CONTRACTOR may publish, at its sole expense, results of CONTRACTOR performance under this Contract with CCG's prior review and approval, which CCG may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from CCG. CONTRACTOR will provide CCG at least three (3) copies of any such publication no less than five (5) business days prior to public release. CONTRACTOR will provide additional copies at the request of CCG.

(c) CONTRACTOR may include information concerning this Contract's terms, subject matter, and estimated value in any report to a governmental body to which the CONTRACTOR is required by law to report such information.

12.05. ASSIGNMENT. **A. Assignment by CONTRACTOR.** CONTRACTOR will not assign all or any portion of its rights under or interests in this Contract or delegate any of its duties without prior written consent of CCG, who shall not unreasonably withhold such consent. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed in writing by CCG, assignment or delegation will not release CONTRACTOR from its obligations pursuant to this contract.

B. Assumption. Any assignee of a Party must assume all or any part of CONTRACTOR's or the State's interests in this Contract, the services, and any documents executed with respect to this Contract, including, without limitation, its obligation for all or any portion of the payments, in whole or in part.

12.06. COOPERATION WITH OTHER CONTRACTORS. (a) CCG may award supplemental contracts for work related to this contract or any portion thereof. CCG reserves the right to award a contract to two or more potential CONTRACTORS, if such an arrangement is in the best interest of CCG. CONTRACTOR will agree to cooperate with such other CONTRACTORS, and will not commit or permit any act that may interfere with the performance of work by any other CONTRACTOR.

12.07. RENEGOTIATION AND RE-PROCUREMENT RIGHTS. **A. Renegotiation of Contract terms.** Notwithstanding anything in this Contract to the contrary, CCG may at any time during the term of this Contract exercise the option to notify CONTRACTOR that CCG has elected to

renegotiate certain terms of this Contract. Upon CONTRACTOR's receipt of any notice pursuant to this Section, CONTRACTOR and CCG will undertake good faith negotiations of the subject terms of this Contract.

B. Re-procurement of the services or procurement of additional services. Notwithstanding anything in this Contract to the contrary, whether or not CCG has accepted or rejected CONTRACTOR's goods or services provided during any period of this Contract, CCG may at any time issue requests for proposals or offers to other potential contractors for performance of any portion of the Services covered by this Contract or services similar or comparable to the Services performed by CONTRACTOR under this Contract.

C. Termination rights upon re-procurement. If CCG elects to procure goods or services or any portion of the goods or services from another CONTRACTOR in accordance with this Section, CCG will have the termination rights set forth in this Contract.

12.08. ERRORS AND OMISSIONS. CONTRACTOR will not take advantage of any errors and omissions in any RFO or this Contract. CONTRACTOR must promptly notify CCG of any errors and omissions that are discovered.

12.09. PURCHASING PREFERENCES. CONTRACTOR is required in performing this Contract to purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside the State.

12.10. CONTRACTOR'S PERSONNEL.

(a) Under no circumstances will CONTRACTOR's employees, agents and Subcontractors be considered employees of CCG or the State of Texas, but will be considered CONTRACTOR's employees, agents within the scope of their authority or Subcontractors for all purposes.

(b) Except as expressly provided in this Contract, neither CONTRACTOR nor any of CONTRACTOR's employees, agents or Subcontractors may act in any sense as agents or representatives of CCG or the State of Texas.

(c) CONTRACTOR's employees, agents or Subcontractors must be paid exclusively by CONTRACTOR for all services performed. CONTRACTOR is responsible for and must comply with all requirements and obligations related to such employees, agents or Subcontractors under local, State or Federal law, including minimum wage, social security, unemployment insurance, State and Federal income tax and workers' compensation obligations.

(d) CONTRACTOR assumes sole and full responsibility for its acts and the acts of its employees, agents and Subcontractors.

(e) CONTRACTOR agrees that any claim on behalf of any person arising out of employment, alleged employment (including, but not limited to, claims of discrimination against CONTRACTOR, its officers, or its agents), agency or subcontracts are the sole responsibility of CONTRACTOR and are not the responsibility of the State, and that CONTRACTOR will indemnify and hold harmless the State from any and all such claims asserted against the State. CONTRACTOR understands that any person who alleges a claim arising out of employment, alleged employment, agency, or subcontract by CONTRACTOR will not be entitled to any compensation, rights, or benefits from the State (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

12.11. COOPERATION WITH CCG AND OTHER ENTITIES.

A. Cooperation with CCG contractors. CONTRACTOR agrees to reasonably cooperate with and work with the State's contractors, Subcontractors, and third-party representatives as requested by CCG. To the extent permitted by CCG's financial and personnel resources, CCG agrees to reasonably cooperate with CONTRACTOR and to use its reasonable efforts to ensure that CCG's contractors reasonably cooperate with CONTRACTOR.

B. Cooperation with State and Federal administrative agencies.

CONTRACTOR must ensure that CONTRACTOR employees, agents and Subcontractors will cooperate with CCG or other State or Federal administrative agency personnel at no charge to the State for purposes relating to the administration of State programs including, but not limited to the following purposes:

- (1) The investigation and prosecution of fraud, abuse, and waste in the State's programs;
- (2) Audit, inspection, or other investigative purposes; and
- (3) Testimony in judicial or quasi-judicial proceedings relating to the Services under this Contract or other delivery of information to CCG or other agencies' investigators or legal staff.

12.12. CONDUCT OF CONTRACTOR'S EMPLOYEES.

(a). While performing the Services, CONTRACTOR's employees, agents and Subcontractors must:

- (1) Comply with applicable State rules, and regulations and the State's requests regarding personal and professional conduct generally applicable to the service locations; and
- (2) Otherwise conduct themselves in a businesslike and professional manner.

(b). If CCG determines, in its sole discretion, that a particular employee, agent, or Subcontractor is not conducting himself in accordance with this Section, CCG may provide CONTRACTOR with notice and documentation concerning such conduct. Upon receipt of such notice, CONTRACTOR must promptly investigate the matter and take appropriate action that may include:

- (1) Removing the employee, agent or Subcontractor from the project;
- (2) Providing CCG with written notice of such removal; and
- (3) Replacing the employee, agent or Subcontractor with a similarly qualified individual acceptable to CCG.

(c). Nothing in this Contract will prevent CONTRACTOR, at the request of CCG, from replacing any employee, agent or Subcontractor who is not adequately performing assigned responsibilities or who, in the opinion of CCG, after consultation with CONTRACTOR, are unable to work effectively with the members of the contracted agency's staff. In such event, CONTRACTOR will provide replacement employee, agent, or Subcontractor with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of Key Personnel will be subject to CCG review and approval. The Parties will work together in the event of any such required replacement so as not to disrupt the project schedule.

(d). CONTRACTOR agrees that anyone employed by CONTRACTOR to fulfill the terms of this Contract is an employee, agent or Subcontractor of CONTRACTOR and remains under CONTRACTOR'S sole direction and control.

12.13. RESPONSIBILITY FOR SUBCONTRACTORS. CONTRACTOR remains fully responsible for obligations, services, and functions performed by its Subcontractors to the same extent as if such obligations, services, and functions were performed by CONTRACTOR's employees or agents and for purposes of this Contract such work will be deemed work performed by CONTRACTOR. CCG reserves the right to require the replacement of any Subcontractor found by CCG to be unacceptable.



12.14. NO INTERFERENCE WITH CCG CONTRACTING. The CONTRACTOR may not limit or restrict, through a covenant not to compete, employment contract or other contractual arrangement, the State's ability to contract with Subcontractors or former employees or agents of the CONTRACTOR.

12.15. GOVERNING LAW AND VENUE. This Contract is governed by the laws of the State of Texas without regard to conflict of laws principles, and is to be interpreted in accordance with Texas law. Any litigation arising out of this contractual relationship between CONTRACTOR and CCG shall be filed only in the appropriate court in Travis County, Texas

12.16. CONTRACTOR'S RESPONSIBILITY TO COMPLY. (a) CONTRACTOR is solely responsible for compliance with all laws and regulations that govern the performance of the Services including, but not limited to, all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions.

(b) CONTRACTOR is responsible for ensuring each of its employees, agents, or Subcontractors who provide Services under this Contract are properly licensed, certified, and have proper permits to perform any activity related to the Services.

12.17. CONTRACTOR'S RESPONSIBILITY TO COMPLY WITH IMMIGRATION LAW. CONTRACTOR will comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C. §1101, *et seq.*), as amended and as superseded by other law regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Contract.

12.18. EQUAL EMPLOYMENT OPPORTUNITY. CONTRACTOR agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including Federal or State laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the CONTRACTOR agrees that no person in the United States will, on the grounds of race, color, religion, national origin, sex, sexual orientation, age, veteran status, or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by CONTRACTOR under this Contract. If CONTRACTOR is found to be not in compliance with these requirements during the term of this Contract, CONTRACTOR agrees to take appropriate steps to correct these deficiencies. Upon request, CONTRACTOR will furnish information regarding its non discriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

12.19. AMENDMENTS AND MODIFICATIONS. This contract may be amended only in writing signed by the Parties. The Parties agree to expeditiously execute any amendments or modifications required by changes in applicable laws. This Contract may be modified under the terms of Article VII relating to Remedies, Disputes, Stop Work Orders. The Parties agree to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties and for any other purpose the Parties agree to in writing.

12.20. COMPLIANCE WITH AMENDMENT AND MODIFICATION. No different or additional services, work, or products will be authorized or performed except pursuant to an amendment or modification of this Contract that is executed in compliance with the applicable terms of this contract. CONTRACTOR will not be entitled to payment for any services, work, or products that are not authorized by a properly executed amendment or modification, or through the express written authorization of CCG.



12.21. RECORDS RETENTION AND AUDIT. CONTRACTOR and its agents and Subcontractors agree to maintain supporting financial information and documents that are adequate to ensure contract compliance, and are sufficient to ensure the accuracy and validity of CONTRACTOR invoices. Such documents, including all original claims forms, will be maintained and retained by CONTRACTOR, its agents and Subcontractors for a period of five (5) years after the date of submission of the final billing or until the resolution of all litigation, claims, financial management reviews or audits pertaining to this Contract, whichever is longer. CONTRACTOR agrees to timely repay any undisputed audit exceptions taken by the State in any audit of this Contract.

12.22. ACCESS TO BOOKS, RECORDS AND DOCUMENTS. (a) Upon reasonable notice, CONTRACTOR must provide, and cause its agents and Subcontractors to provide authorized governmental officials with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of this Contract and any Scope of Work.

(b) CONTRACTOR and its agents and Subcontractors must provide the access described in this Section upon CCG's request. This request may be for, but is not limited to, the following purposes:

- (1) Examination;
- (2) Audit;
- (3) Investigation;
- (4) Contract administration; or
- (5) The making of copies, excerpts, or transcripts.

(c) The access required must be provided to the following officials and/or entities:

(1) Any independent verification and validation contractor or quality assurance contractor, when acting on behalf of CCG;

- (2) The Office of the State Auditor of Texas or its designee;
- (3) A State or Federal law enforcement agency;
- (4) A special or general investigating committee of the Texas Legislature or its designee;
- (5) Any auditor or other entity identified by CCG; and
- (6) The Council on Competitive Government or its designee.

(d) CONTRACTOR agrees, and will require its agents and Subcontractors, to provide the access described wherever CONTRACTOR maintains such books, records, and supporting documentation. CONTRACTOR further agrees, and will require its agents and Subcontractors, to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section.

12.23. STATE AUDITOR'S OFFICE. Acceptance of funds under the Contract by CONTRACTOR acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. CONTRACTOR, and its agents and Subcontractors, agree to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. CONTRACTOR will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through CONTRACTOR and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a CONTRACTOR that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

12.24. LIABILITY FOR WAGES, TAXES AND INSURANCE.

(a) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR WILL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTORS', AGENTS' AND SUBCONTRACTORS' 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. CONTRACTOR AGREES AND ACKNOWLEDGES THAT CONTRACTOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS WILL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. CCG AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, 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.

(b) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS CCG, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY CONTRACTOR, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN THEIR PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ANY ASSESSED FEES AND EXPENSES. THE DEFENSE WILL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

12.25. LIABILITY FOR EMPLOYMENT RELATED CHARGES AND BENEFITS.

CONTRACTOR will perform work under this Contract as an independent contractor and not as agent or representative of CCG. CONTRACTOR is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of this Contract. CCG or Participating Agency will not be liable for any employment-related charges or benefits of CONTRACTOR, such as workers compensation benefits, unemployment insurance and benefits, or fringe benefits.

12.26. NO ADDITIONAL CONSIDERATION. CONTRACTOR, agents and Subcontractors will not be entitled to nor receive from CCG any additional consideration, compensation, salary, wages, or any other type of remuneration for services rendered under this Contract. Specifically, CONTRACTOR will not be entitled by virtue of this Contract to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, the costs associated with transportation, delivery, and insurance relating to the CONTRACTOR's, agents' or Subcontractors' performance of this Contract will be paid for by the CONTRACTOR.

12.27. PUBLIC INFORMATION ACT REQUESTS.

(a) CONTRACTOR acknowledges that CCG is government agencies subject to the Public Information Act, Texas Government Code, chapter 552. CONTRACTOR also acknowledges that CCG will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Public Information Act. CCG agrees that they will promptly notify CONTRACTOR of a request for disclosure of public information filed in accordance with the Public Information Act that consists of the CONTRACTOR's Confidential Information, including

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data in which CONTRACTOR claims a proprietary or commercial interest. CCG will deliver all copies of requests for public information to CONTRACTOR.

(b). With respect to any information that is the subject of a request for disclosure, CONTRACTOR is required to demonstrate to the Texas Office of Attorney General the specific reasons why the requested information is confidential or otherwise excepted from required public disclosure under the Public Information Act. CONTRACTOR will provide CCG and the applicable Participating Agencies with copies of all such communications.

(c). To the extent authorized under the Public Information Act, CCG agree to safeguard from disclosure information received from CONTRACTOR that the CONTRACTOR believes to be Confidential Information. CONTRACTOR must clearly mark such information as Confidential Information or provide written notice to CCG that it considers the information confidential.

12.28. CONTRACTOR CERTIFICATIONS. CONTRACTOR certifies that it: (i) has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract, (ii) is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Family Code §231.006 and acknowledge this Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither it, nor anyone acting for it, has violated State or Federal antitrust laws, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) has not received payment from CCG or any of its employees for participating in the preparation of this Contract, (v) under Government Code, §2155.004, CONTRACTOR certifies that the individual or business entity named in this Proposal 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, (vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under this Contract, (vii) is not suspended or debarred from doing business with the Federal government as listed in the Excluded Parties List System (EPLS) maintained by the U.S. General Services Administration, (viii) as of the effective date of this Contract, is not listed in the prohibited CONTRACTORS list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control and (ix) under Government Code § 2155.006, CONTRACTOR certifies that the individual or business entity in this 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. In addition, CONTRACTOR acknowledges the applicability of Government Code §§2155.444 and 2155.4441 in fulfilling the terms of this Contract.

12.29. CONFLICTS OF INTEREST. (a) **Representation.** CONTRACTOR agrees to comply with applicable State and Federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under this Contract. CONTRACTOR warrants that it has no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this Contract.

(b) **General duty regarding conflicts of interest.** CONTRACTOR will establish safeguards to prohibit employees, agents, and Subcontractors from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. CONTRACTOR, agents, and Subcontractors will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Contract with the State.

12.30. ORGANIZATIONAL CONFLICTS OF INTEREST.

(a) Definition. An organizational conflict of interest is a set of facts or circumstances, a relationship, or other situation under which CONTRACTOR, agent, or Subcontractor has past, present, or currently planned personal or financial activities or interests that either directly or indirectly:

(1) Impairs or diminishes CONTRACTOR's, or Subcontractor's ability to render impartial or objective assistance or advice to CCG; or

(2) Provides the CONTRACTOR, agent, or Subcontractor an unfair competitive advantage in future procurements with CCG.

(b) Warranty. Except as otherwise disclosed and approved by CCG prior to the Effective Date of this Contract, CONTRACTOR warrants that, as of the Effective Date and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to organizational conflict of interest affecting this Contract. CONTRACTOR affirms that it has neither given, 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 or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant State and Federal law.

(c) Continuing duty to disclose. (1) CONTRACTOR agrees that, if after the Effective Date, CONTRACTOR discovers or is made aware of an organizational conflict of interest, CONTRACTOR will immediately and fully disclose such interest in writing to CCG. In addition, CONTRACTOR must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by CONTRACTOR, CCG, as a potential conflict. CCG reserves the right to make a final determination regarding the existence of conflicts of interest, and CONTRACTOR agrees to abide by CCG's decision.

(2) The disclosure will include a description of the action(s) that CONTRACTOR has taken or proposes to take to avoid or mitigate such conflicts.

(d) Remedy. If CCG determines that an organizational conflict of interest exists, CCG may, at its discretion, terminate the contract. If CCG determines that CONTRACTOR was aware of an organizational conflict of interest before the award of this Contract and did not disclose the conflict to the contracting officer, such nondisclosure will be considered a material breach of this Contract. Furthermore, such breach may be submitted to the Texas Office of the Attorney General, Texas Ethics Commission, or appropriate State or Federal law enforcement officials for further action.

(e) Flow down obligation. CONTRACTOR must include the provisions of this Section 12.28 in all agent contracts and subcontracts for work to be performed similar to the service provided by CONTRACTOR, and the terms "Contract," "CONTRACTOR," and "project manager" modified appropriately to preserve the State's rights.

12.31. CCG PERSONNEL RECRUITMENT PROHIBITION. CONTRACTOR has not retained or promised to retain any agent, Subcontractor, person, or company, or utilized or promised to utilize an agent, or a Subcontractor that participated in CCG's development of specific criteria of this Contract or who participated in the selection of the CONTRACTOR for this Contract.

CONTRACTOR will not recruit or employ any CCG or Participating Agency professional or technical personnel who have worked on projects relating to the subject matter of this Contract, or who have had any influence on decisions affecting the subject matter of this Contract, for two (2) years following the completion of this Contract.

12.32. ANTI-KICKBACK PROVISION. CONTRACTOR certifies that it will comply with the Anti-Kickback Act of 1986, 41 USC §51-58 and Federal Acquisition Regulation 52.203-7 where applicable.

12.33. DEBT OR TAXES OWED TO THE STATE OF TEXAS. In accordance with Government Code § 2252.903, CONTRACTOR agrees that any payments due to CONTRACTOR under this Contract will be first applied toward any debt and/or back taxes CONTRACTOR owes the State. CONTRACTOR further agrees that payments will be so applied until such debts and back taxes are paid in full.

12.34. CERTIFICATION REGARDING STATUS OF LICENCE, CERTIFICATE OR PERMIT. CONTRACTOR affirms and represents that CONTRACTOR has not been subjected to a revocation of any license, certificate or permit issued by an agency of the State of Texas.

12.35. OUTSTANDING DEBTS AND JUDGMENTS. CONTRACTOR certifies that it is not presently indebted to the State, and that CONTRACTOR is not subject to an outstanding judgment in a suit by the State against CONTRACTOR for collection of the balance. For purposes of this Section, indebtedness is any amount sum of money that is due and owing to the State and is not currently under dispute. A false statement regarding CONTRACTOR's status will be treated as a material breach of this Contract and may be grounds for termination at the option of CCG.

12.36. ANTI-TRUST. In submitting a proposal, and in accepting this Contract, Contractor certifies and agrees as follows:

(1) Neither the CONTRACTOR, nor agent, nor Subcontractor, nor the person represented by the CONTRACTOR, nor any person acting for the represented person has:

(a) violated the antitrust laws codified by Chapter 15, Texas Business & Commerce Code, or the Federal antitrust laws; or

(b) directly or indirectly communicated the Proposal or Offer associated with this Contract to a competitor or other person engaged in the same line of business.

(2) CONTRACTOR hereby assigns to CCG any and all claims for overcharges associated with this contract arising under the anti-trust laws of the United States, 15 U.S.C.A. Section 1, *et seq.* and the anti-trust laws of the State of Texas, TEX. BUS. & COMM. CODE ANN. Section 15.01, *et seq.*

12.37. RISK OF LOSS. During the period Deliverables are in transit and in possession of CONTRACTOR, its carriers, CCG, or Participating Agency, prior to being accepted by CCG or Participating Agency, CONTRACTOR will insure and bear the risk of loss or damage thereto, unless such loss or damage is caused by the negligence or intentional misconduct of CCG or Participating Agency. After CCG or Participating Agency accepts a Deliverable, the risk of loss or damage to the Deliverable will be borne by CCG or Participating Agency, except loss or damage attributable to the negligence or intentional misconduct of CONTRACTOR's agents, employees or Subcontractors.

ARTICLE XIII. SEVERABILITY

If any provision of this CONTRACT is found to be null, void, voidable, or for any reason whatsoever of no force and effect, then such provision shall be construed as severable from the remainder of this CONTRACT and shall not affect the validity of other provisions of this CONTRACT, which shall remain in full force and effect.



ARTICLE XIV. CORRESPONDENCE

All correspondence between the parties shall be made to the following addresses:

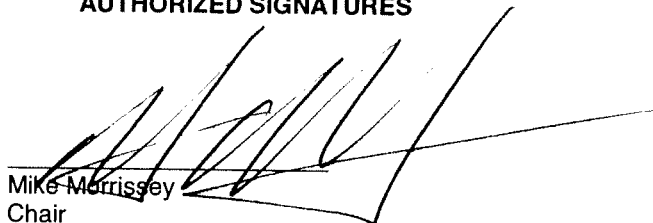
For the **CCG**:

Texas Water Development Board
Contract Administration
P. O. Box 13231
Austin, TX 78711-3231

For the **CONTRACTOR**:

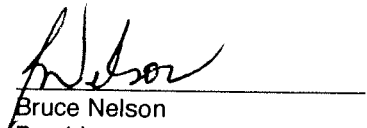
Terrapoint USA Inc.
25216 Grogan's Park Drive
The Woodlands, Texas 77380

AUTHORIZED SIGNATURES



Mike Morrissey
Chair
Council on Competitive Government
111 E. 17th Street
Austin, Texas 78711

Entered into this ____ day of _____, 2009
Austin, Texas



Bruce Nelson
President
Terrapoint USA Inc.
25216 Grogan's Park Drive
The Woodlands, Texas 77380

Entered into this 28th day of MAY, 2009

Austin, Texas