

**AGREEMENT
BETWEEN
THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
AND
KST DATA INC.
FOR
EQUIPMENT PROVISIONING SERVICES**

This agreement (“Contract”) for Equipment Provisioning Services is entered into by and between the Texas Comptroller of Public Accounts (“CPA”), an agency of the State of Texas, and KST Data Inc. (“Contractor”), located at 1121 S. Carroll Avenue, Suite 125, Southlake, TX 76092.

I. Recitals

Whereas, on October 17, 2018, CPA issued Price Request No. 304-18-0320SN to solicit pricing from qualified vendors to obtain Equipment Provisioning Services for ten (10) Kodak i4250 Scanners and two (2) Kodak Enhanced Printer Accessories (“PR”);

Whereas, on October 23, 2018, CPA issued Official Responses to Questions from Potential Respondents;

Whereas, on October 31, 2018 Contractor submitted an Offer in response to the PR;

Whereas, Contractor was selected as the Successful Respondent under the PR; and

Whereas, the parties desire to memorialize the negotiated terms and conditions of the agreement and to specify the order of priority of the contract documents.

Now, therefore, in consideration of the foregoing, the parties hereby agree as follows:

II. Purpose

Contractor shall provide Equipment Provisioning Services (“Services”) to CPA for the Equipment as described in this Contract. Services shall include, but not be limited to: equipment acquisition, deployment, maintenance and break/fix, replacement, inventory, reporting, unwinding, and contract management.

All of the below Attachments are attached to and incorporated as part of this Contract for all purposes:

- Attachment A: Equipment Specifications
- Attachment B: Price Sheet
- Attachment C: Stipulated Loss Schedule
- Attachment D: Confidential Treatment of Information Acknowledgement
- Attachment E: Nondisclosure Agreement
- Attachment F: Contractor’s DIR Contract No. DIR-TSO-3692

In the case of conflict, ambiguity or contradiction between this Contract and any of the attached Attachments, the documents will take precedence in accordance with the following order of priority:

1. This Contract, excluding its Attachments
2. Attachment A: Equipment Specifications

- 3.Attachment B: Price Sheet
- 4.Attachment C: Stipulated Loss Schedule
- 5.Attachment D: Confidential Treatment of Information Acknowledgement
- 6.Attachment E: Nondisclosure Agreement
- 7.Attachment F: Contractor's DIR Contract No. DIR-TSO-3692

III. Term

The Term of this Contract will be from the date of signing by the last Party to sign and continue through the Total Period of Performance for the Equipment, unless earlier terminated in accordance with this Contract. The term "Total Period of Performance" refers to the Initial Period of Performance and the Extended Period of Performance, if applicable, associated with the Equipment. The Initial Period of Performance for the Equipment will be the 48 month period that begins on the date CPA accepts the Equipment.

Termination of this Contract, or of any purchase order ("PO") resulting from this Contract, for any reason shall not release Contractor from any liability or obligation set forth in the PO that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

IV. General Description and Requirements for Services

A. EQUIPMENT. Contractor shall provide ten (10) Kodak i4250 Scanners ("the Scanners") and two (2) Kodak Enhanced Printer Accessories ("Scanner Accessories")(collectively, the "Equipment") which must, at a minimum meet all of the specifications set forth in Attachment A, Equipment Specifications. All Equipment provided by Contractor under this Contract shall be new from the manufacturer and not be refurbished, unless CPA specifically identifies the need for refurbished Equipment in a written request to Contractor.

1. Contractor shall furnish Scanner operating system licenses, and software licenses identified in Attachment A Equipment Specifications, and associated software maintenance.
2. Contractor shall furnish maintenance and replacement for Equipment provisioned under the terms of this Contract.
3. Substitute Hardware, Software, Services or Warranties. In the event CPA terminates or cancels this Contract for Contractor's nonperformance or for cause, CPA may procure, in a manner as it deems appropriate, substitute requested items similar to those that were terminated or cancelled and Contractor shall be liable to CPA for any excess or additional costs incurred by CPA in acquiring these requested items plus court costs and attorneys' fees. CPA's recovery of costs under this section is in addition to any other remedies available to CPA under the PO or under applicable law. Contractor's liability under this Contract is limited as set forth in Section XV. Limitation of Liability.
4. Optional Features, Products, or Services. Contractor has submitted pricing for the Optional Features, Products or Services offered in Price Schedule 4 of Attachment B (Price Sheet). If CPA directs Contractor to provide any Optional Features, Products or Services, the parties shall execute a signed amendment to this Contract and CPA must issue a valid Purchase Order (PO) for those Optional Features, Products or Services.

B. CPA LOCATION. Contractor shall provide the Services to CPA's primary location: LBJ State Office Building, 111 E. 17th Street, Austin, Texas.

C. CPA'S HOURS OF OPERATION. Contractor shall provide on-site maintenance / break-fix for the Equipment, via the OEM, during the hours identified in the Warranty & Service description provided in Attachment A, Equipment Specifications.

D. SCHEDULED CONFERENCES. During the course of this Contract, either Contractor or CPA may request a conference for the purpose of contract review, discussion of performance or other issues related to Services being provided to CPA. These conferences shall be coordinated by CPA and scheduled at times to be determined by CPA depending on planned agenda items. There are no additional charges for these conferences.

E. MATERIALS AND LABOR. Contractor shall furnish all supplies and/or Equipment to successfully perform the requirements as specified under this Contract. Contractor shall use proper materials in accordance with the manufacturer's maintenance directions and instructions. Contractor shall provide all necessary labor. CPA shall not be required to furnish any Equipment or tools to Contractor in order to perform this Contract, except as specifically provided for in this Contract.

F. CONTRACT ADMINISTRATION. Following acceptance by both parties of this Contract, Contractor shall contact CPA's Project Manager regarding matters of contract interpretation or problems regarding the terms, conditions or scope of the contract.

G. EQUIPMENT PROVISIONING SERVICES

1. Acquisition. Contractor shall provide ten (10) Scanners and two (2) Scanner Accessories that meet or exceed the minimum specifications set forth in Attachment A, Equipment Specifications. Contractor shall be responsible for ensuring that CPA has authorized access to ordered Equipment during the Period of Performance or Extended Period of Performance for the Equipment.

The prices provided in Attachment B, Price Sheet include all Equipment purchase or lease costs, standard OEM software required for purchase or lease, delivery charges and project management costs. All maintenance/ break/ fix Services provided by Contractor include all costs for Equipment hardware break/fix and troubleshooting hardware issues.

Contractor shall be solely responsible to CPA for all performances of Contractor's subcontractors, suppliers, business partners, and similar entities. Payments under this Contract shall be payable solely to Contractor. CPA shall not enter into any contract with Contractor's subcontractors, suppliers, business partners, financing companies, or similar entities. Contractor shall be solely responsible for all payments to its subcontractors, suppliers, business, partners, financing companies, or similar entities.

2. Delivery. Contractor shall be solely responsible to CPA for the following related to the delivery of all Equipment:
 - Including all standard common carrier shipping charges within the Monthly Price in Attachment B, Price Sheet. CPA shall notify Contractor, in advance of any Equipment price request, contract order amendment or PO issuance, if expedited shipping or inside delivery is required;
 - Adhering to commercial shipping requirements, quantities and locations specified in this Contract;
 - Emailing shipping status reports for each order to the CPA Contract Manager listing at a minimum CPA's PO number, Equipment description, CPA location, quantity, and estimated delivery date and other fields as mutually agreed upon;

- Including a packing slip either on the outside or within the box for each order that at a minimum lists CPA's PO number, complete serial numbers (if applicable), quantities included in the shipment. In addition, each box of the shipment shall have a label attached identifying the detailed contents of each box; and
- Contractor shall not be responsible for OEM order processing delays, OEM manufacturing delays, OEM production errors, common carrier shipping delays, common carrier weather delays, or damages in transit while in possession of the common carrier, unavailability of CPA personnel to receive equipment on the first delivery attempt or any other reasons which are not within the control of Contractor. Delayed deliveries which are not in the control of Contractor shall be exempt from any service level performance ratings or service level credit payments. Contractor will promptly notify the CPA Contract Manager of any delays.

In the event delivery of Equipment is not received in a timely manner, and the delayed delivery is in the control of Contractor, CPA may require Contractor to pay \$25.00 per business day of delay until each piece of Equipment is received but shall exclude delays caused by Force Majeure as defined in Section XVII, Part V of this Contract. This reimbursement may be in the form of service credits against invoices for Services to CPA. The total reimbursement shall not exceed \$250.00 per fiscal year for all service credit types. The service credits are not an exclusive remedy, but are in addition to any other rights and remedies provided by law, in equity, or under this Contract.

Upon CPA's written notification that Equipment is not operable upon delivery (e.g., dead on arrival), Contractor shall replace upon OEM's confirmation that it cannot be repaired or repair such non-operable Equipment. Within 5 business days, Contractor will provide CPA Contract Manager with an expected delivery date of the replacement based on then current OEM production schedules. If the replacement date is delayed by the OEM, Contractor shall provide a written explanation for the delay and a revised expected delivery date. CPA shall promptly release the DOA Equipment to Contractor for pickup once the OEM has confirmed the equipment cannot be repaired onsite.

Contractor shall provide serial numbers of all Equipment deliveries, when available from the OEM, before arrival via the Advanced Fulfillment Notice (AFN) process, which provides advanced notice of equipment delivery details. Contractor shall provide serial numbers on packing lists. Contractor shall provide a full serial number listing of all active and retired units, upon request of the CPA Contract Manager, as a separate spreadsheet for inventory or invoice support as mutually agreed upon between the CPA Contract Manager and the Contractor Program Manager.

- a) Delivery Schedule. Delivery and installation of the ten (10) Scanners and two (2) Scanner Accessories will occur on different days. Contractor shall comply with the following schedule of events:
- Contractor shall deliver Nine (9) Scanners and Two (2) printer accessories within thirty (30) days of receipt of a PO, if commercially available from the OEM, .
 - Contractor shall deliver one (1) Scanner no later than June 2019 to the CPA Offices, if commercially available from the OEM.
 - Following CPA's receipt of the Equipment, Contractor must allow fifteen (15) consecutive days for CPA to conduct Acceptance Testing of the Equipment.

H. EXTENSION OF EQUIPMENT PERIOD OF PERFORMANCE. Prior to the expiration of the initial Period of Performance for Equipment, CPA may in its sole discretion, choose to extend the Period of Performance for the Equipment in 12 month increments. The extended period of time shall be referred to as the Extended Period

of Performance.

Contractor shall provide Services for the Scanners during the Extended Period of Performance as follows:

- a) Provide Equipment and maintenance Services, at the same service levels as the Services provided during the initial Period of Performance, for the prices listed in Attachment B – Price Sheet Price Schedule 4- Optional Services and OEM Maintenance is commercially available for purchase for the term CPA would like to extend.
- b) In the event OEM Maintenance is no longer commercially available for purchase, CPA may elect to extend the Equipment only, without break/fix maintenance, for the price listed in Attachment B – Price Sheet Price Schedule 4- Optional Services
- c) CPA Contract Manager shall notify Contractor's Data Program Manager 60 days in advance of any requests for extension in writing. Contractor's Data Program Manager shall confirm the extension in writing to the CPA Contract Manager.
- d) Contractor will provide Warranty Gap Coverage during the time, if any, between any OEM-provided warranty end date and the end date of the Initial or Extended Period of Performance ("Warranty Gap Period"). Contractor, at its sole discretion, may elect to provide warranty service or warranty upgrades for Scanners in lieu of the OEM for any Warranty Gap Period between the end date of the OEM-provided warranty ordered by CPA in Attachment A Equipment Specifications and the last day of the Initial or Extended Period of Performance.

CPA shall be subject to additional charges for parts and labor during the Warranty Gap Period, if any, for Scanners ordered by CPA. Contractor shall invoice and CPA shall remit payment for the following:

Cost of the repair, OEM parts and labor, plus eight percent (8%).

V. Acceptance Testing; Lost Stolen or Damaged Equipment

A. ACCEPTANCE TESTING. CPA shall conduct acceptance testing for all Equipment acquired from Contractor. Acceptance testing shall commence within seven (7) calendar days of delivery of the Equipment.

1. Contractor understands and agrees that prior to payment under any PO resulting from this Contract, CPA shall evaluate the provided products and/or Services under the following criteria and any additional acceptance criteria agreed to prior to award and included in the PO. CPA shall be responsible for any conflicts or problems that arise from the CPA installation of software which is not supported by the OEM.

In order to meet the Minimum Performance Standard, the Equipment shall:

- a) Conform with the OEM functional and technical specifications, as found in Attachment A, Equipment Specifications;
- b) Run necessary CPA programs with CPA data, if the CPA programs comply with the OEM specifications;
- c) Conform materially to the OEM specification and be free of malware at the time of delivery;
- d) As applicable, Contractor's OEM software support shall conform with the OEM specifications.

2. Acceptance testing shall last until the Equipment meets the Minimum Performance Standard for a total of fifteen (15) consecutive calendar days.
3. Contractor does not warrant that:
 - a) The operation of CPA-installed software products shall be uninterrupted or error-free or that the software products shall operate in hardware and software combinations other than as authorized by the OEM; and
 - b) CPA programs shall run without interruption or error-free.
 - c) Equipment will operate, without requiring modification(s) or without causing degradation or malfunctions to other CPA operational system(s) and network(s).
4. Contractor is not responsible for any interoperability or compatibility issues that may arise when:
 - a) Products, software, or options not supported by the OEM are used;
 - b) Configurations not supported by the OEM are used;
 - c) Parts intended for one system are installed in another system of different make or model.
 - d) CPA End User changes are made to the OEM configured setup and settings.
5. If the Equipment fails to meet the Minimum Performance Standard during the initial acceptance testing, CPA shall notify Contractor in writing and CPA reserves the right, in its sole discretion, to:
 - a) Request and receive Replacement Equipment (new, not used) for such Equipment, if the equipment does not perform based on the OEM's published specifications and is confirmed by the OEM. The request to return any equipment will be solely restricted to the specific serialized Scanner that was unable to comply with the Minimum Performance Standards during the Acceptance Period. The OEM does not inventory products and the process of manufacturing a new product will be based on the then current OEM production schedule; or
 - b) Continue the acceptance testing until the Minimum Performance Standard is met for a maximum of fifteen (15) additional consecutive calendar days.

In the event CPA determines to continue the acceptance testing and the Equipment fails to meet the Minimum Performance Standard after a maximum of thirty (30) consecutive calendar days from the commencement date of the Acceptance Testing, then CPA may, in its sole discretion, terminate that portion of this Contract without penalty.

The official Acceptance Date for Equipment is defined as the first day of the month immediately following successful completion of Acceptance Testing, which is when a Scanner meets the Minimum Performance Standard. The Acceptance Date for Equipment shall be the date designated by CPA on the Certificates of Acceptance (COA) for Equipment which shall be issued by CPA no later than 3 calendar days after the Acceptance Date. The date on the COA shall be the first day on which Contractor shall be authorized to invoice CPA for such Equipment and the first day on which CPA shall be authorized to compensate Contractor for such amounts. CPA shall not authorize any payments or provide any COAs prior to CPA's receipt and acceptance of Services.

CPA's shall assume responsibility for damage or loss for Equipment as described in Section V, Part B, Lost, Stolen or Damaged Equipment, of this Contract during the acceptance period, Initial Period of Performance and Extended Period of Performance. Care, custody and control of the units shall reside with CPA from day and time of delivery until return of the Equipment.

B. LOST, STOLEN OR DAMAGED EQUIPMENT. In the event of loss, theft or damage beyond repair of Contractor's Equipment while in possession of CPA, CPA shall reimburse Contractor in the amount specified in Attachment C, Stipulated Loss Schedule. If CPA requests Replacement Equipment, Contractor shall promptly provide Replacement Equipment that is the same or equivalent to the specifications of the lost or damaged Equipment. . If it is determined that the Contractor is responsible for the loss or damage of any Equipment then CPA shall not be held liable and Contractor shall provide CPA the Replacement Equipment at no charge to CPA.

The following shall also apply to lost, stolen or damaged Equipment:

1. CPA shall not be responsible for damages due to normal wear and tear. Contractor shall not invoice CPA and CPA shall not pay for this Equipment;
2. In the event Equipment is damaged beyond normal wear and tear while in possession of CPA during the initial or extended Period of Performance, CPA shall reimburse Contractor in the amount specified below:
 - Cost of the repair, OEM parts and labor, plus eight percent (8%).

C. LEGAL HOLD. In the event there is a Legal Hold placed on Contractor-provisioned Equipment while in possession of CPA, CPA, in its sole discretion, has the option of reimbursing Contractor in the amount specified in Attachment C, Stipulated Loss Schedule of this Contract, rather than continue applicable monthly payments. As used in this Contract, the term "Legal Hold" refers to the process used by CPA to preserve information relevant to current or anticipated litigation, audit, government investigation, or other such matter.

VI. Deployment, Maintenance, Warranty and Post Installation Support

A. DEPLOYMENT. Equipment deployment and installation shall be the responsibility of CPA, unless CPA provides Contractor a written request to provide Equipment deployment Services. Upon such a request, Contractor shall provide Equipment deployment Services in accordance with CPA's approved written instructions. CPA shall promptly resolve any issues with delays (i.e. deployment scripts, network, etc.), if applicable, that are provided to CPA by Contractor or Contractor's subcontractors. Within thirty (30) calendar days of either CPA's written request for Equipment deployment or CPA's PO issuance date, or other timeframe mutually agreed upon, CPA shall provide Contractor with an Equipment deployment schedule. In the event CPA requires revisions to the Equipment deployment schedule based on CPA's business needs, Contractor shall cooperate with CPA to make the needed adjustments at no additional charge to CPA. In the event CPA requests Contractor to provide deployment Services, Contractor shall provide an on-site supervisor, Contractor's PM or other CPA approved personnel, Monday through Friday 8:00am to 5:00pm CT to monitor the progress of the Services and oversee its personnel.

B. MAINTENANCE AND TECHNICAL SUPPORT. Contractor shall be solely responsible for all maintenance of the Equipment provided under this Contract. Contractor shall provide maintenance through its own maintenance program, the OEM Warranty, and/or through a sub-contract for maintenance with a third-party. Contractor shall manage support Services, including bearing any cost, for all Equipment owned and provided by the Contractor during the Term. This includes, but is not limited to: time and materials maintenance, troubleshooting, and on-site support function. In all instances, Contractor shall manage each maintenance sub-contractor(s) to ensure that the third-party performs the maintenance in compliance with the Service Level Agreements ("SLAs") provided under this Contract. Failure of Contractor to meet the SLAs within the allotted timeframe shall entitle CPA to any and all remedies allowed under this Contract, however such remedies shall be limited pursuant to Section XV (Liquidated Damages) of this Contract.

Contractor shall provide on-site maintenance at all CPA locations, unless CPA provides written authorization that

such Equipment maintenance repair is eligible for off-site servicing at another non-residential office location.

1. OEM Warranty Registration and Warranty Entitlement. Contractor shall complete all warranty registration procedures and maintain all warranties offered by the OEM for Equipment that is included in this Contract. Contractor shall enforce the provisions of the OEM's warranty period ordered by CPA in Attachment A, Equipment Specifications for each service request made by CPA to an OEM to ensure that all Equipment is properly maintained for the duration of the warranty period ordered by CPA in Attachment A Equipment Specifications. Routine upkeep of the Equipment under OEM-provided warranty, other than hardware Maintenance/Break/Fix requests to Contractor, shall be the responsibility of CPA. Upon request by CPA, Contractor shall provide CPA written proof of OEM warranty entitlement for the Equipment.

2. Maintenance Coverage. Maintenance coverage shall commence and end as follows:

a) Contractor maintenance coverage shall commence upon arrival of Equipment at a CPA office location. Maintenance coverage shall end on the same dates as the end of the Initial or Extended Period of Performance. Maintenance Services shall only be billable to CPA during the Initial or Extended Period of Performance. There shall be no charge for maintenance to CPA before CPA Equipment acceptance as set forth in Section V, Part A of this Contract.

Contractor may repair or replace Equipment (a) with new, or OEM warranty parts provided in performance and reliability, or (b) with functionally equivalent products to original products that have been discontinued. Unless otherwise expressly required by local law, if this replaced or repaired Equipment or parts manifest a defect in materials or workmanship (1) during the ninety (90) days following their repair and/or replacement, or (2) during the remainder of the Limited Warranty Period of the Equipment they are replacing or in which they are installed, Contractor warrants that OEM shall again repair or replace this Equipment or parts.

C. EQUIPMENT MAINTENANCE SPECIFICS.

For on-site maintenance for provisioned Equipment, an OEM or OEM-certified Contractor repair technician shall respond within the timeframe listed in Section VII, Service Levels and Performance Requirements, of this Contract. In all cases, Contractor shall employ commercially reasonable efforts to return to operable service during the business hours of 8:00 am to 4:30 pm CT, Monday through Friday, excluding OEM holidays of arriving onsite with OEM technicians.. The operable service is defined to be when the Scanner hardware is repaired and CPA administrators confirm the issues or errors requiring the maintenance have been resolved.

D. HELPDESK.

Contractor, or its subcontractor, will provide and maintain a toll free telephone number support line ("Call Center") for CPA repair and technical assistance requests. Contractor will provide CPA the process for reporting issues to maintenance providers, in the event the call center is not operational when the CPA issue occurs. Contractor, or its subcontractor, will staff the call center hotline facility with an adequate number of qualified technical personnel sufficient to meet requested service levels. Call center personnel will relay the repair request to the Contractor's authorized technician, within sufficient amount of time to ensure that the appropriate service levels are met.

E. OTHER TECHNICAL SUPPORT. Upon CPA's request, at mutually agreed times and dates, Contractor together with support from the OEM's, shall provide personnel to provide technical on-site support Services at

CPA headquarters located in Austin, Texas. Contractor’s personnel shall perform, at a minimum, the following tasks on-site at CPA’s location at no additional cost: assisting with complex problem identification, resolving complex issues which cannot be resolved by assistance of help desk, installation of emergency hardware/software fixes, troubleshooting physical relocation of Equipment, continuing Equipment modifications or upgrades, and swaps/replacement of Equipment. Contractor shall perform these Services for Equipment that has been acquired through Contractor under this Contract.

VII. Service Levels and Performance Requirements

In order to maintain the CPA-designated service levels, Contractor shall be responsible for providing the following:

- An escalation process to notify Contractor’s business and technical tiers of management when the designated service levels have not been met;
- Replace defective Equipment as described in this Contract.
- Correct issues with Equipment as described in this Contract.
- Maintain a limited inventory of spare parts, on site or offsite, as recommended by the OEM and mutually agreed with CPA if onsite spare parts are recommended by the OEM (e.g., hard drives, etc.) for Scanners ordered in order to facilitate repairs and minimize outages.

A. SERVICE LEVELS. Contractor and its subcontractor(s) will comply with the standard maintenance service levels as defined in the following table:

Equipment	Response Hours	Response Time Objectives*
Level B – medium impact	8 AM – 4:30 PM Central (M-F) excluding OEM holidays	4 business hours

* Calculation reflects normal daily labor resource break times and commences once the OEM response center verifies a hardware problem

Once an OEM service technician has arrived on site to provide maintenance service, the service request ticket shall remain open and be worked continuously until the equipment malfunction is resolved including OEM established escalations, if required.

B. PERFORMANCE REQUIREMENTS.

1. Contractor agrees that for the purposes of this section, the term “incident” referring to on-site repairs, denotes an occurrence where a qualified repair technician fails to report on-site or does not complete the repairs after reporting on-site, after notification of the need for service, and confirmation by the OEM Response Center in the timeframes required. The decision to declare an “incident” as a result of failure in the response/repair time, for on-site service, shall be the decision of a member of CPA’s management staff, after consultation with a member of Contractor’s management staff on the specific reasons for the failure to report on-site on time or make the repairs on time.
2. Contractor will meet as requested by CPA to discuss opportunities to improve metric and overall performance improvement.

IX. Replacement of Defective Equipment

Specific enterprise class Equipment designated by a specific serial number, or a component thereof, which has been delivered by Contractor pursuant to this Contract, shall be deemed to have "Systemic Issues" when it has:

- required hardware service repair four (4) times within a three (3) month rolling period during the initial period of coverage;
- such service repair has been documented by CPA with the service repair requests submitted to either Contractor or the OEM for the same hardware failure; and
- the OEM warrantor has determined to remedy defects or malfunctions.

Contractor shall replace Equipment with Systemic Issues at no charge to CPA with an identically configured replacement (whole unit or a component part thereof) or the OEM natural successor ("Replacement Equipment"). The Replacement Equipment, as identified by serial number or a component part thereof, will have the same Initial Period of Performance end date and price as the Equipment it replaces.

CPA shall promptly notify Contractor's PM of the need for Replacement Equipment and the disposition of the defective Equipment. Contractor shall make commercially reasonable efforts to provide an expected delivery date of the Replacement Equipment within five (5) business days of CPA's written request. Contractor shall provide Contractor's Project Manager with a written explanation if Contractor determines that more than five (5) business days is required to provide an estimated delivery date of the Replacement Equipment. If Contractor determines that more than ten (10) business days is required to provide an estimated delivery date of the defective Equipment, Contractor's Project Manager shall prepare a written explanation for the delay and specify the expected delivery date. If the replacement date is delayed by the OEM, Contractor's Project Manager shall prepare a written explanation for the delay and provide a revised expected delivery date. If replacement of the Equipment exceeds four months, Contractor shall not charge the monthly service rate for the defective Equipment until replacement equipment is delivered. Once Contractor delivers the Replacement Equipment to CPA's designated location, CPA will release the defective Equipment within ten (10) business days following the delivery date.

Contractor will be responsible for updating its database with the Replacement Equipment serial number and ensuring that the Replacement Equipment has the same warranty level as the original Equipment. If the Replacement Equipment is handled via a manufacturer's Returned Merchandise Authorization (RMA) process, Contractor shall be responsible for requesting RMA documents and handling instructions. CPA shall be responsible for following the manufacturer's RMA process and notifying Contractor via email of the Equipment's shipping tracking number. Upon request by Contractor, CPA shall provide Contractor copies of the RMA documentation.

Contractor shall ensure that the OEM shall repair, replace, or refund, at OEM's option, an OEM Hardware Product that manifest a defect in materials or workmanship during the OEM 30 day Limited Warranty Period, if CPA as the end-user provides the OEM with notice of a defect in a Contractor-supplied OEM Hardware Product during the Limited Warranty Period. OEM's obligation under this Limited Warranty, at its option, to repair, replace, or provide a refund for an OEM Hardware Product that manifest a defect in materials and workmanship ceases upon the expiration of the Limited Warranty Period.

X. Contractor's Personnel and Project Management.

A. **GENERAL.** Contractor is responsible for providing all personnel resources necessary to perform the Services described in this Contract, unless specifically stated as the responsibility of CPA. Throughout the term of this Contract, Contractor shall:

- Provide qualified personnel to perform all Services required in this Contract;

- Provide CPA written notice of any plan to add, remove and replace key personnel; and
- Obtain CPA approval of the Contractor's Project Manager (PM).

CPA may request that Contractor remove any particular individual who is providing Services if CPA reasonably believes that such individual is not providing the Services as described in this Contract. If, after CPA has provided notice to Contractor, Contractor has been unable to resolve performance issues relative to such individual to CPA's satisfaction, Contractor shall provide CPA with resumes of qualified replacement key personnel as soon as commercially reasonable and remove and replace such individual pursuant to Section X, Part F of this Contract

B. PERSONNEL TERMS AND CONDITIONS. The following terms and conditions apply to all Contractor and sub-contractor personnel:

1. CPA reserves the right to accept or refuse any subcontractor proposed by Contractor.
2. All employees of Contractor shall be no less than 17 years of age.
3. Contractor shall be liable and responsible for the actions of any of its subcontractors used in the performance of this Contract.
4. Contractor shall have an English-speaking employee on the job during support coverage hours.
5. Contractor employees shall be sober while on duty. The use of any kind of intoxicants while on duty by Contractor's employees shall constitute grounds for permanent removal of the offending employee from the project.
6. All Contractor and sub-contractor personnel shall be clearly identified as Contractor's employees by wearing nametags or other forms of identification as agreed to by Contractor and CPA when visiting a CPA site.
7. All Contractor employees and sub-contractors shall comply with CPA and the State of Texas applicable safety and health requirements during the project.
8. Contractor personnel shall be responsible for leaving all work areas at CPA as clean and orderly as they were found. The cost of any clean-up work that has to be performed by CPA as a result of the Contractor's work shall be reimbursed to CPA.
9. All work shall be accomplished during normal business hours of 8:00 a.m. to 5: 00 p.m., appropriate Central Time, Monday through Friday unless after-hours work is pre-approved by CPA Contract Manager with adequate notification.
10. Contractor is responsible for maintaining a safe work area and securing all tools or other belongings at the end of the workday. CPA shall not be liable to replace any missing tools or other belongings that belong to Contractor, except if the secured storage space provided by CPA is compromised outside the normal CPA work hours in Section IV, Part C of this Contract. If reasonably necessary to perform Services under this Contract, CPA shall provide Contractor with adequate secured storage space for Contractor owned Equipment used to support this effort.
11. Contractor and subcontractor personnel shall conduct themselves in a professional manner and be in appropriate business attire when on CPA's premises. In addition, Contractor and subcontractor personnel

shall comply with all guidelines established by CPA for independent contractors required to provide Services on CPA's premises. These guidelines may address issues which include, but are not limited to, the following: building security, IT security, records, safety, professional conduct, use of State owned property, non-disclosure of confidential information, and drug and alcohol free workplace rules.

C. CONTRACTOR'S PROJECT MANAGER. Contractor shall designate an individual as Contractor's PM who shall be CPA's primary point of contact and shall be responsible for providing Services to CPA under this Contract. Contractor's PM responsibilities include but are not limited to the following:

1. Provide Project Management Services under this Contract during normal business hours, 8:00 a.m. to 5:00 p.m. CST Monday through Friday, except CPA holidays, unless otherwise agreed to by both CPA and Contractor;
2. Coordinate and manage the activities of Contractor personnel;
3. Receive POs, prepare and submit invoices upon CPA's receipt and acceptance of Services;
4. Coordinate delivery of Equipment to CPA locations;
5. Provide CPA status of Equipment delivery; and
6. Receive CPA Contract Manager's communications regarding delivery and certificate of acceptance ("COA") status.

D. PROJECT MANAGEMENT ACTIVITIES. Upon the written request of the CPA Contract Manager to the designated Contractor PM, the parties shall conduct a kick-off meeting within thirty (30) calendar days of the effective date of this Contract to discuss, at a minimum, roles and responsibilities of the parties and overall administration of the Services provided under this Contract. Duly authorized representatives of CPA and Contractor shall attend the kick-off meeting.

CPA and Contractor, during the term of this Contract, may schedule joint periodic meetings (e.g., weekly) at a mutually agreed upon date, time and location to exchange information, discuss contractual concerns, discuss technical needs and/or concerns and discuss the Services provided by Contractor in general.

XI. Unwind, End of Performance.

At the end of the Equipment's Period of Performance, or Extended Period of Performance, as applicable, Contractor shall pick up from the installation site and dispose of the Scanners provided. All costs related to pick up and disposal, including costs associated with removing and shipping the Scanners is included in the cost of Maintenance and Technical Support in Attachment B, Price Sheet.

If Unwind Services are performed by CPA or another service provider, then CPA shall be responsible for the following:

- 1) Timely advance written notification to Contractor, a minimum of five (5) business days in advance of the Period of Performance end date, of the date the Equipment will be available for pickup. All Equipment must be available for pickup within seven (7) calendar days of the Period of Performance end date to avoid additional monthly charges;
- 2) Removal of all CPA data from the Equipment (as applicable)
- 3) Supplying Contractor with a written signed and dated "data destruction" confirmation of the data removal.
- 4) Return Packing Material, including but not limited to boxes, tape, bubble wrap, crates, etc. Please note, CPA could reuse the original OEM packing material for the return.
- 5) Preparing Equipment for shipment per OEM recommended shipping preparation instructions
- 6) Prompt payment of an accurate Contractor invoice for any equipment damages identified by Contractor

above and beyond normal wear and tear upon inspection by Contractor after receipt at its destination

If Unwind Services are performed by CPA or another service provider, then Contractor shall be responsible for the following:

- 1) Pickup of Equipment at CPA's warehouse location or CPA designated office location and ship the Equipment to the designated return site.

XII. Payments

CPA shall make monthly payments in arrears. Payment shall be made in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. All charges for the Equipment are set forth in Attachment B, Price Sheet.

Contractor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by CPA which are not expressly authorized by this Contract after discovery and confirmation by either party of the error. Payments under this Contract shall be payable solely to Contractor. CPA shall make no payments to any subcontractor involved in the project. CPA may prepay contracted amounts without penalty. All costs associated with the Services provided under this Contract are set forth in Attachment K.

XIV. Termination

A. REASONS FOR TERMINATION. This contract may be canceled as a result of the one of the following:

1. Termination by Change in Law: If federal or state laws or other requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Supplement, and if the Parties cannot agree to a Change Order that would enable substantial continuation of the Services, the Parties shall be discharged from any further obligations under this Contract. Contractor's rights at termination are set forth in Section XIV Part B.1 RIGHTS AT TERMINATION OR EXPIRATION OF CONTRACT.
2. Mutual Termination: This Contract may be terminated at any time by mutual consent.
3. Termination for Convenience by CPA: CPA reserves the right to terminate part of or the entire Contract for CPA's convenience, upon ninety (90) days' notice to Contractor.
4. Non-Performance and Termination for Cause. If Contractor fails to provide Services according to the provisions of this Contract, CPA may provide written notice of said default to the Contractor. If Contractor fails to cure the default within sixty (60) days of receipt of written notice from CPA, CPA may terminate all or any part of this Contract. Notwithstanding the foregoing, CPA shall not have the right to terminate all or any parts of this Contract for cause where interoperability or compatibility issues arise when: a) products, software or options not supported by the OEM are used by CPA; b) configurations not supported by the OEM are used by CPA; or c) parts intended for use in one system are installed by CPA in another system of different make or model. Termination is not necessarily an exclusive remedy but will be in addition to any other rights and remedies provided by law or under this Contract. In the event that CPA terminates this Contract in full or in part for cause, CPA shall only be liable for completed Services performed and accepted by CPA through the effective date of such termination. CPA shall not be liable for any severance costs incurred as a result of such termination or the unamortized hardware, software, and lease cost

B. RIGHTS AT TERMINATION OR EXPIRATION OF CONTRACT.

1. In the event that this Contract expires or is terminated for any reason other than termination by non-appropriation or CPA's termination for cause, CPA shall only be liable for completed Services performed and accepted by CPA through the effective date of such termination and reasonable severance costs incurred as a result of such termination and the unamortized hardware, software, and lease cost. Notwithstanding the foregoing, in no event shall the costs resulting from such termination exceed the total contract cost as set forth in AttachmentB, Price Sheets, of this Contract.
2. In the event this Contract is terminated for any reason, or upon its expiration, CPA shall retain ownership of all associated documentation created to support CPA in whatever form that they exist.
3. CPA reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to CPA under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Contractor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to CPA under the Contract or under applicable law. CPA reserves the right to pursue any and all applicable rights and remedies if the Contract is terminated for any reason and CPA expressly waives no such rights or remedies. Contractor's liability under this Contract is limited as set forth in Section XV. Limitation of Liability.

C. NON-APPROPRIATION OF FUNDS. This Contract is subject to termination or cancellation, without penalty to CPA, either in whole or in part, subject to the availability of state funds. CPA is a state agency whose authority and appropriations are subject to actions of the Texas legislature. If CPA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render CPA's or Contractor's delivery or performance under the agreement impossible or unnecessary, the agreement will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this section, CPA will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and CPA will not be required to give prior notice. Termination of this agreement under this section shall not affect CPA's right to use Equipment previously-paid for through the Initial or Extended Period of Performance, as applicable, nor any maintenance or support paid prior to such termination. In the event of contract termination under this section, CPA's sole and maximum obligation shall be to pay Contractor for previously requested Services which are (1) authorized by a CPA-issued PO and (2) completed by Contractor and accepted by CPA prior to the effective date of termination.

XV. Limitation of Liability

To the extent permitted by the constitution and laws of the state of Texas, for any claim or cause of action arising under or related to this Contract, Contractor's total liability under this Contract shall be limited to a maximum of the total amount of funds that Contractor was paid under this Contract during the preceding twelve (12) month period. Notwithstanding the foregoing, this limitation of contractor's liability shall not apply to violations of confidentiality, claims of patent, trademark, or copyright infringement, personal injury or damage to property due to contractor's negligence.

XVI. Insurance and Bonds

Contractor represents and warrants that, within five (5) business days of receipt of the PO, it shall provide CPA with proof of coverage and represents and warrants that it shall maintain the following coverages throughout the term of the contract:

- Blanket Employee Dishonesty Bond or Employee Dishonesty Coverage under a liability insurance policy with a minimum \$25,000 for each individual who shall provide Services under the contract. A rider or

endorsement shall name the Texas Comptroller of Public Accounts as loss payee or additional named insured under the respective bond or policy;

- Standard Workers Compensation Insurance covering all individuals who shall provide Services under the contract;
- Commercial General Liability Insurance: \$1,000,000 minimum each occurrence limit; \$2,000,000 minimum aggregate limit; and
- Professional Liability Insurance: \$1,000,000 minimum each occurrence limit; \$2,000,000 minimum aggregate limit.

Contractor represents and warrants that all coverages are with companies licensed in Texas, with "A" rating from A.M. Best Co., and authorized to provide the required coverages. Contractor also represents and warrants that all of the above policies and bonds contain endorsements prohibiting cancellation exception upon at least thirty (30) days prior written notice to CPA. Contractor shall, within the time provided above, furnish proof to CPA of such coverage in the form of a Certificate of Insurance from Contractor's insurance carrier or carriers indicating the above coverages. The Certificate shall be addressed to CPA as the Certificate holder. Contractor shall provide proof of required insurance coverage via email referencing the PO number submitted to the following address: contract.administration@cpa.texas.gov.

XVII. General Terms and Conditions

A. **PUBLIC INFORMATION.** Contractor acknowledges that State contracts are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code. Contractor waives confidentiality of Contractor - issued e-mail addresses. Contractor understands that CPA is bound by the provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under that statute. Contractor is required to make any information created or exchanged with the state pursuant to this 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. Within three (3) calendar days of receipt, Contractor shall refer to CPA any third party requests, received directly by Contractor for information to which Contractor has access as a result of or in the course of performance under this Contract.

B. **CONFIDENTIAL INFORMATION; NONDISCLOSURE AGREEMENTS.** Contractor and Contractor's employees, including sub-contractor employees, shall not disclose to anyone, directly or indirectly, any information designated by CPA as confidential or to information accessed as a result of this Contract without the prior written consent of CPA. Contractor agrees that all employees, including sub-contractor employees, who visit any CPA site, shall sign a Nondisclosure Agreement, if required. Any employee who refuses to sign the Nondisclosure Agreement will not be approved to work on the project. The Nondisclosure Agreements will continue to be in force after the completion of the project and five (5) years after termination of this Contract.

C. **INDEMNIFICATION.** **CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CPA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT OR ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. 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 CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR'S LIABILITY UNDER THIS CONTRACT IS LIMITED AS SET FORTH IN SECTION XV. LIMITATION OF LIABILITY.

D. PATENT, TRADEMARK, COPYRIGHT INFRINGEMENT. Contractor shall defend and indemnify CPA and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringement arising from CPA's or Contractor's use of or acquisition of any requested Services or other items provided to CPA by Contractor or otherwise to which CPA has access as a result of Contractor's performance under this Contract, provided that CPA will notify Contractor of the claim within a reasonable time of CPA's receiving notice of any such claim. If Contractor is notified of any claim subject to this Section XVII, Part D, Contractor shall notify CPA of that claim within five (5) business days of such notice. Contractor will make no settlement of any such claim without CPA's prior written approval. Contractor will reimburse CPA and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of CPA's counsel. If CPA determines that a conflict exists between its interests and those of Contractor or if CPA is required by applicable law to select separate counsel, CPA will be permitted to select separate counsel and Contractor will pay all reasonable costs of CPA's counsel. Contractor represents and warrants that it has determined what licenses, patents and permits are required under this Contract and has acquired all applicable licenses, patents, and permits.

E. USE OF STATE PROPERTY. Contractor is prohibited from using CPA's Equipment, CPA's Location, or any other resources of CPA or the State of Texas for any purpose other than performing Services under this Contract. For this purpose, Equipment includes, but is not limited to, copy machines, fax machines, information technology resources, and telephones using State of Texas long distance services. CPA information technology resources include any CPA-issued hardware (e.g., laptops, portable personal printers, cell phones, BlackBerry devices, external hard drives, Universal Serial Bus (USB) data storage devices and data disks); any CPA-issued software or media (e.g., CD, DVD, diskette or tape); and the CPA Virtual Private Network (VPN) client. Contractor shall not remove CPA Equipment from the United States. In addition, Contractor may not use any computing device to access CPA's network or e-mail while outside of the United States. During the time that CPA Equipment is in possession of Contractor, Contractor shall be responsible for reasonable repair or replacement charges for damage beyond normal wear and tear. Any charges incurred because of Contractor's use of CPA Equipment for any purpose other than performing Services under this Contract shall be fully reimbursed by Contractor to CPA immediately upon demand by CPA. In the event Contractor fails to comply with this section, CPA shall inform the Contractor Project Manager of the breach and provide a description thereof. If Contractor fails to remedy the breach of this section within thirty (30) calendar days from the date of the notice, then CPA, in addition to other remedies at law or in equity, may terminate this contract.

F. CPA'S TAX EXEMPTION; INDEPENDENT CONTRACTOR; PAYMENT OF TAXES BY CONTRACTOR. Purchases made by CPA for State use are exempt from the State Sales Tax and Federal Excise Tax. Contractor's prices and rates listed in Attachment B, Price Sheet are exclusive of Sales Taxes. CPA will furnish Tax Exemption Certificates upon request. Contractor will serve as an independent contractor under this Contract. Contractor must be able to demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to Contractor's employees. Contractor will be solely responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, income taxes, withholding taxes, social security taxes, pension

contributions, and any other form of payroll or any other taxes, for Contractor and Contractor’s employees. CPA will have no responsibility for payment of any such taxes or amounts related to such taxes. At Contractor’s sole cost and expense, Contractor shall secure and maintain all insurance premiums that are required by this Contract or which are necessary to protect the interests of the State of Texas and CPA or that Contractor may need or desire for Contractor or Contractor’s employees. Contractor shall indemnify CPA and pay to CPA all costs, penalties, losses, and other amounts resulting from Contractor’s omission or breach of this section.

G. SECURITY INCIDENT NOTIFICATION. Contractor shall provide notice to CPA’s Project Manager and CPA’s Chief Information Security Officer within twenty-four (24) hours of Contractor’s discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential CPA information (“Security Incident”). Within twenty-four business (24) hours of the notification of a Security Incident, Contractor shall provide a written report to CPA’s Chief Information Security Officer detailing the circumstances of the incident, which includes at a minimum, if available:

- a. A description of the nature of the Security Incident;
- b. The type of CPA information involved;
- c. Who may have obtained the CPA information;
- d. What steps Contractor has taken or will take to investigate the Security Incident;
- e. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- f. A point of contact for additional information.

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

- a. Who is known or suspected to have gained unauthorized access to the CPA information;
- b. Whether there is any knowledge if the CPA information has been abused or compromised;
- c. What additional steps Contractor has taken or will take to investigate the Security Incident;
- d. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- e. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Contractor shall confer with CPA’s Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. CPA reserves the right to conduct an independent investigation of any Security Incident, and should CPA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to CPA and CPA’s authorized representative(s). Subject to review and approval of CPA’s Chief Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If CPA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be borne by CPA.

H. CPA DATA SAFEGUARD STANDARDS.

a) **Defined Terms.** The term “CPA Data” refers to CPA’s information as well as other entity information in the possession of CPA that is processed, stored, or transmitted by a computer. CPA Data includes all data that is generated by Contractor in performance of a contract with CPA. The term “CPA Information System” refers to those devices, software, networks and related infrastructure that CPA owns, operates or has obtained for use to conduct CPA business. Devices include, but are not limited to, CPA-owned or managed storage, processing, and communications devices, as well as personally owned devices.

- b) [Reserved]
- c) [Reserved]
- d) [Reserved]

- e) [Reserved]
- f) [Reserved]
- g) [Reserved]
- h) CPA-Required Security Awareness Training. As a condition of gaining access to a CPA Information System, Contractor shall participate in CPA's security awareness training on an annual basis. Within five (5) business days of CPA's written request, Contractor shall submit to the CPA Contract Manager (i) a list of individuals who have access to CPA Information Systems, (ii) the most recent completion date of the CPA-required training for each individual, and (iii) copies of the training records. Contractor shall maintain records of all individuals who have completed the CPA-required training for the duration of the individual's employment or other business relationship with Contractor, plus five years. CPA, in its sole discretion, may deny network or system access to any individual that does not complete the CPA-required training within thirty (30) calendar days following the date of CPA's grant of access to the CPA Information System(s).
- i) [Reserved]
- j) Third-Party Service Providers. It is Contractor's sole responsibility to ensure that its access and the access Contractor grants to its service providers to CPA Data or CPA Information Systems does not result in unauthorized access to CPA Data or CPA Information Systems.
- k) Federal Taxpayer Information. Contractor shall not access, process, store or transmit IRS Federal Taxpayer Information for or on behalf of CPA unless expressly authorized by a contract with CPA.

I. CRIMINAL CONVICTION CERTIFICATION. Contractor shall take appropriate steps and perform due diligence to become informed as to each assigned employee's felony criminal convictions, if any, and shall inform CPA's Contract Administrator in writing within three (3) business days of Contractor's knowledge of any such felony criminal convictions for any assigned employee. At each of the three (3) intervals below, Contractor shall take appropriate steps to review and perform due diligence of every assigned employee's criminal history:

- i. within the five (5) business days immediately following notice of a tentative contract award;
- ii. within the seven (7) business days prior to the proposed effective date of any renewal or extension of this Contract; and
- iii. within the seven (7) business days prior to Contractor requesting approval for assignment of a new employee (such as a substitute employee).

Contractor's due diligence shall include, at a minimum, (1) Contractor's compliance with Contractor's published employee policies and procedures for background and criminal checks of Contractor's employees and (2) Contractor's comprehensive search of the public information portion of an online criminal conviction database, such as the TxDPS criminal conviction database located at: <https://records.txdps.state.tx.us/dpswebsite/>. If such TxDPS criminal conviction database is not appropriate for a particular assigned employee, Contractor shall submit a detailed explanation that an equivalent or more extensive search was conducted and that the alternate search is appropriate for the assigned employee(s) within, as appropriate, (a) five (5) business days of receipt of notice of tentative contract award, (b) seven (7) business days prior to proposed effective date of any renewal or extension of this Contract, or (c) seven (7) business days prior to Contractor's request for assignment of a new employee.

For purposes of this clause, "assigned employees" includes, without limitation, all employees or other personnel provided by Contractor who will or may (1) be assigned as lead or key personnel under this Contract; (2) interact on-site at CPA's premises with any CPA personnel, assets, records or resources in connection with this Contract; or (3) otherwise access or interact with any assets, records or resources of CPA in connection with this Contract excluding OEM provided service technicians OEM provided on-site service technicians shall follow the OEM procedures for background checks. OEM information to be verified includes, but is not limited to, social security number trace, verification of education/degree, employment and criminal conviction history, felony and misdemeanor in each state and county of the past seven (7) years. Additional checks such as driving record,

credit report, reference checks and licensing or certification verification may be made on applicants for particular job categories if appropriate and job related. Contractor has no access or control of this OEM background check information.

Upon request by CPA's Criminal Investigation Division, Contractor will provide to CPA's Criminal Investigation Division, no later than five (5) business days after receiving such request, the written results of Contractor's performance of these minimum steps for all assigned employees. If CPA becomes aware that Contractor provided false information, or if Contractor fails to promptly advise CPA of a felony criminal conviction occurring after the certification becomes effective, Contractor shall be in breach of this Contract and CPA shall have the option to terminate this Contract without further obligation to Contractor and may pursue all other remedies and rights available to CPA under this Contract, at law, or in equity.

J. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS. Contractor shall have no authority to act for or on behalf of CPA or the State of Texas except as expressly provided for in any PO; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of CPA or the State of Texas.

K. ASSIGNMENT. CPA or Contractor may assign its interest in or duties or rights under this Contract without prior written approval to: i) a successor in interest (for CPA, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company, or affiliate. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party.

L. NO WAIVER. No provision of this Contract or any PO resulting from this Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in this Contract or any PO resulting from this Contract or otherwise available to CPA by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. By issuing a PO, by its conduct prior to or subsequent to issuing a PO or by executing this Contract, CPA does not waive any privileges, rights, defenses, remedies, or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA. The modification of any privileges, rights, defenses, remedies, or immunities available to CPA must be in writing, must reference this section, and must be signed by CPA to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to CPA will not constitute a waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Contract or any PO resulting from this Contract or under applicable law.

M. SUPPORT DOCUMENTS; INSPECTION OF RECORDS. Contractor shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These supporting fiscal documents will be maintained and retained by Contractor for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to this Contract or any PO resulting from this Contract for purposes of inspecting, monitoring, auditing, or evaluating by CPA or the State of Texas. Contractor acknowledges and agrees that, in addition to and without limitation on the other audit provisions of this Contract or any PO resulting from this Contract, pursuant to Section 2262.154, Texas Government Code, the state auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under any PO resulting from this Contract or indirectly through a subcontract under any PO resulting from this Contract relating to the funds actually received

under this Contract. The acceptance of funds by Contractor or any other entity or person directly under any PO resulting from this Contract or indirectly through a subcontract under any PO resulting from this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit of the funds actually received under this Contract. This Contract or any PO resulting from this Contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154, Texas Government Code. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

N. SEVERABILITY. If any provision of this Contract or any PO resulting from this Contract shall, for any reason, be held to violate any applicable law, and so much of this Contract or any PO resulting from this Contract is held to be unenforceable, then the invalidity of such a specific provision will not be held to invalidate any other provisions, which other provisions will remain in full force and effect unless removal of said invalid provisions destroys the legitimate purpose of this Contract or any PO resulting from this Contract, in which event the Contract or PO shall be canceled.

O. APPLICABLE LAW AND CONFORMING AMENDMENTS. Contractor must comply with all laws, regulations, requirements and guidelines applicable to a vendor providing Services and products described in this Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of this Contract. CPA reserves the right, in its sole discretion, to unilaterally amend this Contract or any PO resulting from this Contract and throughout the term of this Contract to incorporate any modifications necessary for CPA's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

P. MOST FAVORED CUSTOMER. Contractor represents and warrants that all prices, charges, benefits, warranties, and terms granted to CPA pursuant to this Contract or any PO resulting from this Contract are comparable to, or more favorable to, CPA than the prices, charges, benefits, warranties, and terms that Contractor has heretofore offered to any person or entity for the products and/or Services covered under any other agreement. If at any time during the term of this Contract or any PO resulting from this Contract, Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, Contractor must notify CPA of such more favorable terms and CPA, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to CPA under this Contract and any PO resulting from this Contract, and be retroactive to the date of such PO.

Q. ROLLING ESTOPPEL. If Contractor is aware a problem exists and fails to report the problem to CPA, Contractor continues to be responsible for meeting the goals and timelines established in this Contract and any PO resulting from this Contract. Under these circumstances, CPA will not be liable for any detrimental consequences, except as provided herein.

R. OUTSOURCING. Contractor acknowledges and understands that CPA may, in its sole discretion, enter into an outsourcing agreement with another provider which shall perform certain Services for CPA. If CPA enters into a written agreement for outsourcing, Contractor shall, as consistent with the terms of this Contract, grant the outsourcing vendor the right to use and access the Services and/or equipment (e.g., software, hardware) on the same terms and conditions that Contractor has granted CPA the right to use and access such Services and/or equipment provided the outsourcing vendor also agrees that it (i) shall only use the Services and/or equipment for the benefit of CPA, and (ii) shall enter into confidentiality agreement with CPA, which contains confidentiality

terms that are substantially no less restrictive than the confidentiality terms contained in this Contract. Contractor further shall either fully cooperate with all transition activities regarding outsourcing; or Contractor agrees that CPA shall have the right to immediately terminate or assign to the outsourcing vendor, this Contract or any PO resulting from this Contract without any liability for any amounts to Contractor.

Notwithstanding the above, in no event may CPA transfer the Services and/or equipment to another provider without the prior written consent of Contractor. If the Services and/or equipment will be used at a site other than CPA's, Contractor, CPA and the third party must enter into a written third party use agreement prior to such use or access by such third party.

S. TEXAS LAW; VENUE. This Contract and any PO resulting from this Contract will be governed by and construed under and in accordance with the laws of the State of Texas. Any and all obligations or payments under this Contract and any PO resulting from this Contract are due and payable in Travis County, Texas, and venue is proper in only in Travis County.

T. NOTICES. Any written notices required under this Contract or any PO issued as a result of this Contract shall be by either hand delivery to Contractor's office or to CPA's Austin office, LBJ State Office Building, 111 E. 17th Street, Austin, Texas, attention Manager of Support Services Division, or by U.S. Mail, certified, return receipt requested. Notice will be effective on receipt by the affected party. CPA and Contractor agree that either party may change the designated notice address in this Section by written notification to the other party.

U. PERSONAL INJURY, PROPERTY DAMAGE. Contractor shall be liable for any bodily injury or personal injury to any individual caused by Contractor or Contractor's employees or Contractor's defective products that are not the result of the OEM's product design or manufacturing. In the event of loss, destruction or damage to any CPA or State of Texas property by Contractor or Contractor's employees, Contractor shall indemnify CPA and the State of Texas and pay to CPA and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damage property, at CPA's election. Contractor will reimburse CPA and the State of Texas for such property damage within ten (10) calendar days after Contractor's receipt of CPA's notice of amount due.

V. FORCE MAJEURE. Except as otherwise provided, neither Contractor nor CPA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract or any PO resulting from this Contract which is caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, supply chain disruptions which are outside of Contractor's control, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within five (5) business days of the existence of such force majeure, or otherwise waive this right as a defense.

W. DEBTS OR DELINQUENCIES TO THE STATE. To the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under or related to this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor shall comply with rules adopted by the Comptroller of Public Accounts under Sections 403.055, 403.0551, 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

X. DISPUTE RESOLUTION. Chapter 2260 of the Texas Government Code prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. Contractor and CPA shall comply with the rules the CPA has adopted under Chapter 2260 of the Texas Government Code, codified at 34 Texas Administrative Code §§1.360-1.387, and may adopt revisions to these rules throughout the term of the contract, including any extensions. The Contractor and CPA shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by CPA and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor under the Contract:

(A) The Contractor's claim for breach of the contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of CPA and the Contractor otherwise entitled to notice under the contract. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

(B) The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by CPA if the parties are unable to resolve their disputes under subparagraph (A) of this Section.

(C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of a contract by CPA nor any other conduct of any representative of CPA relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the contract, the following shall apply:

Should a dispute arise out of the contract, CPA and the Contractor shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by CPA and the Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Costs of such mediation shall be allocated as set forth in 34 Texas Administrative Code, Section 1.380. Notwithstanding the foregoing, Contractor acknowledges and agrees that CPA's obligation to pay the costs of mediation is subject to the availability of state funds. By mutual agreement, CPA and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that CPA and the Contractor shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. CPA's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by CPA of (1) any rights, privileges, defenses, remedies or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA; (2) CPA's termination rights; or (3) other termination provisions or expiration dates of the contract.

Notwithstanding any other provision of the contract to the contrary, the Successful Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes, however, Successful Respondent may suspend performance during the pendency of such claim or dispute if Successful Respondent has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

Y. MEDIA RELEASES. Contractor is not authorized to make or participate in any media releases pertaining to this Contract which they relate without CPA's prior written consent, and then only in accordance with explicit

written instructions from CPA.

Z. IRS DATA. Reference Exhibit 7 (Contract Language for General Services) *IRS* Publication No. 1075, posted 12-22-2016 – In performance of the Services under this Contract, Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- (1) All work will be performed under the supervision of Contractor or Contractor's responsible employees.
- (2) Contractor and Contractor's employees with access to or who use FTI (Federal Tax Information) must meet the background check requirements defined in *IRS* Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the *IRS*.
- (6) Contractor will maintain a list of employees authorized access. Such list will be provided to CPA and, upon request, to the *IRS* reviewing office.
- (7) CPA will have the right to void the contract if Contractor fails to provide the safeguards described above.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1. Additionally, it is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.

552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. Granting Contractor access to FTI must be preceded by certifying that each individual understands CPA's security policy and procedures for safeguarding IRS information. Contractor must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in CPA's files for review. As part of the certification and at least annually afterwards, Contractor must be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 4, *Sanctions for Unauthorized Disclosure and Exhibit 5, Civil Damages for unauthorized Disclosure*, of Publication 1075). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 of Publication 1075) For both the initial certification and the annual certification, Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

The IRS and CPA, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of Contractor to inspect facilities and operations performing any work with FTI under the contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where Successful Respondent is found to be noncompliant with contract safeguards.

AA. CONTRACTOR CERTIFICATIONS.

1. Contractor represents and warrants that the provisions in this Contract apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide Services under, who have a financial interest in, or otherwise are interested in the agreement between CPA and Contractor.
2. Contractor represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, located on CPA's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Contract.
3. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Notwithstanding the foregoing, Contractor has included a detailed attachment in its Offer with a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under this Contract, relate to the solicited or similar goods or Services, or otherwise be relevant to CPA's consideration of Contractor's Offer. In addition, Contractor represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of this Contract. Contractor represents and warrants that it has sufficient right, title, and interest in the Equipment provided under this Contract to provide the Services required by this Contract.
4. Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

5. Contractor represents and warrants that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into such this Contract will not reasonably create an appearance of impropriety.
6. Contractor hereby represents and warrants that, pursuant to 15 U.S.C. Section 1, et seq. and Texas Business and Commerce Code Section 15.01, et seq., neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.
7. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
8. Under Section 231.006, Texas Family Code, regarding child support, Contractor certifies that the individual or business named in the offer is not ineligible to receive the specified payment and acknowledges that this Contract and any PO resulting from this Contract may be terminated and payment may be withheld if this certification is inaccurate.
9. Contractor represents and warrants that the individual signing this Contract is authorized to sign this document on behalf of and to bind Contractor under this Contractor.
10. Contractor represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Contractor and an employee of any CPA component, and Contractor has not been an employee of any CPA component within the immediate twelve (12) months prior to Contractor's execution of this document.
11. Contractor represents and warrants that this Agreement is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. Contractor represents and warrants that it has not received compensation for participation in the preparation of the specifications for this Contract.
12. Contractor represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
13. Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).
14. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
15. Contractor represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
16. Contractor represents and warrants that to the best of its knowledge at the time of this offering entity and its principals are eligible to participate in this transaction and is not subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
17. Contractor represents and warrants that it will comply with the requirements the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
18. Contractor represents and warrants that its performance under this Contract shall be conducted conscientiously in a professional and workmanlike manner and to the full limit of Contractor's talents and capabilities with due diligence and in full compliance with the highest professional standards of practice in the industry applicable to the Services performed.
19. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in Section XVII, Part AA(1) of this Contract within the five

(5) calendar years immediately preceding the submission of Contractor's Offer in response to PR No. 304-18-0320SN that would or could impair Contractor's performance under this Contract, relate to the solicited or similar goods or Services, or otherwise be relevant to CPA's consideration of Contractor's Offer. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Offer a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under this Contract, relate to the solicited or similar goods or Services, or otherwise be relevant to CPA's consideration of Contractor's Offer. In addition, Contractor represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of this Contract. Contractor represents and warrants that it has sufficient right, title, and interest in the Equipment provided under this Contract to provide the Services required by this Contract.

20. In accordance with Section 361.965, Texas Health and Safety Code, Contractor represents and warrants that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.
21. Under Section 2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Contractor certifies that the individual or business entity named 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.
22. Contractor represents and warrants that any electronic and information resources products developed, procured, maintained, or used by CPA directly or used by the Contractor under this Contract or any PO resulting from this Contract which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product complies with the specifications set forth in the Contract and comply with the applicable State of Texas Accessibility requirements for Electronic and Information Resources specified in the Department of Information Resources' rules at 1 Texas Administrative Code Chapter 213 to the extent enumerated in the OEM's specifications.
23. Contractor represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Adjacent does not boycott Israel and will not boycott Israel during the term of this Contract.
24. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

AB. INFORMATION SECURITY REQUIREMENTS - Contractor shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to confidential CPA information. If communications with Contractor necessitate the release of confidential CPA information, each individual who will require access to or may be exposed to that information must sign the CPA Confidential Treatment of Information Acknowledgement (CTIA) form. See Attachment D for the CTIA.


XVIII. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties named below. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

KST Data Inc.

By: 

By: 

Lisa Craven
Deputy Comptroller

Mark Edson
Vice President

Date: 12-4-18

Date: 12/03/18

Texas Department of Information Resources

SOW ID# CPA-000018

DocuSigned by:

Authorized by: 

7F04C0B913D547B...
Hershel Becker

Printed Name: _____

Title: Chief Procurement Officer

Date: 12/10/2018 | 9:20 PM CST

ATTACHMENT A
EQUIPMENT SPECIFICATIONS

Table 1- Kodak i4250 specifications

<p>Kodak i4250</p> <p>Throughput Speeds* (landscape, letter/A4 size, black and white/grayscale/color) 110 ppm</p> <p>Maximum dpi Resolution 600 dpi</p> <p>Maximum Document Width 12" / 30.5 cm</p> <p>Maximum Document Length 360" / 9.1 m</p> <p>Multi-Feed Detection With ultrasonic technology, three sensor</p> <p>Document Feeding ADF</p> <p>Connectivity USB 3.1</p> <p>File Formats Multi-Page TIFF, PDF, RTF, TXT, TIFF</p> <p>Operating System Compatibility Windows</p> <p>Light Source LED</p> <p>Drivers TWAIN, WIA, ISIS</p> <p>Duty Cycle 40,000 Scans</p> <p>Maximum Sheet Capacity 500</p> <p>Automatic Image Corrections Yes</p> <p>Environmental Compliance ENERGY STAR</p> <p>Maximum Power Consumption 130 W</p> <p>AC Input Power 100 to 240 VAC, 50 / 60 Hz</p> <p>Dimensions 13.7 x 19.2 x 18.4" / 34.79 x 48.9 x 46.73 cm</p> <p>Weight 67.0 lb / 30.4 kg</p> <p>*Throughput speeds may vary depending on your choice of driver, application software, operating system and PC.</p> <p>Warranty:</p> <p>Kodak 3 year extended Warranty Onsite 4 Hour Kodak 1 year Post Warranty Onsite 4 Hour</p> <p>Periodic Maintenance:</p> <p>1 Periodic Maintenance (PM) per Year for the Initial Period of Performance or full year Extended Periods of Performance</p>	10
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Table 2- Kodak Part # 1218940 (Printer Accessories) specifications

Description	Quantity
<ul style="list-style-type: none">-Upper imaging guide-Upper flappable background accessory-Enhanced Printer carrier-Enhanced Black Ink Cartridge-Ink blotters <p>The OEM does not currently offer a repair warranty or return on printer accessories. Repair or replacement is the sole responsibility of CPA. Upon written request of CPA and PO receipt, Contractor will order and ship CPA a replacement at the Warranty Gap Rates</p>	2

ATTACHMENT B- PRICE SHEET

Price Schedule 1						
Provisioning of Scanning Equipment						
Period: 11/01/2018 - 10/31/2022						
Line#	Description	Monthly Price Months 1-12	Monthly Price Months 13- 24	Monthly Price Months 25- 36	Monthly Price Months 37-48	Extended Price for 48-Month Term
1	Monthly Unit Price for One (1) Kodak i4250 Scanner with Kodak 4 Hour Full Service Maintenance	\$396.02	\$396.02	\$396.02	\$396.02	\$19,008.88
Number of Scanners						x 9
Price for 48-Month Term for nine (9) Scanners, Total for Price Schedule 1:						\$171,079.91

Price Schedule 2						
Provisioning of Scanning Equipment						
Period: 07/01/2019 - 06/30/2023						
Line#	Description	Monthly Price Months 1-12	Monthly Price Months 13- 24	Monthly Price Months 25- 36	Monthly Price Months 37-48	Extended Price for 48-Month Term
1	Monthly Unit Price for One (1) Kodak i4250 Scanner with Kodak 4 Hour Full Service Maintenance	\$403.85	\$403.85	\$403.85	\$403.85	\$19,385.03
Price for 48-Month Term for one (1) Scanner, Total for Price Schedule 2:						\$19,385.03

Price Schedule 3						
Provisioning of Printer Accessory						
Period: 11/01/2018 - 10/31/2022						
Line#	Description	Monthly Price Months 1-12	Monthly Price Months 13- 24	Monthly Price Months 25- 36	Monthly Price Months 37-48	Extended Price for 48-Month Term
1	Monthly Unit Price for One (1) Kodak Enhanced Printer Accessory Part# 6J7159 with No Warranty/No Maintenance	\$10.44	\$10.44	\$10.44	\$10.44	\$501.12
Number of Scanner Accessories						X 2
Price for 48-Month Term for two (2) Printer Accessories, Total for Price Schedule 3:						\$1002.24

Price Schedule 4
Kodak Scanners and Related Services
Optional Services

Line#	Description	Quantity	Unit of Measure	Price
1	Monthly Unit Price for One (1) Kodak i4250 Scanner with Kodak 4 Hour Full Service Maintenance- Extended Period of Performance- (11/01/22 – 10/31/23: Months 49-60)	1	Per Month	\$316.81
2	Monthly Unit Price for One (1) Kodak i4250 Scanner with Kodak 4 Hour Full Service Maintenance- Extended Period of Performance- (7/01/23 – 6/30/24: Months 49-60)	1	Per Month	\$323.08
3	Monthly Unit Price for One (1) Kodak Enhanced Printer Accessory Part # 1218940 – No warranty offered by OEM	1	Per Month	\$8.35

ATTACHMENT C

Stipulated Loss Schedule

In accordance with Section V.B of this Contract, Lost, Stolen or Damaged Equipment, CPA will reimburse Contractor in the amount specified in this Attachment C, Stipulated Loss Schedule, in the event of loss, theft or damage beyond repair of Contractor's Equipment while in possession of CPA.

48 Month Term

Reimbursement Formula for Scanners:

(Monthly Equipment Unit Price * Number of Full Months Remaining in the Period of Performance) + \$1.00. The effective date of the buyout will be the last day of the month in which CPA provides written notification to Contractor that the buyout is approved.

Example: POP 1/1/2016-12/31/19. Written notification is received from CPA on 4/18/2016 the buyout is approved. The CPA Notification Month would be 4 and the Number of Full Months remaining in the Period of Performance would be 44. The effective date of the buyout would be 4/30/2016.

CPA Approval Notification Month in Equipment Period of Performance	Number of Full Months Remaining in the Period of Performance	CPA Approval Notification Month in Equipment Period of Performance	Number of Full Months Remaining in the Period of Performance
1*	47	25	23
2	46	26	22
3	45	27	21
4	44	28	20
5	43	29	19
6	42	30	18
7	41	31	17
8	40	32	16
9	39	33	15
10	38	34	14
11	37	35	13
12	36	36	12
13	35	37	11
14	34	38	10
15	33	39	9
16	32	40	8
17	31	41	7
18	30	42	6
19	29	43	5
20	28	44	4
21	27	45	3
22	26	46	2
23	25	47	1
24	24	48+	0

*For the purpose of this Stipulated Loss Table only, Month 1 starts on the Equipment arrival date at CPA and ends on the last day of the first month of the Initial Period of Performance.

ATTACHMENT D**Texas Comptroller of Public Accounts**

Comptroller of Public
Accounts
FORM
70-223
(Rev. 10-14/11)

Confidential Treatment of Information Acknowledgement (CTIA)

I have read and understand the Comptroller's Summary Public Information Disclosure Manual, a copy of which has been made available to me. I understand that confidential information made available to me by the Comptroller's office may include the Comptroller's own information and information held by the Comptroller's office from other entities. I understand that confidential information is to be held in strictest confidence, and I will act in accordance with applicable federal and state laws, regulations and Comptroller policy with regard to the safekeeping and disclosure of confidential information. I understand that I am not to use such information to the detriment of the Comptroller's office or the State of Texas.

I understand that it is my responsibility to consult with the Comptroller's office and obtain approval to disclose confidential information made available to me, and to ensure that any and all disclosures I make are made to people or entities authorized to receive such information.

I understand that I shall either return to the Comptroller's office or destroy any confidential information in my possession according to Comptroller guidelines, when I no longer require such information for authorized purposes.

I understand that computer system password(s) I receive or devise to access computer systems, which may be made available to me for my use by the Comptroller's office, are confidential. I will not disclose to any unauthorized person any password(s) which I am given or devise, and I will not write such password(s) or post them where they may be viewed by unauthorized people. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of my password(s). I understand that use of a password not issued specifically to me, or to a group of which I am a member, is expressly prohibited.

I understand that criminal and/or civil penalties and/or civil damages may apply if I obtain unauthorized access to, or make an unauthorized disclosure or inspection of, certain types of confidential information (e.g., IRS Federal Taxpayer Information, Protected Health Information, Sensitive Personal Information). Such penalties and/or damages may include, but are not limited to, the following:

- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$4,000 fine (Texas Labor Code §301.085);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (Texas Tax Code §171.361);
- a misdemeanor, punishable by up to 180 days in jail and/or up to a \$2,000 fine (Texas Tax Code §22.27(c));
- a felony, punishable by up to 5 years in prison and/or a fine of up to \$5,000 (26 USC. §7213);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (26 USC §7213A);
- civil damages equal to sum of the greater of \$1,000 for each unauthorized inspection/disclosure or sum of actual damages sustained plus punitive damages for gross negligence, and the cost of action (26 USC §7431); and
- civil and criminal penalties related to criminal justice information (28 CFR §20.25).

I understand that an attempt to circumvent any computer security system or other security control by any means is a violation of Comptroller policy. I also understand that failure to observe these restrictions may constitute a "Breach of Computer Security" as defined in Texas Penal Code, Section 33.02(b), and that such an offense constitutes a Class B misdemeanor, a state jail felony, or I understand that any copyrighted material including, but not limited to, commercial computer software, which may be made available to me for my use by the Comptroller's office, is protected by copyright laws and is not to be copied for any reason without permission from the copyright owner. I understand that the violation of copyright laws, including computer software, may result in fines and/or imprisonment.

By my signature hereon, I acknowledge my understanding of the contents of this form and the continued applicability of these provisions after my access to confidential information and computer systems has been terminated.

Printed name of person requesting access Mark Edson		Name of employer KST Data, Inc.	
sign here ➤	Signature of person requesting access 		Date 12/04/18
	Work phone (Area code and number) 817-442-1578		Work email address medson@kstdata.com


For general questions regarding this form, contact the Comptroller's Information Security Office by calling 512-936-5671.

Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at 1-800-531-5441, ext. 6-6057.

ATTACHMENT E
Nondisclosure Agreement

In consideration of Texas Comptroller of Public Accounts ("CPA") communicating with the undersigned Respondent regarding a potential contract resulting from the referenced solicitation (e.g., RFP, RFO, IFB) and because of the sensitivity of certain information provided to Respondent, both parties agree that all information regarding CPA or gathered, produced, collected or derived from or related to the potential contract, or provided to Respondent under a resulting contract ("Confidential Information") must remain confidential subject to release only upon prior written approval of CPA, and more specifically agree as follows:

1. The Confidential Information may be used by Respondent only to assist Respondent in connection with the business relationship contemplated in the solicitation or performance of a contract with CPA resulting from the solicitation.
2. Respondent shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as proposed consultant or independent contractor to CPA.
3. Unless otherwise provided in the solicitation or resulting contract, Respondent agrees to maintain the confidentiality of all Confidential Information in the same manner that it protects the confidentiality of its own materials of like kind, but in no event less than reasonable care. Respondent shall take reasonable precautions to protect the Confidential Information including, but not limited to, not disclosing Confidential Information in any manner to any person, firm, or entity, except for authorized employees, agents, or contractors of Respondent with a need to know who are bound by confidentiality obligations at least as stringent as those contained in this agreement prior to any disclosure of such Confidential Information.
4. The Confidential Information may not be copied, reproduced, disclosed, distributed, or otherwise divulged without CPA's prior written approval. Confidential Information and any copies thereof shall be CPA's exclusive property.
5. All Confidential Information made available to Respondent, including copies thereof, must be returned to CPA upon the first to occur of (a) expiration or termination of any contract resulting from the solicitation, or (b) request by CPA.
6. The foregoing does not prohibit or limit Respondent's use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, provided such prior knowledge was not subject to a confidentiality obligation, (b) independently developed by it, (c) acquired by it from a third party under no obligation of confidentiality to CPA, (d) which is or becomes part of the public domain through no breach by Respondent of this nondisclosure agreement or other contractual obligations to CPA, or (e) approved by CPA in writing for unrestricted disclosure.
7. If Respondent is required by applicable law, regulation, or legal process to disclose any Confidential Information, then Respondent shall provide CPA with prompt notice of any such requirement prior to delivery of the Confidential Information to allow CPA a reasonable opportunity to seek a protective order or equivalent.
8. This nondisclosure agreement shall become effective as of the date Confidential Information is first made available to Respondent and shall survive the expiration or termination of any contract resulting from the solicitation and be a continuing requirement.
9. The breach of this nondisclosure agreement by Respondent shall entitle CPA to immediately terminate any contract with Respondent resulting from the solicitation upon written notice to Respondent for such breach. The parties acknowledge that the measure of damages in the event of a breach of this nondisclosure agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether CPA elects to terminate any contract with Respondent resulting from the solicitation upon the breach hereof, CPA may require Respondent to pay to CPA the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to CPA in the event of a breach hereof by Respondent of this nondisclosure agreement. CPA does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this nondisclosure agreement.
10. This nondisclosure agreement is governed by and construed under the laws of the State of Texas. Any and all obligations of this agreement are due in Travis County, Texas and venue is proper in only such county.



Signature of Authorized Representative

Mark Edson, Vice President

Printed Name & Title of Authorized Representative

12/04/18

Date Signed

KST Data, Inc.

Company Name ("Respondent")

ATTACHMENT F

Contractor's DIR Contract No. DIR-TSO-3692

[COVER SHEET]