



DeWight Dopslauf, C.P.M., CPPO  
Harris County Purchasing Agent

September 19, 2022

Commissioners Court  
Harris County, Texas

**RE: Sole Source Exemption – Local Government Code § 262.024 (a)(7)**

Members of Commissioners Court:

Please approve a sole source exemption from the competitive bid requirements and the attached Order authorizing the County Judge to execute the attached Agreement for the following:

**Description:** Software for Analytics and Investigation of Authorized Inmate Communications for the Harris County Sheriff's Office

**Vendor:** LEO Technologies, LLC (DIR-CPO-4912)

**Term:** September 27, 2022 through September 26, 2024

**Amount:** \$10,800,000

**Reviewed by:**   X   Sheriff's Office   X   Harris County Purchasing

The Office of the Harris County Purchasing Agent has confirmed the sole source exemption. LEO Technologies, LLC is the sole provider of proprietary, patented technology that provides law enforcement entities with automated transcription and analysis of all inmate recordings. This purchase will be made utilizing Texas Anti-Gang (TAG) Program grant funds. A purchase order will be issued up Commissioners Court approval.

Sincerely,

*DeWight Dopslauf*

DeWight Dopslauf  
Purchasing Agent

JG  
Attachment(s)  
cc: Sheriff's Office  
Vendor

**FOR INCLUSION ON COMMISSIONERS COURT AGENDA SEPTEMBER 27, 2022**

**ADDENDUM TO THE AGREEMENT  
BETWEEN HARRIS COUNTY AND  
LEO TECHNOLOGIES, LLC**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HARRIS     §

This Addendum to the above-referenced Agreement is made and entered into by and between Harris County (“County”), a body corporate and politic under the laws of the State of Texas acting by and through the Sheriff’s Office (the “Department”), and LEO Technologies, LLC, (“Contractor”). The County and Contractor are referred to herein collectively as the “Parties” and individually as a “Party.”

***Recitals***

The County desires automated analytics investigative software leveraging authorized inmate communications originating from correctional facilities’ phone systems for the Department (the “Services”).

Contractor warrants and represents it is capable and willing to provide the Services and Deliverables.

***Terms***

**I.**

The Services have been procured under State of Texas Department of Information Resources (“DIR”) Contract No. DIR-CPO-4912 (the “Contract”). Contractor agrees to provide the Services for the Department in accordance with the Contract, including exhibits, attached hereto as Exhibit A. It is expressly understood and agreed that Contractor’s Subscription Agreement is included with the Contract’s exhibits and incorporated herein by reference. In the event of any conflict between the terms and provisions of this Addendum, or any portion thereof, and the terms and provisions of any other part or portion of the Contract, or any other terms and conditions, this Addendum shall control.

Contractor shall follow all federal, state, and local laws, rules, orders, codes, and regulations applicable to the Services.

Any language in the Subscription Agreement that states the County will indemnify Contractor for any reason is hereby deleted in its entirety.

**II.**

**EFFECTIVE DATE AND TERM**

The term shall begin upon approval by Commissioners Court and run for twenty-four (24) months.

### III.

#### LIMITATION OF APPROPRIATION AND GRANT AWARD

A) Contractor understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to for the Services performed under this Agreement, and the total maximum sum that the County shall become liable to pay to Contractor under this Agreement, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of Ten Million Eight Hundred Thousand and No/Dollars (\$10,800,000.00), which is expected to be available pursuant to the award of the Grant Funds.

B) Contractor understands and agrees that payment for the Services under this Agreement shall be made from Grant Funds awarded to the County for the term of the Agreement. It is expressly understood and agreed that the County shall rely solely on Grant Funds under the Grant awarded to the County with which to pay its obligations for the Services provided under this Agreement. The County shall not be liable under any circumstances or any interpretations for any costs under the Agreement until the Grant Funds are actually received by the County and then only to the extent that such monies are actually received and certified available for this Agreement by the County Auditor, as evidenced by the issuance of a Purchase Order for that amount. Contractor agrees that the Grant Funds awarded to the County are the exclusive funding of the Agreement.

C) The Parties understand that payment obligations created by this Agreement are conditioned upon the availability of third-party funds (e.g., federal funds awarded to the State or County) and appropriated for the payment of such obligations under the Grant. In the event these funds are discontinued or reduced during the Agreement term, the County shall not be liable for payment of any funds above the actual Grant Funds the County receives. If such a discontinuation/reduction occurs and the Parties are unable to renegotiate the Agreement upon mutually acceptable terms, Contractor's sole and exclusive remedy shall be to terminate this Agreement. The County obligation to make any payments under the Agreement is limited to the amount of the Grant Funds. Contractor agrees that it will not be entitled to any damages or remedies of any kind including, but not limited to liquidated or incidental damages, late fees, penalties, or finance charges. Failure to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

D) Contractor understands and agrees that it shall not proceed with any Services until it receives written authorization from the County to begin. If at any time during the course of the Agreement Contractor knows that the funds available will not cover the cost of the Services, Contractor shall notify the County immediately.

E) Subject at all times to the availability of Grant Funds and the County's right to withhold payment of any questionable charges, the County shall pay each such undisputed invoice in accordance with Texas state law. Upon approval of this Agreement by the Court, a Purchase Order will be issued in the contract amount.

F) Contractor understands and agrees, said understanding and agreement being of the absolute essence of this Agreement, that with regard to any Renewal Term or extension of this Agreement, the County has not certified any funds for any renewal or extension period beyond the current fiscal year. Therefore, if the County exercises any renewal option, the renewal is subject to the future allocation and certification of funds for the renewal term, on the same terms and conditions of this Agreement.

IV.

ENTIRE AGREEMENT

This instrument contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.

Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.


V.

EXECUTION

Multiple Counterparts: This Addendum may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Addendum.

LEO TECHNOLOGIES, INC.

HARRIS COUNTY

By:   
Name: James M. Sexton  
Title: Chief Operating Officer  
Date: 09/06/2022

By: \_\_\_\_\_  
LINA HIDALGO  
COUNTY JUDGE

APPROVED AS TO FORM:  
CHRISTIAN D. MENEFE  
COUNTY ATTORNEY

By: Philip Berzins For: \_\_\_\_\_  
T. Scott Petty  
Senior Assistant County Attorney  
C.A. File 22GEN3309

EXHIBIT A

Contract DIR-CPO-4912, with Exhibits and Subscription Agreement

(follows behind)

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR PRODUCTS**

**LEO Technologies, LLC**

## **1 INTRODUCTION**

### **1.1 Parties**

This contract for products and related services (this “Contract”) is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and LEO Technologies, LLC (hereinafter “Vendor”), with its principal place of business at 1122 Colorado St., Suite 2103, Austin, TX 78701.

### **1.2 Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. Chapter 418 of the Texas Government Code provides for certain purchases made under executive orders or proclamations that declare a state of disaster. This Contract is executed based on the Disaster Proclamation issued by Texas Governor Greg Abbott on May 31, 2021, relating to the ongoing and imminent threat of widespread and severe damage, injury, and loss of life and property, including property damage, property crime, human trafficking, violent crime, threats to public health, and violation of sovereignty and territorial integrity, in certain Texas counties and for all state agencies affected by this disaster, and any amendments thereto or renewals thereof (the “Disaster Proclamation”). The Disaster Proclamation suspended any regulatory statutes prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster upon written approval of the Office of the Governor. Further, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency’s emergency response that is necessary to protect life or property threatened by this declared disaster, the Governor suspended these statutes and rules for the duration of the Disaster Proclamation. As a result, DIR followed instructions and timelines required by the Office of the Governor, Texas Division of Emergency Management, and other agencies involved in the disaster response notwithstanding any generally-applicable statutory or regulatory requirements that would have delayed or otherwise hindered the state's response.

### **1.3 Order of Precedence**

- a) For purchase transactions under this Contract, the order of precedence shall be as follows:
  - i. this Contract;
  - ii. Appendix A, Terms and Conditions;

- iii. Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan;
  - iv. Appendix C, Pricing Index; and
  - v. Appendix D, Subscription Agreement and Order Form templates.
- b) Each of the foregoing documents is hereby incorporated by reference and together constitute the entire agreement between DIR and Vendor governing purchase transactions.

#### 1.4 Definitions

Capitalized terms used but not defined herein have the meanings given to them in Appendix A, Terms and Conditions.

## 2 TERM OF CONTRACT

The term of this Contract shall commence on the date of the last signature hereto and, unless otherwise terminated in accordance with the provisions herein, end on the earlier of (i) the expiration or termination of the Disaster Proclamation, or (ii) the date that is thirty (30) calendar days after DIR provides written notice to Vendor that, as a result of a competitive procurement process in compliance with applicable procurement laws of the State of Texas, DIR has entered into one or more contracts for the same or substantially similar products and related services described in Section 4 hereof.

## 3 RESTRICTIONS ON PURCHASES

Purchases under this Contract are limited to purchases which are in response to and are authorized by the Disaster Proclamation. Vendor and Customers shall not enter into a Purchase Order under this Contract unless such Purchase Order is accompanied by the Order Form attached hereto as Appendix D and Customer has completed the following attestation contained therein:

<p><b>DISASTER PROCLAMATION ATTESTATION STATEMENT:</b></p> <p>I have reviewed the Disaster Proclamation issued by the Governor of the State of Texas on May 31, 2021, relating to the ongoing and imminent threat of widespread and severe damage, injury, and loss of life and property, including property damage, property crime, human trafficking, violent crime, threats to public health, and violation of sovereignty and territorial integrity, in certain Texas counties and for all state agencies affected by this disaster, and any amendments thereto or renewals thereof. I hereby attest that this order is in response to and is authorized by such Disaster Proclamation.</p> <p>I am authorized to initiate this order on behalf of my organization.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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## 4 PRODUCT OFFERINGS

This Contract is solely for VERUS software and related services, as described in Section 4.1.

#### 4.1 VERUS Software

VERUS (the “VERUS Software”) is a proprietary, patented technology and process, which includes software and services that provide law enforcement entities with (a) automated transcription of all inmate recordings originating within a correctional facility, (b) software that is able to search such calls, (c) model driven analytical processing that provides reports and intelligence notifications in near real time about past or potential criminal events, (d) the ability to program automatic searches using multiple keywords with regard to all such calls simultaneously, and (e) algorithm and machine learning capabilities.

#### 4.2 Related Services

At a minimum, Vendor will provide the following related services at no additional cost to a Customer purchasing the VERUS Software under this Contract for each correctional facility designated by such Customer in the applicable Order Form (each such facility, a “Designated Facility”):

- a) Vendor shall implement and interface the VERUS Software with certain inmate call data collected by the Designated Facility’s phone provider as identified by Customer in the Order Form.
- b) Vendor shall provide adequate personnel and services to train Designated Facility and Customer personnel in the use of the VERUS Software. Upon request by Customer, such training shall be provided onsite at the Designated Facility.
- c) Vendor shall provide adequate personnel and services to support Customer’s use of the VERUS Software. Upon reasonable request by Customer, such support shall be provided onsite at the Designated Facility.
- d) Vendor shall provide adequate personnel and services to train Texas Department of Public Safety (“DPS”) personnel in the use of the VERUS Software. Upon request by Customer, such training shall be provided onsite at a location designated by DPS.
- e) Vendor shall provide adequate personnel and services to support DPS’s use of the VERUS Software. Upon reasonable request by DPS, such support shall be provided onsite at a location designated by DPS.
- f) Vendor shall produce certified reports depicting its reporting and notifications on a monthly, quarterly, and yearly basis.

### 5 DPS ACCESS TO DATA

Vendor and Customers shall allow DPS full and unrestricted access to VERUS Software purchased by a Customer under this Contract and all data collected, stored, analyzed, and maintained therein. DPS may not be charged a fee nor required to enter into any agreement as a condition to receiving the access provided for by this Section. If DPS is the Customer or provides funding for purchases by a Customer, this Section shall not change or affect the pricing to or agreements entered into by such Customer. In accordance with Section 4.2 of Appendix A, Vendors and Customers shall not have the authority to modify this Section 5.



## 6 PRICING

Pricing to Customers shall be as set forth in **Appendix A, Terms and Conditions**, and as set forth in **Appendix C, Pricing Index**, and shall include the DIR Administrative Fee (as defined below).

## 7 DIR ADMINISTRATIVE FEE

- a) Vendor shall pay an administrative fee to DIR based on the dollar value of all sales to Customers pursuant to this Contract (the “DIR Administrative Fee”). The amount of the DIR Administrative Fee shall be seventy-five hundredths of a percent (0.75%) of all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.
- b) All prices quoted to Customers shall include the DIR Administrative Fee. DIR reserves the right to increase or decrease the DIR Administrative Fee during the term of this Contract, upon written notice to Vendor without amending this Contract. Any increase or decrease in the DIR Administrative Fee shall be incorporated in the price to Customers.

## 8 NOTIFICATION

All notices under this Contract shall be sent to a party at the respective address indicated below.

**If sent to the State:**

Hershel Becker or Successor in Office  
Chief Procurement Officer  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Email: [hershel.becker@dir.texas.gov](mailto:hershel.becker@dir.texas.gov)

**If sent to Vendor:**

James Sexton  
Leo Technologies, LLC  
1999 Avenue of the Stars Suite 1100,  
Century City, CA 90067  
Phone: (310) 526-3890  
Email: [james.sexton@leotechnologies.com](mailto:james.sexton@leotechnologies.com)

## 9 SUBSCRIPTION AGREEMENT AND ORDER FORM TEMPLATES

Services provided under this Contract shall be in accordance with the Subscription Agreement and Order Form templates as set forth in **Appendix D** of this Contract. No changes to the Subscription Agreement and Order Form templates terms and conditions may be made unless previously agreed to by Vendor and DIR. Vendor and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or DIR or the responsibilities or liabilities of Vendor.

## 10 CONFLICTING OR ADDITIONAL TERMS

- A) The terms and conditions of this Contract shall supersede any additional conflicting or additional terms in any additional service agreements, statement of work, and any other provisions, terms, conditions, and license agreements, including those which may be affixed to or accompany software upon delivery (sometimes called shrink-wrap or click-wrap agreements), and any linked or supplemental documents, which may be proposed, issued, or accepted by Vendor and Customer in addition to this Contract (such additional agreements, “Additional Agreements”), regardless of when such Additional Agreements are proposed, issued, or accepted by Customer. Notwithstanding the foregoing, it is Customer’s responsibility to review any Additional Agreements to determine if Customer accepts such Additional Agreement. If Customer does not accept such Additional Agreement, Customer shall be responsible for negotiating any changes thereto.
- B) Any update or amendment to an Additional Agreement shall only apply to Purchase Orders for the associated product or service offering after the effective date of such update or amendment; provided that, if Vendor has responded to a Customer’s solicitation or request for pricing, any subsequent update or amendment to an Additional Agreement may only apply to a resulting Purchase Order if Vendor directly informs such Customer of such update or amendment before the Purchase Order is executed.
- C) Vendor shall not require any Additional Agreement that: 1) diminishes the rights, benefits, or protections of Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer. If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to this Contract or the Purchase Order between Vendor and Customer, and Vendor will nonetheless be obligated to perform such Purchase Order without regard to the prohibited documents, unless Customer elects instead to terminate such Purchase Order, which in such case may be identified as a termination for cause against Vendor.

(Remainder of this page intentionally left blank.)

This Contract is executed to be effective as of the date of last signature.

**LEO Technologies, LLC**

**Authorized By:** Signature on File

**Name:** James Sexton

**Title:** Chief Operating Officer

**Date:** 9/21/2021

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 9/22/2021

**Office of General Counsel:** M.G.

**Date:** 9/22/2021



# **Department of Information Resources**

## **VERUS Software**

### **Appendix A**

#### **Contract Terms and Conditions**

**Version 1.0**

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

## **1 CONTRACT SCOPE**

Vendor shall provide the products and/or services specified in the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section [3 Definitions](#).

## **2 NO QUANTITY GUARANTEES**

The Contract is not exclusive to Vendor. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and/or services will be procured through the Contract.

## **3 DEFINITIONS**

### **3.1 Compliance Check**

An audit of Vendor's compliance with the Contract which may be performed by a third-party auditor, DIR Internal Audit department, DIR contract management staff, or their designees.

### **3.2 Contract**

DIR Contract No. DIR-CPO-4912 between DIR and Vendor into which this Appendix A is incorporated.

### **3.3 CPA**

Refers to the Texas Comptroller of Public Accounts.

### **3.4 Customer**

Any of the following that enters into a Purchase Order under the Contract: a Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001:

- A. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- B. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;

- C. Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- D. A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- E. A local workforce development board created under Section 2308.253;
- F. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- G. The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- H. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- I. A nonprofit organization that provides affordable housing.

### 3.5 **Business day**

Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

### 3.6 **DIR**

Refers to the Texas Department of Information Resources.

### 3.7 **Effective Date**

Refers to the effective date of the Contract as set forth therein.

### 3.8 **Invoice**

Refers to a Customer approved instrument submitted by Vendor for payment of services.

### 3.9 **Purchase Order**

Refers to Customer's fiscal form or format, contract with Vendor, or other document used by Customer to authorize the purchase of products or services from Vendor under the Contract, including but not limited to a formal written purchase order, procurement card, electronic purchase order, or another authorized instrument.

### 3.10 **State**

Refers to the State of Texas.

### 3.11 **Subcontracting Plan**

Refers to **Appendix B**, Vendor's Historically Underutilized Business Subcontracting Plan.

### 3.12 **Vendor**

Refers to Vendor as defined in the Contract.

### 3.13 **Third-Party Provider**

Refers to an agent, affiliate, subcontractor, vendor, reseller, manufacturer, publisher, distributor, order fulfiller or other person or entity designated or directed by Vendor to provide products or services to a Customer in performance of, related to, or in support of a Purchase Order issued under the Contract.

## 4 **GENERAL PROVISIONS**

### 4.1 **Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

### 4.2 **Modification of Contract Terms and/or Amendments**

- A. The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- B. DIR may amend the Contract upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- C. Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- D. Customer(s) and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, source of funding, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract.

### 4.3 **Invalid Term or Condition**

- A. To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR do not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
- B. If one (1) or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

#### **4.4 Assignment**

- A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- B. Vendor shall not assign its rights under the contract or delegate the performance of its duties under the Contract without prior written approval from the DIR. Any attempted assignment in violation of this provision is void and without effect.

#### **4.5 Survival**

All applicable Purchase Orders that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer or Vendor terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive for more than one year after the termination or expiration of the Contract. In all instances of termination or expiration, Vendor shall provide a list of all surviving Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Purchase Orders. Rights and obligations under the Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee and any and all payment obligations of Customer invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect.

#### **4.6 Choice of Law**

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. In any litigation where any state agency is a party, and subject to the requirements of Chapter 2260, Texas Government Code., the exclusive venue of any such suit arising under the contract is fixed in the state courts of Travis County, Texas. If litigation does not involve any state agency, then venue is fixed in the state courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. Regardless of any provision anywhere in the Contract, no state agency or other Customer in any manner waives any defense or immunity whatsoever.

#### **4.7 Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

#### **4.8 Proof of Financial Stability**

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the Contract term.

#### **4.9 Data Location**

Regardless of any other provision of the Contract or its incorporated or referenced documents, all of the data for State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted,



and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise; however, Vendor shall notify DIR promptly after such request is made. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

#### 4.10 Independent Contractor

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR, OR THE STATE OF TEXAS.**

## 5 INTELLECTUAL PROPERTY MATTERS

### 5.1 Intellectual Property Matters Definitions

#### 5.1.1 “Work Product”

Means, excluding Vendor IP and Third Party IP, any and all deliverables provided to Customer, including data, transcripts, and reports, produced by Vendor for exclusively for Customer pursuant to a Purchase Order issued under the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date, including but not limited to any:

- (i) works of authorship (such as reports, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),
- (ii) any copies, and similar or derivative works to any of the foregoing,
- (iii) all documentation and materials related to any of the foregoing,
- (iv) all other goods, services or deliverables to be provided to Customer pursuant to a Purchase Order issued under the Contract, and
- (v) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived exclusively for the use or benefit of Customer in connection with a Purchase Order issued under the Contract, or with funds appropriated by or for Customer or Customer’s benefit:
  - a. by any Vendor personnel or Customer personnel, or
  - b. by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

### 5.1.2 “Intellectual Property Rights”

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author’s rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

- i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
- ii) any work of authorship, including any copyrights, moral rights or neighboring rights;
- iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
- iv) domain name registrations; and
- v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

### 5.1.3 “Third Party IP”

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract.

### 5.1.4 “Vendor IP”

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor:

- i) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Work Product,
- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Vendor outside Vendor’s provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer, or
- iii) Any derivative works of (i) or (ii) above.

## 5.2 Ownership

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and

Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises, and computer files containing the Work Product, except that such access will not include access to systems containing data from other Vendor customers. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

### **5.3 Further Actions**

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

### **5.4 Waiver of Moral Rights**

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

### **5.5 Confidentiality**

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph [5.8 Vendor License to Use](#). Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

### **5.6 Injunctive Relief**

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

### **5.7 Return of Materials Pertaining to Work Product**

Upon the request of Customer, but in any event upon termination or expiration of the Contract, or a Purchase Order issued under the Contract, as applicable, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

### **5.8 Vendor License to Use**

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Vendor nor any Third-Party Provider shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

### **5.9 Third-Party Underlying and Derivative Works**

- A. To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, a non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to:
  - i) use, execute, reproduce, display, and perform Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product
- B. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

### **5.10 Agreement with Third Party Providers**

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing such services or Work Product pursuant to the Contract, and that Vendor shall maintain such written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

### **5.11 License to Customer**

Vendor grants to Customer, at no additional charge, a world-wide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), and transmit any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties,

solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

#### **5.12 Vendor Development Rights**

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

### **6 TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY**

- A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Vendor hereby represents, certifies, and warrants that it and its products and services comply with all relevant accessibility laws and standards.
  - i) Upon request, and prior to a DIR Customer purchase, Vendor must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such competed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
  - ii) If Vendor claims that a proposed product or family of products is exempt from accessibility requirements must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
  - iii) Upon request, and prior to a DIR customer purchase for IT development services, Vendor must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which

documents Contract Holder's capability or ability to produce accessible electronic and information resources.

- iv) Additionally, Vendor must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.
- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Vendor must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.
- vi) Also upon request, Vendor must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

## **7 VENDOR CONTRACT FULFILLMENT AND PROMOTION**

### **7.1 Service, Sales and Support of the Contract**

Vendor shall provide service, sales, and support resources to serve all Customers. It is the responsibility of Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use best efforts to ensure that potential Customers are made aware of the existence of the Contract. All contracts for and sales to Customers for products and related services available under the Contract shall be in accordance with the Contract.

### **7.2 Internet Access to Contract and Pricing Information**

#### **A. Vendor Webpage**

Within thirty (30) calendar days from the Effective Date, Vendor will establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Vendor's website. Vendor must use a web hosting service that provides a dedicated internet protocol (IP) address. Vendor's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Vendor's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The webpage must include:

- i) the services awarded and services description;
- ii) Vendor contact information (name, telephone number and email address);
- iii) instructions for obtaining quotes and placing Purchase Orders;
- iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage; and
- v) a link to the DIR "Cooperative Contracts" webpage;
- vi) the DIR logo in accordance with the requirements of this Section.

B. If Vendor does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.



### **7.3 Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained, and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

### **7.4 Webpage Compliance Checks**

Periodic Compliance Checks of the information posted for the Contract on Vendor's website may be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

### **7.5 Webpage Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

### **7.6 Use of Access Data Prohibited**

If Vendor stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

### **7.7 Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

### **7.8 Services Warranty and Return Policies**

Vendor will adhere to Vendor's then-currently published policies concerning product and service warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated customers for like products and services.

### **7.9 DIR Logo**

Vendor may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

- A. the logo may not be modified in any way,
- B. when displayed, the size of the DIR logo must be equal to or smaller than Vendor's logo,
- C. the DIR logo is only used to communicate the availability of services under the Contract to Customers, and

D. any other use of the DIR logo requires prior written permission from DIR.

#### **7.10 Vendor Logo**

If DIR receives Vendor's prior written approval, DIR may use Vendor's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logo may be on the DIR website or on printed materials. Any use of Vendor's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

#### **7.11 Vendor Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor will be required to attend an orientation meeting to discuss the content and procedures of the Contract to included reporting requirements. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Vendor for attendance at the meeting.

#### **7.12 Performance Review Meetings**

Vendor shall attend periodic meetings to review Vendor's performance under the Contract at DIR's request. The meetings will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Vendor for attendance at the meeting.

### **8 VENDOR PURCHASE ORDERS, INVOICES, AND PAYMENTS**

#### **8.1 Purchase Orders**

All Customer Purchase Orders will be placed directly with Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

#### **8.2 Invoices**

- A. Invoices shall be submitted by Vendor directly to Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to Vendor. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.
- B. Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the products and services by the Customer.
- C. The DIR Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.



### 8.3 **Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

### 8.4 **Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

### 8.5 **Travel Expense Reimbursement**

Pricing for services provided under the Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under the Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customers reserve the right not to pay travel expenses which are not pre-approved in writing by the Customer.

## 9 **CONTRACT ADMINISTRATION**

### 9.1 **Contract Managers**

DIR and Vendor will each provide a contract manager (“Contract Manager”) to support the Contract (respectively, the “DIR Contract Manager” and “Vendor Contract Manager”). Information regarding each Contract Manager will be posted on the internet website designated for the Contract.

#### 9.1.1 **DIR Contract Manager**

The DIR Contract Manager’s duties include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. advising DIR of Vendor’s performance under the Contract, and
- C. periodic verification of pricing and monthly reports submitted by Vendor.

#### 9.1.2 **Vendor Contract Manager**

Vendor Contract Manager’s duties shall include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. facilitating dispute resolution between Vendor and Customers, and

- C. advising DIR of Vendor's performance under the Contract. DIR reserves the right to require a change in Vendor Contract Manager if Vendor Contract Manager is not, in the opinion of DIR, adequately serving the needs of the State.

## 9.2 Reporting and Administrative Fees

### 9.2.1 Reporting Responsibility

- A. Each month, Vendor shall report all products and services purchased under the Contract. Vendor shall file monthly reports to include monthly sales reports, subcontract reports, and pay the DIR Administrative Fees in accordance with the due dates specified in this Section.
- B. DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, Compliance Checks of Vendor's applicable Contract books. Vendor will provide all required documentation at no cost.

### 9.2.2 Detailed Monthly Report

- A. Using the Vendor Sales Report (VSR) portal, Vendor shall provide DIR with a monthly report in the format required by DIR detailing sales activity under the Contract for the previous month period. This included months in which there are no sales. Reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. Per transaction, the monthly report shall include, at a minimum,: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to Vendor for correction in accordance with this Section.
- B. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in Contract termination.

### 9.2.3 Historically Underutilized Businesses Subcontract Reports

- A. Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- B. Reports shall be due in accordance with the CPA rules.

#### 9.2.4 DIR Administrative Fee

- A. The DIR Administrative Fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review monthly sales reports, close the sales period, and notify Vendor of the amount of the DIR Administrative Fee no later than the fourteenth (14th) calendar day of the month following the date of the reported sale. Vendor shall pay the amount of the DIR Administrative Fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales no later than February 15th; DIR closes January sales and notifies Vendor of the amount of the DIR Administrative Fee by March 14th; Vendor submits payment of the DIR Administrative Fee for January sales by March 25th.
- B. DIR may change the amount of the DIR Administrative Fee upon thirty (30) calendar days written notice to Vendor without the need for an amendment to the Contract.
- C. To preserve the DIR Administrative Fee in place at the time of the sale of product or service, the calculation of the DIR Administrative Fee is based on the Purchase Order date for each sale.
- D. Vendor shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

#### 9.2.5 Accurate and Timely Submission of Reports

- A. Vendor shall submit reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Vendor shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late DIR Administrative Fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or DIR Administrative Fee payments or deliver late reports and DIR Administrative Fee payments within three (3) business days, Vendor shall contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- B. Should Vendor fail to correct inaccurate reports or cure the delay in timely and accurate delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right at DIR's expense to require an independent third-party audit of Vendor's records as specified in Section [9.3](#). DIR will select the auditor (and all payments to auditor will require DIR approval).
- C. Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1,000/month) or suspension or termination of Vendor's Contract.

### 9.3 **Records and Audit**

- A. Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- B. Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract, whichever is later. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- C. Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the Compliance Checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking, and/or copying such books and records.
- D. Vendor shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with Vendor's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.
- E. For procuring State Agencies whose payments are processed by the CPA, the volume of payments made to Vendor through the CPA and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

### 9.4 **Contract Administration Notification**

- A. Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following:

- i) Vendor Contract Manager's name and contact information,
  - ii) Vendor sales representative name and contact information, and
  - iii) The name and contact information of Vendor personnel responsible for submitting reports and payment of DIR Administrative Fees.
- B. Upon execution of the Contract, DIR shall provide Vendor with written notification of the following:
- i) DIR Contract Manager's name and contact information, and
  - ii) DIR cooperative contracts email box information.

## **10 VENDOR RESPONSIBILITIES**

### **10.1 Indemnification**

#### **10.1.1 Indemnities by Vendor**

- A. Vendor shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, 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, resulting from, or related to:
- i) any acts or omissions of Vendor, its employees, or Third-Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
  - ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
  - iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Vendor in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Vendor, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
  - iv) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Vendor, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.
- B. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

### 10.1.2 Infringements

If Vendor becomes aware of an actual or potential claim of an Infringement, or Customer provides Vendor with notice of an actual or potential claim of an Infringement, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole expense: (i) procure for Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing. If neither (i) or (ii) is reasonably practicable for Vendor, Vendor may terminate the Contract upon written notice to Customer. This termination shall not affect Vendor's indemnification obligations hereunder.

### 10.2 Property Damage

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF VENDOR'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

### 10.3 Taxes/Worker's Compensation/Unemployment Insurance

Vendor agrees and acknowledges that during the existence of the Contract, Vendor shall be entirely responsible for the liability and payment of Vendor's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Vendor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. Vendor agrees and acknowledges that Vendor and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and/or the State shall not be liable to Vendor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee or employee of another governmental entity Customer.

### 10.4 Vendor Certifications

- A. Vendor hereby certifies, represents, and warrants that:
- i) it has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
  - ii) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006 Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
  - iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
  - iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;



- v) under Section 2155.004, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Vendor, which if determined adversely to them will have a material adverse effect on the ability to fulfill its obligations under the Contract;
- vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration, nor is Vendor subject to any Federal Executive Orders issued banning certain entities or countries.
- viii) as of the Effective Date, it is not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- ix) in the performance of this Contract, Vendor shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Section 2155.4441, Texas Government Code;
- x) all equipment and materials to be used in fulfilling the requirements of this Contract are of high-quality and consistent with or better than applicable industry standards, if any. All works and services performed pursuant to the Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- xi) to the extent Vendor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Vendor is otherwise owed under this Contract may be applied toward any debt Vendor owes the State of Texas until the debt is paid in full;
- xii) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- xiii) the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that Vendor will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Vendor shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- xiv) under Section 2155.006 and Section [2261.053](#), Texas, Government Code, it is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of Section 2155.444 and Section 2155.4441, Texas Government Code, in fulfilling the terms of the Contract;
- xvi) Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Section 556.005 or Section 556.008, Texas Government Code;
- xvii) in accordance with Section 2271.002, Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of the Contract;

- xviii) in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
  - xix) in accordance with Section 2252.152, Texas Government Code, it is not identified on a list prepared and maintained under Section 2270.0201 (previously 806.051) or Section 2252.153, Texas Government Code;
  - xx) if Vendor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, it verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract;
  - xxi) if Vendor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, it verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association;
  - xxii) it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract; and
  - xxiii) all information provided by Vendor is current, accurate, and complete.
- B. During the term of the Contract, Vendor shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.
- C. In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

### **10.5 Ability to Conduct Business in Texas**

Vendor shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organization Code, Title 1, Chapter 9. Upon request by DIR, Vendor shall provide all documents and other information necessary to establish Vendor's authorization to do business in the State of Texas and the validity of Vendor's existence under the laws of its state of organization.

### **10.6 Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State of Texas in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request,



Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **10.7 Use of Subcontractors**

If Vendor uses any subcontractors in the performance of the Contract, Vendor must make a good faith effort in the submission of its HUB Subcontracting Plan (HSP) in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised HSP approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of the Contract. A revised HSP approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of the Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

#### **10.8 Responsibility for Actions**

- A. Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- B. Vendor, for itself and on behalf of its subcontractors, shall immediately report to DIR any change to the information contained in Section [10.4, Vendor Certifications](#) of this Appendix A to the Contract. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **10.9 Confidentiality**

- A. Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Section 552.003, Texas Government Code are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- B. Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner unless required to do so by applicable law, court order, or similar.

#### **10.10 Security of Premises, Equipment, Data and Personnel**

Vendor or Third-Party Providers may, from time to time during the performance of the Contract, have access to personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer, DPS, or contained within a Designated Facility. Vendor and Third-Party Providers shall preserve the safety, security, and the integrity of such personnel, premises, equipment, and other property, including data, information, files, and materials, in accordance with the instruction of Customer, DPS, or their designees within a Designated Facility, as applicable, and to the degree in which Vendor or such Third-Party Provider protects its own information. Vendor shall be responsible for damage to premises, equipment, and other property when such damage is caused by Vendor or a Third-Party Provider. If Vendor or a Third-Party Provider fails to comply with these security requirements, then Customer may immediately terminate the Purchase Order and related Order Form.

#### **10.11 Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of Vendor's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Vendor conduct such background checks. Should any employee or Third-Party Provider of Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Order Form or request replacement of the employee or Third-Party Provider in question.

#### **10.12 Limitation of Liability**

- A. For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages.
- B. Vendor and a Customer may include in a Purchase Order a term limiting Vendor's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Vendor's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Vendor by such Customer as described in the Purchase Order.
- C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Vendor's liability contained herein or in a Purchase Order shall not apply to: claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

#### **10.13 Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

#### **10.14 Vendor Required Insurance Coverage**

- a) As a condition of the Contract, Vendor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Vendor is awarded services which require that Vendor's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to such Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. If Vendor's services under the Contract will not require Vendor to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Vendor may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and

agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.

- b) All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor thereunder. The minimum acceptable insurance provisions are as follows:

#### 10.14.1 Commercial General Liability

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- A. Blanket contractual liability coverage for liability assumed under the Contract;
- B. Independent Contractor coverage;
- C. State of Texas, DIR, and Customer listed as an additional insured; and
- D. Waiver of Subrogation.

#### 10.14.2 Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers' Liability of \$1,000,000 per accident, \$1,000,000 disease PER EMPLOYEE and \$1,000,000 per disease POLICY LIMIT.

#### 10.14.3 Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a. Waiver of Subrogation;
- b. Additional Insured.

#### 10.15 Use of State Property

Vendor is prohibited from using a Customer's equipment, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using a Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to such Customer immediately upon demand by such Customer. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Order, and other remedies available to DIR and Customer under the Contract and applicable law.

#### **10.16 Immigration**

- i) Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under the Contract.
- ii) Pursuant to Chapter 673, Texas Government Code, Vendor shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:
  - A. all persons 1) to whom the E-Verify system applies, and 2) who are hired by Vendor during the term of the Contract to perform duties within Texas; and
  - B. all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of the Contract and assigned by the subcontractor to perform work pursuant to the Contract.
- iii) Vendor shall require its subcontractors to comply with the requirements of this Section and Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

#### **10.17 Public Disclosure**

No public disclosures or news releases pertaining to the Contract shall be made by Vendor without prior written approval of DIR.

#### **10.18 Product and/or Services Substitutions**

Substitutions are not permitted without the prior written consent of DIR or Customer.

#### **10.19 Secure Erasure of Hard Disk Managed Services Products and/or Services**

Vendor agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Purchase Order for such products and/or services, in accordance with 1 TAC 202 or NIST 800-88.

#### **10.20 Deceptive Trade Practices; Unfair Business Practices**

- A. Vendor represents and warrants that neither Vendor nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- B. Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade

Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

#### **10.21 Drug Free Workplace Policy**

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **10.22 Public Information**

- A. Pursuant to Section 2252.907, Texas Government Code, Vendor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- B. Each State government entity should supplement the provision set forth in Section A above with the additional terms agreed upon by the parties regarding the specific format by which Vendor is required to make the information accessible by the public.
- C. Vendor represents and warrants that it will comply with the requirements of Section 552.372(a), Texas Government Code, where applicable. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subsection J, Chapter 552, Texas Government Code, may apply to the Contract or certain Purchase Orders, and Vendor agrees that the Contract or such Purchase Orders can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **10.23 Vendor Reporting Requirements**

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109, requiring computer technicians to report images of child pornography.

#### **10.24 Cybersecurity Training**

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Vendor, or a subcontractor, officer, or employee of Vendor, will have access to a state computer system or database, then Vendor shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency or institution of higher education. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Vendor shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

### **11 CONTRACT ENFORCEMENT**

## **11.1 Enforcement of Contract and Dispute Resolution**

- i) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, (iii) except as provided in Sec. 2251.051 Texas Government Code, Vendor shall continue performance while the dispute is being resolved, and (iv) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- ii) Disputes arising between a Customer and Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- iii) State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.00.

## **11.2 Termination**

### **11.2.1 Termination for Non-Appropriation**

#### **11.2.1.1 Termination for Non-Appropriation by Customer**

Customers may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; iii) by the entity appropriating any federal funds received by the State which may be used by state agencies, the Texas legislature, local governments, or the Governor to pay for goods or services as described herein; or iv) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor will be provided ten (10) calendar days written notice of intent to terminate. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

#### **11.2.1.2 Termination for Non-Appropriation by DIR**

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature; ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code; or iii) by the entity appropriating any federal funds received by the State which may be used by state agencies, the Texas legislature, local governments, or the Governor to pay for goods or services as described herein. In the event of non-appropriation, Vendor will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.



### 11.2.2 Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold the Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 14.1, Notices, of intent to terminate.

### 11.2.3 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer or Vendor may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice.

### 11.2.4 Termination for Cause

#### 11.2.4.1 Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

#### 11.2.4.2 Purchase Order

Customer or Vendor may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

#### 11.2.5 Immediate Termination or Suspension

DIR may immediately suspend or terminate the Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor (whether or not such potential violations directly impact the provision of goods or services under the Contract). In such case, Vendor may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Vendor within five (5) business days after the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review Vendor's presentation but is under no obligation to provide formal response.

#### 11.2.6 Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract in accordance with Section [4.5](#).

#### 11.2.7 Vendor Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted.

### 11.3 Force Majeure

DIR, Customer, or Vendor may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an "Event of Force Majeure"), provided that the party experiencing such Event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this Section, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by such Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of such Customer.

## 12 NON-SOLICITATION OF STATE EMPLOYEES

Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with the Contract for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Vendor shall not solicit, directly or indirectly, any employee of a Customer who is associated with a Purchase Order for a period of ninety (90) calendar days following the expiration or termination of such Purchase Order.

## 13 WARRANTY

Customers may provide written notice to Vendor of errors, inaccuracies, or other deficiencies in products or services provided by Vendor under a Purchase Order within thirty (30) calendar days of receipt of an invoice for such products or services. Vendor shall correct such error, inaccuracy, or other deficiency at no additional cost to Customer.



## **14 NOTIFICATION**

### **14.1 Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three (3) business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in the Contract or to such other address as such party shall have notified the other party in writing.

### **14.2 Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

## **15 CAPTIONS**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**<END OF APPENDIX A>**



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - ☐ Section 2 c. - Yes
  - ☐ Section 4 - Affirmation
  - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - ☐ Section 2 c. - No
  - ☐ Section 2 d. - Yes
  - ☐ Section 4 - Affirmation
  - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - ☐ Section 2 c. - No
  - ☐ Section 2 d. - No
  - ☐ Section 4 - Affirmation
  - ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - ☐ Section 3 - Self Performing Justification
  - ☐ Section 4 - Affirmation

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.





# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

**- - Agency Special Instructions/Additional Requirements - -**

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract\* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

## SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: LEO Technologies LLC State of Texas VID #: 1834506257600  
Point of Contact: Matthew Beath Phone #: 314-302-9072  
E-mail Address: matthew.beath@leotechnologies.com Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
(mm/dd/yyyy)

Enter your company's name here: LEO Technologies LLC

Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☒ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b>	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



Enter your company's name here: LEO Technologies LLC

Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: LEO Technologies LLC

Requisition #: \_\_\_\_\_

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

LEO Technologies has significant human and technology resources to fulfill this contract. The product to be used for this contract is wholly owned by LEO Technologies. The human resources that support the product from a service level are LEO Technologies employees. We will only utilize the product owned by LEO Technologies and LEO Technologies employees to service this contract.

#### SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on file.

Signature

Matthew Beath

Printed Name

Chief Financial Officer

Title

07/12/2021Date  
(mm/dd/yyyy)

#### Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.



## Rev. 2/17

Requisition #: \_\_\_\_\_

## SECTION A-1: SUBCONTRACTING OPPORTUNITY

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

[illegible]

Page 1 of 1  
(Attachment A)



# HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: LEO Technologies LLC Requisition #: \_\_\_\_\_

**IMPORTANT:** If you responded "No" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If **Yes**, continue to SECTION B-4.)

☐ - No / Not Applicable (If **No** or **Not Applicable**, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b.** List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No



# HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: LEO Technologies LLC

Requisition #: \_\_\_\_\_

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name:	LEO Technologies LLC	State of Texas VID #:	1834506257600
Point-of-Contact:	Matthew Beath	Phone #:	314-302-9072
E-mail Address:	matthew.beath@leotechnologies.com	Fax #:	

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:			
Point-of-Contact:		Phone #:	
Requisition #:		Bid Open Date:	
			(mm/dd/yyyy)

## SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

☐ - Not Applicable

### 4. Bonding/Insurance Requirements:

☐ - Not Applicable

### 5. Location to review plans/specifications:

☐ - Not Applicable

**APPENDIX C**  
**PRICING INDEX**  
**LEO Technologies, LLC**  
**DIR-CPO-4912**  
**Appendix C – Pricing Index**

SERVICES					
Service Name	Service Description	Unit of Issue	Price Per Unit	Discount % Off MSRP	DIR Customer Price Per Unit
VERUS	Artificial Intelligence (AI) and Machine Learning (ML) processing of authorized inmate communications	Per minute	\$0.05	0%	\$0.05

## LEO TECHNOLOGIES SUBSCRIPTION AGREEMENT

This **LEO Technologies Subscription Agreement** (the “**Subscription Agreement**”, together with any Orders in effect, the “**Agreement**”) is made and entered as of May 1, 2022 (the “**Effective Date**”), by and between LEO Technologies, LLC, a Delaware limited liability company (“**LEO**”), and the customer identified on the signature page hereto (“**Customer**”). LEO and Customer are referred to collectively as the “**Parties**,” or individually as a “**Party**.”

**1.0 Scope.** Customer desires to license the products and supporting professional services described in the applicable Orders, as defined herein. The Parties agree as follows:

**2.0 Definitions.** The following terms have the following meanings:

**2.1 “Authorized User”** means any user authorized by Customer to use the Services. Authorized Users may include employees, contractors, subcontractors, and other third parties performing services for or on behalf of Customer.

**2.2 “Confidential Information”** means any non-public information disclosed by one Party to another Party that is: (a) at the time of disclosure identified or marked as confidential or proprietary information; or (b) by its nature and the circumstances should reasonably be considered to be confidential information, in all cases including, but not limited to, information regarding a Party’s technology, trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information auditors reports of any nature, proposals, results of testing and benchmarking any software, product roadmap, strategy, operations, transactions, pricing, and information maintained in a Party’s internal-only documentation or web sites.

**2.3 “Data”** means any and all data, including, but not limited to Personal Information, processed by the Subscription Services on behalf of Customer under this Agreement.

**2.4 “Documentation”** means any materials provided by LEO relating to the performance, operation, or use of the Services, whether currently existing or created in the future, and whether in written or electronic form, including, but not limited to, with respect to the Services: (i) specifications; (ii) technical, operating procedure, program, or user manuals; (iii) training and support materials; and (iv) installation, configuration, integration, and implementation materials.

**2.5 “Downtime”** means time that the Subscription Services is unable to process Data to provide the Services.

**2.6 “Error”** means a material failure of the Subscription Services to conform to the functional specification described in the Documentation, which is reported by Customer and replicable by LEO.



- 2.7 “Intellectual Property Rights”** means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author’s rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:
- 2.7.1 any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;
  - 2.7.2 any work of authorship, including any copyrights, moral rights or neighboring rights;
  - 2.7.3 any trademark, service mark, trade dress, trade name, or other indicia of source or origin;
  - 2.7.4 domain name registrations; and
  - 2.7.5 any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 2.8 “LEO IP”** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by LEO:
- 2.8.1 prior to providing any services or Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the services or Product,
  - 2.8.2 after the Effective Date if such tangible or intangible items or things were independently developed by LEO outside LEO’s provision of services or Products for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to LEO or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with LEO or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer, or
  - 2.8.3 Any derivative works of Sections 2.8.1 or 2.8.2 above.
- 2.9 “Order”** means a purchase order issued under this Subscription Agreement for the delivery of professional services or Subscription Services by LEO to Customer.
- 2.10 “Personal Information”** means any and all individually identifiable information or data relating to a natural person that (i) directly or indirectly identifies or can be used to directly or indirectly identify, contact or locate an individual, or (ii) that relates to an individual, whose identity can be either directly or indirectly inferred

or authenticated, including any information that is linked or linkable to that individual. Personal Information shall be considered Confidential Information of the disclosing Party hereunder.

**2.11** “**Personnel**” means any employees, subcontractor employees, agents, independent contractors, or other third parties furnished by LEO to perform Services.

**2.12** “**Phone Provider**” is Securus Technologies, or a similar entity providing inmate telephone services to Customer.

**2.13** “**Products**” means, collectively, any and all deliverables provided to Customer, including data, transcripts, and reports, produced by LEO exclusively for Customer pursuant to an Order issued under this Subscription Agreement, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented, or conceived at any time following the Effective Date of such Order, including but not limited to any:

2.13.1 works of authorship (such as reports, manuals, instructions, printed materials, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, configurations, object code, source code, or other programming code, HTML code, flow charts, notes, outlines, lists compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web page or websites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works),

2.13.2 any copies, and similar or derivative works to any of the foregoing,

2.13.3 all documentation and materials related to any of the foregoing,

2.13.4 all other goods, services or deliverables to be provided to Customer pursuant to a Purchase Order issued under the Contract, and

2.13.5 all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for exclusively for the use or benefit of Customer in connection with an Order issued under this Subscription Agreement, or with funds appropriated by or for Customer or Customer’s benefit:

(a) by any Vendor personnel or Customer personnel, or

(b) by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer

- 2.14** “**Services**” means the services (including the Subscription Services and any applicable professional services) provided in an accepted Order.
- 2.15** “**Subscription Services**” means the service provided by LEO via LEO’s VERUS software and all software (including any upgrades or updates thereto), scripts, or other executable code provided or made available by LEO to Customer or Phone Provider.
- 2.16** “**Third Party IP**” means the Intellectual Property Rights of any third party that is not a party to the Subscription Agreement or an Order issued under the Purchase Agreement, and that is not directly or indirectly providing any goods or services to Customer under the Contract

### **3.0 Purchase of Services.**

- 3.1 Orders.** Customer may purchase Services from LEO by requesting and executing an Order that is accepted by LEO. By executing an accepted Order, Customer also agrees to be bound by this Agreement and agrees to the terms herein. No Customer will have any rights under this Agreement until an Order with Customer is executed between LEO and such Customer.
- 3.2 Integration With Phone Provider.** Customer acknowledges and understands that the Subscription Services must be connected to Customer’s Phone Provider via an application program interface (“**API**”) that allows the processing of Data in near real time for the Services to function. On the Effective Date, Customer shall direct the Phone Provider to provide LEO with an API in order to access the Data from the Phone Provider. Customer shall use its best efforts to support the execution of any necessary agreements between LEO and the Phone Provider to facilitate LEO’s receipt of the requisite API and access to the Data. No failure or delay by LEO to satisfy a LEO obligation in this Agreement shall be considered a breach if such failure or delay is caused, in whole or in substantial part, by a failure of Phone Provider or Customer to provide LEO access to the Data.
- 3.3 Implementation.** LEO and Customer shall reasonably cooperate in order to implement the Services. Such cooperation includes Customer’s best efforts to obtain the cooperation of the Phone Provider. Customer shall provide LEO with necessary access to its systems and facilities in order to implement and maintain the Services.

### **4.0 Subscription Services.**

- 4.1 Grant of Use.** Subject to the terms of this Agreement, including without limitation the restrictions set forth herein and timely payment of the applicable fees, LEO hereby grants to Customer for the term set forth in the applicable Order a world-wide, non-transferable, non-exclusive license, without the right to grant sublicenses (except with regard to third parties for the purpose of engaging such third parties to

assist or carryout Customer's internal business use of the Subscription Services), to access, use, copy, display, perform, and transmit the Subscription Services solely for the purpose of monitoring inmate calls originating within certain designated correctional facilities. Customer agrees that it does not acquire under this Agreement any license to use the Products in excess of the scope and/or duration of the Subscription Services set forth in the applicable Order.

- 4.2 Authorized User.** Customer shall appoint Authorized Users to use the Subscription Services. Customer shall insure that each Authorized User agrees to the Terms of Use attached hereto as *Exhibit A* (the "**Terms of Use**"). Customer is solely responsible for monitoring its Authorized Users' access to and use of the Subscription Services. Any failure by any Authorized User to comply with the terms of this Agreement and the Terms of Use shall be deemed a material breach by Customer and LEO shall not be liable for any damages incurred by Customer or any third party resulting from such breach.
- 4.3 Privileged Numbers.** The Subscription Services allow certain communications to be designated as not to be processed by the Subscription Services (the identifying telephone number related to each such communication, a "**Privileged Number**"). Using the method described in the Documentation, Customer shall, from time to time, provide to LEO a list of Privileged Numbers. Customer is solely responsible for the accuracy of such list. LEO IS NOT RESPONSIBLE FOR CUSTOMER'S FAILURE TO (A) DESIGNATE A COMMUNICATION AS NOT TO BE PROCESSED OR (B) PROVIDE LEO WITH ACCURATE LISTINGS OF PRIVILEGED NUMBERS.
- 4.4 Technical Support.** LEO will provide technical support and workarounds so that the Subscription Services operate in material conformance with the Documentation. Customer acknowledges and agrees that LEO is not responsible for Downtime caused by (a) Internet failures or delays involving hardware or software not within LEO's possession or reasonable control and (b) the Phone Provider. To the extent such Downtime is a result of technical issues relating to the Phone Provider, Customer agrees to assist LEO in coordinating with Phone Provider and remedying such issues.
- 5.0 Payment Terms.** Fees, payment terms, and the source of such fees paid by Customer are specified in the applicable Order. Unless otherwise specified in the Order, payment of all fees is due 30 days after the invoice date. Failure to make timely payments shall be a material breach of the Agreement and LEO will be entitled to suspend any or all of its performance obligations hereunder and/or to modify the payment terms, and to request full payment before any additional performance is rendered by LEO. Customer agrees that its licenses hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by LEO regarding future functionality or features.



## **6.0 Ownership and Intellectual Property.**

**6.1 Ownership and Proprietary Rights.** The Products and all equipment, infrastructure, websites, and other materials provided by LEO in the performance of the Subscription Services or related professional services will at all times remain the exclusive, sole, and absolute property of LEO or its licensors, as applicable. Customer does not acquire any right, title, or interest in or to such Products and equipment and materials except the limited and temporary right to use them as necessary for Customer's use of the Subscription Services. All rights, title, and interest in or to any copyright, trademark, service mark, trade secret, patents, and other proprietary right relating to the Products and Subscription Services and the related logos, product names, etc., are reserved and all rights not expressly granted are reserved by LEO and such third parties. Customer may not obscure, alter, or remove any copyright, patent, trademark, service mark, or proprietary rights notices on any Products or other materials. Customer shall not take any action that jeopardizes LEO's intellectual property rights in the Products, nor assume or acquire any right in the Products except the time-limited rights specified in this Agreement and the related Order(s). All rights not expressly licensed to Customer by LEO are reserved exclusively to LEO.

### **6.2 Third-Party Underlying and Derivative Works.**

6.2.1 To the extent that any LEO IP or Third Party IP are embodied or reflected in the Products, or are necessary to provide the Subscription Services, LEO hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, a non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to use, execute, reproduce, display, and perform LEO IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Product.

6.2.2 Upon request, LEO shall provide Customer with documentation indicating a third party's written approval for LEO to use any Third Party IP that may be embodied or reflected in the Products.

**6.3 Customer Indemnity.** Customer shall indemnify and hold LEO harmless from and against any action, suit, or proceeding for infringement and/or misappropriation of intellectual property rights that rises or results from (i) any Customer data or content, and (ii) any breach of LEO's acceptable use and security policies, as may be amended from time to time. Further, and to the extent allowed by statute or law, Customer shall indemnify and hold LEO harmless from and against any third-party claim, action, suit, or proceeding arising from any breach of Section 12.2.

**7.0 Infringements.** If LEO becomes aware of an actual or potential claim of a third party claim involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "**Infringement**"), or Customer

provides Vendor with notice of an actual or potential claim of an Infringement, LEO may (in the the case of an injunction against Customer, shall), at LEO's sole expense: (i) provure for Customer the right to continue to use the affected portion of the Products or Subscription Services, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing. If neither (i) or (ii) is reasonably practicable for LEO, LEO may terminate the Agreement upon written notice to Customer.

## **8.0 Confidential Information.**

**8.1 Confidentiality Obligation.** Confidential Information of a Party ("**Disclosing Party**") will be held in confidence by the other Party ("**Recipient**") and, except as otherwise provided herein or with the Disclosing Party's prior written consent or as required by law, will not be disclosed to any third party other than Recipient's employees, contractors or representatives who have a need to know for the Purpose and who are bound by obligations of confidentiality at least as protective of the Disclosing Party's Confidential Information as those herein.

**8.2 Restrictions on Use of Confidential Information.** The Recipient will: (a) not use the Confidential Information for any purpose other than in the performance and fulfillment of the Recipient's obligations or in the exercise of the Recipient's rights under this Agreement ("**Purpose**"); (b) take all reasonable and necessary steps to require its employees, principals, officers, agents, contractors, representatives, affiliates, and any and all other persons or entities who have access to Confidential Information through Recipient, comply with the Recipient's obligations pursuant to this Section; (c) disclose any of the Disclosing Party's Confidential Information in response to a valid court order or other legal process, only to the extent required by that order or process and only after the Recipient has given the Disclosing Party written notice, if permitted, promptly after receipt thereof and the opportunity for the Disclosing Party to seek a protective order or confidential treatment of such Confidential Information (with the reasonable assistance of Recipient, and at Disclosing Party's expense, if the Disclosing Party so requests); and (d) return all the Disclosing Party's Confidential Information to the Disclosing Party or destroy the same, at the Disclosing Party's request, by no later than thirty (30) calendar days after such request or when Recipient no longer needs Confidential Information for its authorized purposes.

**8.3 Exceptions.** The foregoing obligations apply to all Confidential Information of the Disclosing Party, unless and until such time as the Recipient can demonstrate with competent evidence that: (a) such Confidential Information is or became generally available to the public, through lawful means and through no fault of the Recipient and without breach of this Agreement; (b) such Confidential Information is or was already rightfully in the possession of the Recipient without restriction and prior to any disclosure by the Disclosing Party; (c) such Confidential Information is or has been lawfully disclosed to the Recipient by a third party without an obligation of confidentiality upon the Recipient; or (d) the Recipient can prove that such

Confidential Information was developed independently by the Recipient without access to, use of or reference to the Confidential Information disclosed by the Disclosing Party.

## **9.0 Warranties.**

### **9.1 Representations and Warranties.**

- 9.1.1 The Parties represent and warrant that entering into and fully performing their obligations under this Agreement does not and will not violate any agreement or obligation existing between the Party and any third party. Each Party represents and warrants that it will comply with applicable law. Customer further represents and warrants that Customer will: (a) direct and require Phone Provider to provide access to the Customer's systems and data as necessary for this Agreement, including providing an API as necessary for LEO to provide the Services described in the Agreement; (b) comply with all Documentation to the extent reasonably practicable and necessary to facilitate the Services; and (c) it will promptly provide all reasonable assistance necessary to facilitate the Services.
- 9.1.2 Customer further represents and warrants that as of the Effective Date Customer: (a) is authorized to enter into this Agreement in compliance with the applicable procurement laws of the State of Texas, including, without limitation, Chapter 418 of the Texas Government Code and any amendments or waivers thereof, such as that certain Disaster Proclamation issued by Texas Governor Greg Abbot on May 31, 2021, relating to the ongoing and imminent threat of widespread and severe damage, injury, and loss of life and property, including property damage, property crime, human trafficking, violent crime, threats to public health, and violation of sovereignty and territorial integrity, in certain Texas counties and for all state agencies affected by this disaster, and any amendments thereto or renewals thereof, and (b) has secured funding from Texas Office of the Governor (OOG), Homeland Security Grants Division.

### **9.2 Disclaimer.**

- 9.2.1 THE SUBSCRIPTION SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. LEO, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION (I) ANY WARRANTY THAT THE SERVICES ARE FREE OF ERRORS, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED, (II) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND FREEDOM FROM VIRUSES

OR ANY OTHER MALICIOUS CODE. CUSTOMER ACKNOWLEDGES THAT THE USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND DATA. ACCORDINGLY, LEO CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY, OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. LEO MAY SUSPEND CUSTOMER'S USE OF THE SUBSCRIPTION SERVICES IMMEDIATELY, WITHOUT PRIOR NOTICE, PENDING AN INVESTIGATION, IF ANY BREACH OF SECURITY IS SUSPECTED. EXCEPT AS PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES CONCERNING NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LEO DOES NOT REPRESENT THAT THE SERVICES WILL BE ACCURATE, ERROR-FREE, AVAILABLE, OR FIT FOR A PARTICULAR PURPOSE. THE SUBSCRIPTION SERVICE IS NOT A REPLACEMENT FOR HUMAN INTERVENTION OR MONITORING OF COMMUNICATIONS.

- 9.2.2 CUSTOMER UNDERSTANDS THAT THE SERVICES INHERENTLY DEAL WITH CONTENT THAT MAY BE TIME-SENSITIVE, CRIMINAL, OR POTENTIALLY DANGEROUS. LEO IS NOT LIABLE FOR ANY FAILURE OF THE SERVICES TO AID IN PROTECTING LIFE OR PROPERTY OR OTHERWISE PREVENTING CRIMINAL ACTIVITY. CUSTOMER ACKNOWLEDGES THAT THE SUBSCRIPTION SERVICES' AVAILABILITY MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC, AND/OR TELEPHONE COMMUNICATIONS. LEO IS NOT RESPONSIBLE OR DEEMED TO BE IN DEFAULT FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS, OR UNAVAILABILITY RELATED TO CUSTOMER'S EQUIPMENT, DATA, OR ACTS OR OMISSIONS OF ANY USER OF THE SUBSCRIPTION SERVICES.

- 10.0 Relationship and Responsibility.** This Agreement is not intended to create a partnership, franchise, joint venture, agency, or employment relationship. Neither Party may bind the other Party or act in a manner which expresses or implies a relationship other than that of independent contractor

## **11.0 Data.**

- 11.1 Ownership.** All Data are owned by Customer. LEO shall use the Data as necessary to perform the Services, including processing by the Subscription Services and other obligations under this Agreement.
- 11.2 Data Security.** LEO will maintain, implement, and enforce reasonable and appropriate technical, administrative, and physical data security procedures intended to minimize the risk of unauthorized access to or exposure of the Data.
- 11.3 Data Privacy.** Customer is the owner, controller, or similar concept as defined by applicable law. Customer determines the purposes and means of processing all Data and is responsible for all owner/controller requirements, including providing a privacy notice describing the processing of Data contemplated by this Agreement if required by applicable law. LEO is a processor, service provider, or similar concept as defined by applicable law with respect to Data and shall use, retain, and disclose the Data solely to the extent necessary to provide the Services, including the improvement of LEO's Services.

## **12.0 Limitation of Liability.**

- 12.1 Exclusions to Limitation of Liability.** The limitations of liability set forth below will not apply to the following (collectively, the "**Exclusions to Limitation of Liability**"): (a) a Party's claims of bodily injury; (b) violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; (c) indemnification requirements under the Agreement; (d) Customer's payment obligations; or (e) to the extent such exclusions are impermissible under applicable law.
- 12.2 Maximum Liability.** Except for the Exclusions to Limitation of Liability, and to the full extent permitted by applicable law, LEO's maximum aggregate liability for all claims hereunder, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to the twice (2X) the total amounts paid by Customer under this Order.
- 12.3 No Special Damages.** TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, OR OTHER ECONOMIC ADVANTAGE), HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY OR IN TORT, INCLUDING NEGLIGENCE, AND EVEN IF SUCH PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

**13.0 Export Control.** The Parties acknowledge and agree that the Services may be subject to regulation by agencies of the U.S. Government, including the Department of State and Department of Commerce, and any foreign government or regulatory body, which prohibits export or diversion of certain technical products, data or services (“**Controlled Technologies**”) to certain individuals or countries. This prohibition includes providing or giving access to such Controlled Technologies, including such items that have been identified by the U.S. Export Administration Regulations (“**EAR**”) and the International Traffic in Arms Regulations (“**ITAR**”). The Parties acknowledge that providing Controlled Technologies to certain foreign nationals located in the United States may be deemed by the U.S. Government as equivalent to exporting such Controlled Technology to a foreign country, including embargoed or restricted countries (“**Prohibited Foreign Nationals**”). The Parties will comply in all respects with all export and re-export restrictions applicable to the deliverables and Services. Customer will not, directly or indirectly, export or direct the Services or any information provided by LEO to any embargoed or restricted country identified in the U.S. export laws. Customer will ensure that its Personnel are not included on any United States export exclusion lists and are not prohibited foreign nationals. Customer will promptly notify LEO if it learns of any violations of export laws related in any way to this Agreement.

**14.0 Term and Termination.**

**14.1 Term.** The term of the Agreement commences on the Effective Date and will continue in full force and effect until the earlier of (a) ninety (90) days after the expiration of the last Order and (b) the termination of this Subscription Agreement as described in Section 14.2 (the “**Term**”).

**14.2 Termination.**

**14.2.1 For Breach.** Customer or Leo may terminate this Agreement or any Order upon material breach of this Agreement or any Order if such breach is not cured within thirty (30) days following receipt of notice of such breach by the breaching Party.

**14.2.2 For Data Access Failure.** If Phone Provider fails to provide LEO with continuous, reliable access to the Data as necessary for LEO’s performance under this Agreement, Customer understands that LEO will no longer be able to provide the Services to Customer. In the event of such Data access failure, LEO shall provide written notice to Customer and Customer and LEO will work together for thirty (30) days from the date of such notice to restore continuous, reliable access to the Data on terms mutually acceptable to both Parties. If access to the Data is not restored at the end of such period, either Party may terminate this Agreement upon written notice to the other Party without penalty.

## 15.0 General.

- 15.1 Notices.** Any notice required under this Agreement must be in writing and sent to each Party's representatives at addresses identified on the signature page to this Subscription Agreement. Notices will be delivered in person or by means evidenced by a delivery receipt or acknowledgment (certified or registered mail (postage prepaid and return receipt requested), or via overnight courier). Notices will be effective upon receipt.
- 15.2 Injunctive Relief.** Customer acknowledges that misuse or unauthorized disclosure of any LEO Confidential Information or intellectual property (or violation of other proprietary rights of LEO) by Customer may give rise to irreparable injury to LEO that is inadequately compensable in damages. Accordingly, LEO may seek and obtain injunctive relief against the breach or threatened breach of this Agreement, in addition to any other legal remedies that may be available. Customer acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests of LEO, its subsidiaries and/or affiliated companies, and are reasonable in scope and content.
- 15.3 Governing Law, Jury Trial Waiver.** All disputes arising out of or related to this Agreement will be governed by the laws of the State of Texas and controlling U.S. federal law without regard to conflict of laws principles that would require the application of the laws of another jurisdiction. No choice of law rules of any jurisdiction will apply. All disputes arising out of or related to the terms of this Agreement will be brought in a court of appropriate subject matter jurisdiction located in Austin, Texas and each party hereby irrevocably waives all objections to jurisdiction and venue in such courts.
- 15.4 Waiver.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. To be enforceable, a waiver must be in writing and signed by an authorized representative of the waiving Party.
- 15.5 Interpretation.** This Agreement may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealings between the Parties not expressly made a part of this Agreement.
- 15.6 Survivability.** The following sections will survive the expiration or termination of this Agreement for any reason: Sections 1.0, 2.0, 5.0-12.0, 14.0, 15.0.
- 15.7 Order of Precedence.** In the event of a conflict among the documents composing the Agreement, the order of precedence and control will be: (a) this Subscription Agreement, then (b) the Order.
- 15.8 Counterparts.** This Subscription Agreement and any related Orders may be executed in any number of counterparts, each of which when so executed shall be

deemed to be an original and all of which when taken together shall constitute one Agreement.

- 15.9 Severability.** If any provision, or any portion of any provision, of the Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision, or such portion of a provision, shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained herein or therein shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance, or jurisdiction, or of rendering any other provisions of the Agreement, this Subscription Agreement, or any Order invalid or unenforceable whatsoever.




**IN WITNESS WHEREOF**, authorized representatives of the Parties have signed this Agreement as set forth below as of the Effective Date.

**LEO**

**CUSTOMER:**

**HARRIS COUNTY**

By: 

By: \_\_\_\_\_

Name: James M. Sexton

Name: Lina Hidalgo

Title: Chief Operating Officer

Title: County Judge

Date: 09/06/2022

Date: \_\_\_\_\_

**LEO Address for Notice:**

**Customer Address for Notice:**

602 West 13<sup>th</sup> Street  
Austin, Texas 78701  
Attn: James Sexton  
Phone: (310) 871-1602  
Email: james.sexton@leotechnologies.com

1111 Fannin, 12<sup>th</sup> Floor  
Houston, TX 77002  
Attn: Jorge Geronimo, Contracts Administrator  
Phone: 713-274-4411  
Email: Jorge.Geronimo@pur.hctx.net

## **EXHIBIT A**

### **Authorized User Terms of Use**

Customer and Authorized User's access to and use of the Subscription Services is subject to the terms of use of the terms below and as set forth elsewhere in the Agreement.

**Obligations.** Customer shall:

1. identify for LEO the names of all Authorized Users so that LEO can establish individual user accounts and account login credentials for each Authorized User;
2. require Authorized Users to maintain the confidentiality of their account login credentials, and not allow Authorized Users to share their account login credentials with any other individual; and
3. comply and ensure that its personnel comply with any and all applicable laws of any and all applicable jurisdictions.

**Prohibitions.** Customer shall not:

1. access or attempt to access (or permit or assist another in doing so) the Subscription Services or components thereof by any means other than through an authorized access point;
2. sell, license, sublicense, rent, lease, encumber, lend, distribute, transfer, or otherwise provide access to the Subscription Services (including Documentation) in any form to any third party other than its Authorized Users;
3. disassemble, decompile, port, reverse compile, reverse engineer, translate, or otherwise attempt to separate any of the components of the Subscription Services or reconstruct the Services or components thereof, or attempt to derive or obtain any source code, structure, algorithms, process, technique, technology, know-how, or ideas embodied by, underlying, or contained in the Services;
4. alter, modify or create derivative works of the Services (including Documentation) or components thereof in any way, including without limitation customization, translation or localization;
5. "mirror" or "frame" any part of the Subscription Services, or create internet links to the Subscription Services which include log-in information, usernames, passwords, and/or secure cookies;
6. disseminate on or via the Services any viruses, worms, spyware, adware, or other malicious computer code, file or program that is harmful or invasive or is intended to damage or hijack the operation of, or monitor the use of, any hardware, software or equipment;

7. build a competitive product or service to the Services, or build a product or service using similar ideas, features, functions, or graphics as the Services or determine whether the Services are within the scope of any patent;
8. use any data mining, bots, spiders, automated tools or similar data gathering and extraction methods, directly or indirectly, on the Services or to collect any information from the Services, provided that this provision will not prohibit Customer from exercising its rights in the data using non-automated means or means pre-approved by LEO in writing;
9. violate, or attempt to violate, the security of the Services; or
10. ~~Types text here.~~ permit or facilitate any other person or entity from taking any actions which Customer is prohibited from taking pursuant to this Agreement.

## ORDER

**Project Name:** \_\_\_\_\_

**LEO Contact Person:** James M. Sexton

**Customer Project Manager:** \_\_\_\_\_

**LEO Project Manager:** James M. Sexton

**Customer Purchase Order No.:** \_\_\_\_\_

This “**Order**” dated \_\_\_\_\_, 202\_\_ (“**Order Effective Date**”) is entered into by and between LEO Technologies, LLC (“**LEO**”) and Harris County (“**Customer**”). Customer wishes to license LEO’s VERUS software solution and supporting professional services and by executing this Order agrees to be bound by the terms of this Order and the Subscription Agreement dated May 1, 2022, entered into by and between LEO and Customer. In the event of a conflict between the terms of the Subscription Agreement and this Order, the Subscription Agreement shall control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Subscription Agreement.

### **I. SCOPE**

Name:

Address:

Phone Provider:

Customer Facility Location:

Texas Anti-Gang Center 2500 East T.C. Jester Blvd. Houston, Texas 77008; on behalf of all participating agencies in TAG Center with a nexus to all Harris County Sheriff’s Office detention/custodial facilities.

The background and scope of this project is as follows:

Verus is a United States (CONUS) cloud-based proprietary and automated analytics investigative software leveraging authorized inmate communications originating from correctional facilities’ phone systems. Verus ingests, aggregates, processes, analyzes these communications in near-real time, which allows these communications to be indexed by every single word. This investigative tool is proprietary and allows for unlimited users to search a repository of over 60,000,000 authorized inmate communications in an unstructured manner, which yields maximum public safety results. End users can save keywords and phrases through a feature known as Continuous Monitors. These monitors are designed to search programmatically in the background 24/7 and flag captured

keywords or phrases for review. These notifications are sent via e-mail, hence allowing the end-user to be prompted whether they are actively using Verus or not. Features like these propel Verus into being more than a traditional transcription tool. Verus performs in different languages, including Spanish. Verus can transcribe Spanish conversations into Spanish transcripts, and then translate the transcripts into English in less than 5 minutes

The engineering of LEO Technologies' Verus system is built upon a unique ML/AI platform capable of natural language processing. With the skills of our leading ML/AI experts, who continue to develop and refine the product, Verus is always improving. LEO Technologies is also partnered with Amazon Web Services (AWS), which gives our product the unique ability to scale based on facility size and call volume.

LEO Technologies has successfully participated in numerous competitive bids and due diligence processes, in multiple states across the nation, to include the State of Texas. Verus has won these competitive bids based upon our patented technologies and ability to process 100% of the inmate communication volume, in near real time, in multiple languages.

Beginning in July of 2020, LEO Technologies participated in three (3) competitive proof of concepts. These competitive bids/RFPs/proof of concepts included going back in time to retrieve historical calls, analyzing current communications at a ratio of 100% of the communications volume in near real time, in both English and Spanish languages. To date, LEO Technologies has analyzed and transcribed over 24 million authorized inmate communications within the Harris County Sheriff's Office jail system. LEO Technologies has activated over 2000 individual end-user accounts for public safety stakeholder agencies in the region, including municipal, county, state, and federal law enforcement officials.

## **II. SPECIFIC SERVICES, DELIVERABLES AND DETAILS**

LEO agrees to provide Customer with access to the Subscription Services for the duration of the Order Term, such Subscription Services to include:

- Unlimited end-users specified by Customer;
- Unlimited queries/searches; and
- Unlimited analytical searches.

Additionally, the Services shall include:

- Direct and immediate support of exigent matters of public safety, daily report to Agency Command staff and Executive Management Team;
- Dissemination of a weekly recap as directed by Customer or Customer's designees, and monthly report of statistics and facts related to Customer's use of the Subscription Services;
- Annual certification of statistics, to be provided in December of each calendar year during the Order Term, as defined below;

- Additional public safety tasks as reasonably directed by Customer or Customer's designees.

### **III. TERM**

The term of this Order shall commence on the Order Effective Date and terminate on April 30, 2024 (the “**Order Term**”).

LEO shall perform the Services according to the estimated timeline set forth below. Customer acknowledges and agrees that the dates set forth below are estimates only and may be subject to change.

1. Upon execution of this Order and the Subscription Agreement, LEO Technologies will deploy and commence introduction of Customer and Customer's designees to the Subscription Services.
2. LEO Technologies will provide quarterly in-depth end-user training, bi-annual reports to Customer's Executive Management Team.
3. Customer will receive an annual certification of statistics at the end of the calendar year during the Order Term.

This contract begins May 2022, however the “year end” and all other dates (quarterly, annually, biannual, etc.) shall be based on the calendar year.

### **IV. FEES**

In consideration for LEO's provision of the Services set forth in this Order during the Order Term, Customer shall pay to LEO a one-time fee of \$10,800,000 (the “**Order Value**”) payable in full upon receipt of invoice.<sup>1</sup> LEO and Customer each acknowledge that this Order Value is based on an estimate of Customer's total audio to be processed during the Order Term, subject to a rate of five cents (\$0.05) per minute. The Parties agree that no overages shall be charged, nor shall Customer be entitled to any refund of fees under this Order.

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<sup>1</sup> NTD: To be updated based on payment terms and schedule as determined by LEO and Customer (*e.g.*, one-time flat fee vs. installments).

ACCEPTED AND AGREED to as of the Effective Date by the following authorized party representatives.

**LEO**

**CUSTOMER**

**LEO Technologies, LLC**

**Harris County**

By:  \_\_\_\_\_

By: \_\_\_\_\_

Name: James M. Sexton

Name: Lina Hidalgo

Title: Chief Operating Officer

Title: County Judge

Date: 09/06/2022

Date:

**DISASTER PROCLAMATION ATTESTATION STATEMENT:**

I have reviewed the Disaster Proclamation issued by the Governor of the State of Texas on May 31, 2021, relating to the ongoing and imminent threat of widespread and severe damage, injury, and loss of life and property, including property damage, property crime, human trafficking, violent crime, threats to public health, and violation of sovereignty and territorial integrity, in certain Texas counties and for all state agencies affected by this disaster, and any amendments thereto or renewals thereof. I hereby attest that this order is in response to and is authorized by such Disaster Proclamation.

I am authorized to initiate this order on behalf of my organization.

By: \_\_\_\_\_

Name: Lina Hidalgo

Title: County Judge

Date:

*Signature Page to Order*

ORDER OF COMMISSIONERS COURT  
Authorizing execution of addendum to an agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the \_\_\_\_ day of \_\_\_\_\_, 2022 with all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

**ADDENDUM TO THE AGREEMENT BETWEEN HARRIS COUNTY AND  
LEO TECHNOLOGIES, LLC**

Commissioner \_\_\_\_\_ introduced an order and moved that Commissioners Court adopt the order. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

**IT IS ORDERED** that County Judge Hidalgo be and is hereby authorized to execute for and on behalf of Harris County an addendum to an agreement between Harris County and LEO Technologies, LLC; to provide automated analytics investigative software leveraging authorized inmate communications originating from correctional facilities' phone systems for the Sheriff's Office; for a not-to-exceed amount of Ten Million Eight Hundred Thousand and No/Dollars (\$10,800,000.00) in appropriated funds; for a term beginning upon approval of Commissioners Court and continuing for twenty-four (24) months; said Agreement being incorporated as though fully set forth herein word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.