

**AGREEMENT
BETWEEN
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
AND
ERNST & YOUNG, LLP
FOR
EDUCATIONAL SAVINGS ACCOUNT (ESA) PROGRAM CONSULTING SERVICES**

This Agreement (Contract) to provide consulting services related to an Education Savings Account Program (ESA) is entered into by and between the Texas Comptroller of Public Accounts (“Comptroller” or “CPA”), an agency of the State of Texas, and Ernst & Young, LLP (Contractor), located at 401 Congress Avenue #3200, Austin, Texas 78701 (each a “Party” and together “the Parties”).

I. Recitals

Whereas, on November 19, 2024, Comptroller issued a Request for Proposals No. 239a (RFP) from qualified persons or entities interested in providing ESA consulting services as set forth in the RFP;

Whereas, Contractor submitted a proposal on or before December 18, 2024 in response to Comptroller’s RFP (Proposal);

Whereas, Contractor was selected as a Successful Respondent;

Whereas, under this Contract, Contractor shall fully comply with all terms, conditions, requirements and other provisions of this Contract, including those set forth in the Attachments attached hereto and incorporated herein for all purposes; and

Whereas, in consideration of Contractor’s compliance with all requirements of this Contract, Comptroller awards this Contract to the Contractor.

Now, therefore, the Parties hereby agree as follows.

II. Authority

This Contract is entered pursuant to the authority granted in Texas Government Code Chapters 403 and 2254.

III. Services

Contractor shall provide to Comptroller the services described in and in the manner required by all of the following documents (Services) as attached hereto and incorporated as part of this Contract for all purposes. All terms and conditions of Comptroller’s RFP shall apply unless otherwise provided in this Contract. In the case of conflicts between this Contract and any of the listed Attachments to this Contract, the documents shall control in the following order of priority:

1. This Contract (without attachments)
2. Attachment A: Comptroller’s RFP
3. Attachment B: Standards of Performance
4. Attachment C: Authorized Personnel and Compensation

5. Attachment D: HUB Subcontracting Plan
6. Attachment E: Contractor's Proposal
7. Attachment F: Confidential Treatment of Information Acknowledgement
8. Attachment G: Cybersecurity Training Attestation (CCTA)

Contractor's performance under this Contract is limited to the requirements set forth in this Contract, including services reasonably related to satisfying those requirements. The requirements set forth in this Contract include, but are not limited to, compliance with all Standards of Performance set forth in Attachment B of this Contract.

Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to provide all of the required Services to Comptroller in the manner required by this Contract. Comptroller shall look solely to Contractor for performance of this Contract. Contractor shall provide the Services under the direction of Comptroller. Contractor shall be the sole point of Contract responsibility. Contractor shall be liable, both individually and severally, for the performance of all obligations under this Contract, and shall not be relieved of the non-performance of any subcontractor.

Contractor understands that this Contract is not exclusive and Comptroller may issue additional solicitations and/or award additional contracts for these or other services at any time.

IV. Personnel; Subcontractors

Contractor shall act as an independent contractor in providing Services. Contractor's employees shall not be construed as employees of Comptroller in providing Services. Contractor shall assign to this Contract only those persons as employees or subcontractors who are approved by Comptroller's Primary Project Manager (authorized personnel). Contractor shall assign only qualified personnel to this Contract. Where appropriate, qualified personnel shall be duly licensed and in good standing in their governing jurisdiction and not be subject to any pending disciplinary proceeding, suspension, expulsion, limitation from practice or similar ineligibility determined by any professional self-regulatory, federal, state, or local authority. Comptroller reserves the right, in its sole discretion, to approve each of Contractor's personnel and to request substitution. As of the date of Comptroller's execution of this Contract, Comptroller's Project Manager has authorized the personnel listed in Attachment C to provide Services.

Contractor shall provide to Comptroller prior written notice of any subcontract or proposed change in authorized personnel providing Services. In the event Contractor intends to add, replace, or substitute personnel during the term of the Contract, Contractor shall provide Comptroller with résumés of the proposed individuals. All proposed substitutions and replacement personnel must be of equal or superior experience or skill as the person replaced. Comptroller will provide Contractor with written notice of approval or rejection of proposed personnel within three (3) business days following receipt of the résumé. No additions, substitutions or replacements of authorized personnel will be made without the prior written consent of Comptroller. Each of Contractor's personnel is subject to removal from the Contract by Comptroller.

Contractor represents and warrants that each of the authorized personnel listed in Attachment C, and any substitute or replacement personnel assigned after the effective date of this Contract, have the training, qualifications, education and experience to provide the services required under this Contract.

In no event shall any provision of this Section, including, but not limited to, the requirement that Contractor obtain the prior approval of Comptroller on Contractor's subcontracts, be construed as relieving Contractor of the responsibility for ensuring that all Services rendered under its subcontracts comply with all the terms

and provisions of this Contract as if they were rendered by Contractor. Contractor shall furnish Comptroller with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations.

V. Funding; Legislative Action

Comptroller's performance of its obligations under this Contract is contingent upon and subject to the availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Contract. This Contract is subject to immediate cancellation or termination, without penalty to Comptroller or the State of Texas, subject to the availability and receipt of these funds. In addition, Comptroller is a state agency whose authority, revenue and funding sources and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Contract impossible or unnecessary, Comptroller may terminate this Contract without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Section, Comptroller shall not be required to give notice and shall not be liable for any damages or losses caused by or associated with such termination or cancellation.

VI. Evaluation and Written Acceptance

Prior to authorizing any compensation under Section VII of this Contract, Comptroller shall evaluate Contractor's performance against the Standards of Performance and with all other requirements of this Contract. Prior to authorizing any such payments, Comptroller shall evaluate and provide written notice of Comptroller's acceptance or rejection of Contractor's services.

VII. Payments

Contractor's total compensation under this Contract shall not exceed \$100,000 (ONE HUNDRED THOUSAND DOLLARS) (the "Maximum Amount"), as per the rates or amounts set forth in Attachment C. This compensation is all inclusive and shall include all expenses incurred by Contractor, except Comptroller pre-approved travel expenses as set forth in Attachment C. Unless expressly allowed elsewhere in this Contract or approved by the Comptroller, Comptroller shall pay no amounts under this Contract for any amount for any purpose to Contractor or any other person or entity.

In submitting its invoices, Contractor acknowledges and by execution of this Contract certifies to the following: all invoices submitted by Contractor have been carefully reviewed for detailed description of the Services performed; that the Services have been performed in compliance with this Contract; the amounts shown on the invoices are based on the agreed-upon fees set out forth in Attachment C; the amounts shown on the invoices are reasonable and necessary; and all appropriate and required supporting documentation is attached. Comptroller may, in its sole discretion, deny a request for payment that does not comply with the terms of this Contract or require additional documentation to support payment, and Contractor shall respond to any such requests within five (5) business days of receipt. Comptroller does not guarantee any specific amount of compensation under this Contract. Contractor shall submit invoices to Linda Fernandez at Linda.Fernandez@cpa.texas.gov.

Any payments shall be made in accordance with Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. Comptroller shall not pay any amounts for any purpose to Contractor or any other entity, except as expressly provided for in this Contract. Comptroller reserves the right to make payments only upon receipt of a correct invoice including all of the required supporting documentation. Comptroller also reserves the right to refuse payments for invoices that exceed the rates specified in this Contract.

VIII. Term and Termination

8.1 Term. This Contract shall become effective on the date signed by Comptroller, after having first been signed by the Contractor, and shall terminate on August 31, 2026 (Initial Term), unless otherwise sooner terminated as provided in this Contract. Comptroller shall have the right, in its sole discretion, to renew this Contract for two (2) additional one-year periods through August 31, 2028. These additional one (1) year periods are September 1, 2026, through August 31, 2027, and September 1, 2027, through August 31, 2028. The “Contract Term” means the Initial Term plus any additional periods. Comptroller, in its sole discretion, may extend the Contract for six (6) months following the last period of renewal or for such additional time as Comptroller deems necessary to secure and transition to a new contract. All terms of the Contract shall apply during the Contract Term. Notwithstanding the termination or expiration of this Contract, all provisions of this Contract that by their nature are intended to survive termination or expiration of the Contract shall survive, included but not limited to provisions regarding confidentiality, transition, indemnification, limitation of liability, payments, records retention, property rights, data safeguards, confidentiality, and dispute resolution.

8.2 Termination for Cause. Without limitation on the right of Comptroller to terminate this Contract pursuant to its terms, Comptroller reserves the right, in its sole discretion, to terminate this Contract, in whole or in part, upon any one of the following conditions, any of which constitute an “Event of Default”:

(i) A receiver, conservator, liquidator, or trustee of Contractor, or of any of its property is appointed by order or decree of any court or agency or supervisory authority having jurisdiction; or an order for relief is entered against Contractor, under Title 11 of the United States Code; or Contractor is adjudicated bankrupt or insolvent; or any portion of the property of Contractor is sequestered by court order and such order remains in effect for more than thirty (30) days after such party obtains knowledge thereof; or a petition is filed against Contractor under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) days;

(ii) Contractor files a case under the Title 11 of the United States Code or is seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law;

(iii) Contractor makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property.

(iv) Judgment for the payment of money in excess of \$50,000 (which is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within thirty (30) days from the date of entry thereof, and within said thirty (30) day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefor as may be required under generally accepted accounting principles; or a writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) days after its entry;

(iv) A court of competent jurisdiction finds that Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;

(v) A license necessary for Contractor to perform its obligations under this Contract is revoked or suspended.

(vi) Contractor fails to communicate with Comptroller as required by the Contract;

(vii) Contractor breaches an industry standard of confidentiality related to the Contract;

(viii) Comptroller determines that Contractor or any of its subcontractors have an unacceptable conflict of interest and such conflict is not cured within ten (10) calendar days following notification thereof to Contractor;

(ix) Comptroller reasonably determines, in its sole discretion, that Contractor has failed or refused to perform, is negligent in performing, or is unable to perform or it reasonably appears that Contractor will not perform any of the duties or obligations as provided under this Contract, or fails or refuses to perform consistent with the statements, promises and commitments made by Contractor during the solicitation process, and has not cured such performance defect within thirty (30) days of receipt of written notice from Comptroller of such performance defect or the actual deadline for performing, whichever occurs last;

(x) If Contractor fails to notify Comptroller in writing of a “material adverse change” experienced by Contractor or any subcontractor during the term of this Contract or any extension thereof, at the time the change occurs or is identified. The term “material adverse change” shall mean: (i) any actual or anticipated change in control, ownership or executive management of Contractor or any subcontractors for which Comptroller has not provided advance written consent; (ii) any actual or anticipated legal or administrative investigations or proceedings initiated against Contractor or subcontractors regardless of the jurisdiction from which such proceedings originate that could reasonably be expected to adversely impact Contractor’s ability to perform its obligations under this Contract; or (iii) any change or changes that individually or in the aggregate are materially adverse to (1) the net assets in an amount of fifteen percent (15%) or more, properties, business, security, results of operations or financial condition, taken as a whole, of Contractor or any subcontractor, (2) the ability of Contractor or subcontractors to perform its or their obligations under this Contract, or (3) the legality or enforceability against Contractor or subcontractors;

or

(xi) Material non-compliance by Contractor, as reasonably determined in Comptroller’s sole discretion, with any of the Standards of Performance of the Contract not cured within thirty (30) days from the date CPA notifies Contractor in writing of the non-compliance.

8.3 Termination for Convenience. Comptroller may, in its sole discretion, terminate or cancel the Contract with thirty (30) calendar days’ written notice to Contractor. Contractor may terminate the Contract immediately upon written notice to Comptroller if Contractor reasonably determines that it can no longer provide Services in accordance with applicable law or professional obligations.

8.4 Termination Remedies. Upon an Event of Default, Comptroller, without limiting any other rights or remedies it may have by law, equity, or under this Contract, will have the right to institute an action for actual damages and/or injunctive relief and/or to terminate the Contract immediately. Comptroller’s termination of this Contract shall not limit or waive any remedies Comptroller may have for breach by Contractor of its past, present, or future duties and obligations created by this Contract or otherwise required by applicable law.

All remedies available to Comptroller for breach or anticipatory breach of this Contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Comptroller will be entitled to liquidated damages, actual damages, cost projections, injunctive relief and/or performance bonds may either separately or combined with any other remedy in accordance with applicable law.

8.5 Transition. Upon termination of the Contract for any reason, Contractor shall assist with and fully cooperate with Comptroller in good faith to ensure a timely and secure transition of services to a new arrangement and provider with Contractor delivering records to Comptroller or Comptroller's designee in a commercially usable format. This obligation shall survive the termination or expiration of this contract and shall be a continuing obligation. Additionally, this transition obligation shall be provided by Contractor without Comptroller or the State of Texas being subject to additional costs or fees of any kind for transition costs. In accordance with Section 14.44 of this Contract, Contractor shall deliver to Comptroller all completed, or partially completed, work and any and all documentation or other products and results of these services.

8.6 No Liability Upon Termination. If this Contract is terminated for any reason, Comptroller and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. In the event of termination of this Contract, Comptroller's sole and maximum obligation shall be to authorize payment to Contractor for previously authorized services, performed in accordance with all requirements of this Contract, up to the termination date.

IX. Confidentiality and Open Records

Contractor shall comply with the provisions of the Nondisclosure Agreement (Exhibit D to Attachment A (RFP)) at all times, except that CPA agrees not to require liquidated damages resulting from any breach thereof. Contractor shall take all necessary and appropriate action to safeguard all sensitive data and other confidential information from unauthorized disclosure. Whenever the transmission of confidential information is necessary, Contractor shall transmit the information electronically and such electronic transmission shall be secure and the data encrypted, at a minimum, using 128 AES encryption to protect it from unauthorized disclosure.

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that Comptroller will comply with the Texas Public Information Act, Chapter 552 of the Texas Government Code, as interpreted by judicial opinions and opinions of the Attorney General. Within three (3) days of receipt, Contractor shall refer to Comptroller any third-party requests received directly by Contractor for information to which Contractor has access as a result of or in the course of performance under this Contract. Contractor is required to make any information created or exchanged with Comptroller pursuant to this Contract, and not otherwise excepted from disclosure under this Contract or the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to Comptroller. In order to comply with such requirement, any information created or exchanged with Comptroller shall be in Word, Excel, or PDF format, as applicable.

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to: (1) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to Comptroller for the duration and retention period of this Contract; (2) promptly provide to Comptroller any contracting information related to this Contract that is in the custody or possession of Contractor on request of Comptroller; and, (3) on termination or expiration of this Contract, either provide at no cost to Comptroller all contracting information related to this Contract that is in the custody or possession of Contractor or preserve the contracting information related to this Contract as provided by the records

retention requirements applicable to Comptroller.

X. Insurance

Contractor represents and warrants that it shall, within five (5) business days of executing this Contract and annually thereafter, provide Comptroller with current written certificates of insurance or other acceptable proof of the following insurance coverages for Contractor and Contractor's employees:

1. Blanket Employee Dishonesty Bond or Employee Dishonesty Coverage under a liability insurance policy with a minimum \$25,000 for each individual who will provide Services. A rider or endorsement shall name the Texas Comptroller of Public Accounts as loss payee or additional named insured under the respective bond or policy;
2. Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract;
3. Commercial General Liability Insurance: \$3,000,000 minimum each occurrence limit; \$5,000,000 minimum aggregate limit; and
4. Professional Liability that includes Cyber Liability Insurance with a minimum \$5,000,000 per incident or claim and \$5,000,000 in the aggregate limit for liability.

Contractor represents and warrants that all of the above coverages are with companies licensed in the State of Texas with "A" rating from A.M. Best Company and authorized to provide the corresponding coverages. Contractor also represents and warrants that Contractor shall provide at least thirty (30) days' written notice to Comptroller before cancellation of any policies required under this Contract. Contractor represents and warrants that it shall maintain all of the above insurance coverages during the entire term of this Contract. Contractor shall provide proof of required insurance coverage via email referencing the RFP number submitted to the following address: contract.administration@cpa.texas.gov.

When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work on this Contract, or the policy must not contain a "prior acts" exclusion. If any of the insurance coverages required under this Contract are written on a claims-made basis, the insurance policy must provide an extended reporting period of not less than three (3) years following the completion of all work performed by Contractor specified in this Contract.

XI. INDEMNIFICATION AND LIMITATION OF LIABILITY

CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS, AND COMPTROLLER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD-PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE ATTORNEY GENERAL. CONTRACTOR AND COMPTROLLER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

EXCEPT AS PROHIBITED UNDER THE LAWS OR THE CONSTITUTION OF THE STATE OF TEXAS, THE AGGREGATE LIABILITY OF CONTRACTOR FOR ANY LOSSES, CLAIMS, OR DAMAGES UNDER THIS CONTRACT OR OTHERWISE RELATED TO THE SERVICES CONTRACTOR IS ENGAGED TO PERFORM HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO A MAXIMUM OF TWO HUNDRED THOUSAND DOLLARS (\$200,000) EXCEPT THAT SUCH LIABILITY LIMITATION SHALL NOT APPLY TO FRAUD OR WILLFUL MISCONDUCT, VIOLATIONS OF CONFIDENTIALITY, OR INTELLECTUAL PROPERTY INFRINGEMENT BY CONTRACTOR.

NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS OR OTHER INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES.

XII. Dispute Resolution

Chapter 2260 of the Texas Government Code (“Chapter 2260”) prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Contract, including any extensions. Contractor shall comply with such rules.

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

- (i) Contractor’s claim for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and Contractor otherwise entitled to notice under this Contract. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (ii) The contested case process provided in Chapter 2260 is Contractor’s sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (i) of this Section.
- (iii) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practice and Remedies Code. Neither the execution of this Contract by Comptroller nor any other conduct of any representative of Comptroller relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Contract not subject to Chapter 2260, the following shall apply:

Should a dispute arise out of this Contract, Comptroller and Contractor shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties’ attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and Contractor within fifteen (15) days after written notice by one

of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless Comptroller, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, Comptroller and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and Contractor shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of (i) any rights, privileges, defenses, remedies or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller; (ii) Comptroller's termination rights; or (iii) other termination provisions or expiration dates of this Contract.

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

XIII. Property Rights

For purposes of this Contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. Comptroller and Contractor intend this Contract to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Comptroller.

If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to Comptroller, its successors and assigns, the entire right, title and interest in and to all copyright and other intellectual property rights in and to the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights as Comptroller may deem necessary to secure for Comptroller or its designee the rights herein assigned.

In the event that Contractor has any rights in and to the Work that cannot be assigned to Comptroller, Contractor hereby grants to Comptroller an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Comptroller.

XIV. Representations, Warranties, and General Provisions

14.1 Child Support Obligation. Under Section 231.006 of the Texas Family Code regarding child

support, Contractor certifies that Contractor is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

14.2 Financial Participation Prohibited Affirmation. Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

14.3 Taxes. Purchases made for State of Texas' use are exempt from the State Sales Tax and Federal Excise Tax. Comptroller will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. Comptroller shall not be liable for any taxes resulting from this Contract.

14.4 HUBs. Contractor represents and warrants that it shall comply with the Historically Underutilized Business ("HUB") requirements of this Contract, including the requirements specified in Contractor's HUB Subcontracting Plan.

14.5 Change in Law and Compliance with Laws. Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for Comptroller's or Contractor's compliance with all applicable State and federal laws, regulations, requirements and guidelines.

14.6 Governing Law and Venue. This 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. The venue of any suit brought for any breach of this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

14.7 Time Limits. Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

14.8 Assignments. Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from Comptroller. Any attempted assignment in violation of this Section is void and without effect.

14.9 Federal, State and Local Requirements. Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees. Contractor is responsible for both Federal and State Unemployment insurance coverage and standard Workers' Compensation Insurance coverage. Contractor shall comply with all Federal and State tax laws and withholding requirements. Comptroller shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or Federal or State withholding requirements. Contractor shall indemnify Comptroller and pay to Comptroller all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

14.10 Provision for Direct Deposit. The electronic funds transfer (EFT) provisions of Texas law were codified in Section 403.016 of the Texas Government Code. Depending on eligibility under the law, certain payments from the State of Texas may be directly deposited into Contractor's bank account or may be made by warrant. If Contractor is eligible for direct deposit and wishes to be paid by direct deposit, Contractor must request from biaap@cpa.texas.gov and complete the form titled "Vendor Direct Deposit Authorization" and return it as soon as possible to: biaap@cpa.texas.com or Comptroller of Public

Accounts, Attention: Budget and Internal Accounting Division, Accounts Payable Section, LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774.

14.11 No Implied Waiver. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller under this Contract or otherwise available to Comptroller by law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller does not waive any privileges, rights, defenses, remedies, or immunities available to Comptroller as an agency of the State of Texas, or otherwise available to Comptroller, by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller must be in writing, must reference this Section, and must be signed by Comptroller to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Contract or under applicable law.**

14.12 Permits, Certifications and Licenses. Contractor represents and warrants that it has determined what licenses, certifications and permits are required under this Contract and has acquired all applicable licenses, certifications and permits.

14.13 Control; Ownership; Legal Proceedings. Contractor shall immediately notify Comptroller in writing of any actual or anticipated change in the control or ownership of Contractor and of any legal or administrative investigations or proceedings initiated against Contractor regardless of the jurisdiction from which such proceedings originate.

14.14 Limitation on Authority. Contractor shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of Comptroller or the State of Texas.

14.15 No Other Benefits. Contractor shall have no exclusive rights or benefits other than those set forth herein.

14.16 INDEMNIFICATION FOR INTELLECTUAL PROPERTY. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPTROLLER AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) COMPTROLLER'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO COMPTROLLER BY CONTRACTOR OR OTHERWISE TO WHICH COMPTROLLER HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR AND COMPTROLLER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. IF CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, CONTRACTOR SHALL NOTIFY COMPTROLLER OF SUCH CLAIM WITHIN FIVE (5) WORKING DAYS OF SUCH NOTICE. CONTRACTOR SHALL BE LIABLE TO PAY

ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE ATTORNEY GENERAL. IN ADDITION, CONTRACTOR WILL REIMBURSE COMPTROLLER AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF COMPTROLLER DETERMINES A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF COMPTROLLER IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, COMPTROLLER WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF COMPTROLLER'S COUNSEL.

14.17 Records Retention. Contractor shall maintain and retain all records relating to the performance of the Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years (a) after the Contract expiration date or (b) until all audit, claim, litigation, negotiation, open records, administrative review, or other action involving the Contract or related documents are resolved, whichever is later.

Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State of Texas' property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by Comptroller, State of Texas or their authorized representatives. Contractor shall cooperate with auditors and other authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all of such State of Texas' property as requested by Comptroller or the State of Texas. By example and not as an exclusion to other breaches or failures, Contractor's failure to comply with this Section shall constitute a material breach of this Contract. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in this Contract. To the extent any authorized representative of Comptroller or the State of Texas is a competitor of Contractor, Contractor may require such authorized representative to execute a mutually agreeable confidentiality and non-disclosure agreement before receiving access to information related to the State of Texas' property.

14.18 State Auditor's Right to Audit. In addition to and without limitation on the other audit provisions of this Contract, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office ("SAO") may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the State of Texas directly under this Contract or indirectly through a subcontract under this Contract. Contractor understands that acceptance of State funds under this Contract acts as acceptance of the authority of the SAO to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the SAO in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the SAO's authority to audit state funds and the requirement to cooperate fully with the SAO is included in any subcontracts it awards. Additionally, the SAO shall at any time have access to and rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of Contractor relating to this Contract for any purpose.

This Contract may be amended unilaterally by Comptroller to comply with any rules and procedures of the SAO in the implementation and enforcement of Section 2262.154.

14.19 Unfair Business Practices. Contractor represents and warrants that it has not been the subject of a

Deceptive Trade Practices violation under Chapter 17 of the Texas business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

14.20 Immigration. Contractor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. §1101 *et seq.*) and all subsequent immigration laws and amendments.

14.21 Equal Employment Opportunity. Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

14.22 Antitrust Affirmation. Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has: (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of its proposal to any competitor or any other person engaged in the same line of business as Contractor.

14.23 No Conflicts of Interest. Contractor represents and warrants that the provision of goods and services or other performance under this Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety, or Contractor has disclosed in writing to Comptroller any existing or potential conflicts of interest relative to the performance of this Contract.

Contractor acknowledges that Contractor is ineligible to respond or participate in any way in developing a proposal for any RFP issued by Comptroller for an ESA or similar school choice program provider or service or to serve as a contractor or subcontractor for any contract issued as a result of such RFP.

14.24 Dealings with Public Servants Affirmation. Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

14.25 Americans with Disabilities Act. Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act and its implementing regulations, as each may be amended (“ADA”).

14.26 Buy Texas Affirmation. In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.

14.27 Drug-free Workplace. Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 *et seq.*) and its implementing rules, and that it shall maintain a drug-free work environment.

14.28 No Felony Criminal Convictions. Contractor represents that neither Contractor nor any of its employees, agents, or representatives who will perform services under this Contract, including any

subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised Comptroller of the facts and circumstances surrounding the convictions. Contractor has completed and returned the Criminal Conviction Certification form (Exhibit C to Attachment A (RFP)).

14.29 Notices. Unless noted elsewhere in this Contract, any written notices required under this Contract will be by hand delivery to Contractor's office address, as specified on Page 1 of this Contract, or to Comptroller's Legal Counsel, c/o Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 310-C, Austin, Texas, 78774; by U.S. certified mail with return receipt requested, addressed to the appropriate foregoing address; or by electronic mail to contracts@cpa.texas.gov or to Contractor's electronic mail at: [enter Contractor's email address]. Notice will be effective on receipt by the affected Party. Notwithstanding the foregoing, service of legal process or other similar communications will not be given by electronic mail and will not be deemed duly given under this Agreement if delivered by such means. Either Party may change the designated notice address in this Section by written notification to the other Party. The Parties hereby agree to provide each other with day-to-day operational contacts.

14.30 False Statements. Contractor represents and warrants that all statements and information prepared and submitted in this document and its Response are current, complete, true and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void this Contract.

14.31 Force Majeure. Except as otherwise provided, neither Contractor nor Comptroller shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, pandemics, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

14.32 Debts and Delinquencies Affirmation. Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

14.33 Lobbying Prohibition. Contractor represents and warrants that Comptroller's payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

14.34 Texas Bidder Affirmation. Contractor certifies that if a Texas address is shown as the address of Contractor, then Contractor qualifies as a Texas Bidder as defined by Section 2155.444(c) of the Texas Government Code.

14.35 Comptroller's Anti-Fraud Policy. Contractor represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy located on Comptroller's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Contract.

14.36 Abandonment or Default. If Contractor defaults on this Contract, Comptroller reserves the right to cancel this Contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting contractor will not be considered in the re-

solicitation and may not be considered in future solicitations for the same type of work, unless the specifications or scope of work significantly change. The period of suspension will be determined by Comptroller based on the seriousness of the default.

14.37 Suspension and Debarment. Contractor certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

14.38 Prior Disaster Relief Contract Violation. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

14.39 Security Incident Notification. Contractor shall have policies and procedures for the effective management of Security Incidents that shall be made available to CPA upon written request. Within twenty-four (24) hours of Contractor's discovery or reasonable belief that there has been an event that results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of confidential CPA information ("Security Incident"), Contractor shall provide notice to CPA by calling (800) 531-5441 EXT 34357. Until the investigation is complete, Contractor shall submit on a daily basis, or as otherwise agreed by CPA, a written report via encrypted email to security.alerts@cpa.texas.gov that includes, at a minimum, the following:

- Date and time incident occurred,
- Date and time incident detected,
- Date and time incident contained,
- Address where incident occurred,
- Name of person(s) that discovered incident,
- Description of how Contractor discovered incident,
- Type of CPA information involved,
- Description of the nature of the incident,
- Description of the steps Contractor has taken or will take to investigate incident,
- Description of the steps Contractor has taken or will take to mitigate any negative impacts of incident,
- Information technology involved (*e.g.*, laptop, server, mainframe),
- Description of steps taken to preserve computer evidence and maintain chain of custody, and
- Description of corrective action Contractor has taken or will take to prevent future incidents.

Contractor shall coordinate all media or other breach notifications with CPA in advance of such notification(s), unless expressly prohibited by law. Subject to review and approval of CPA, Contractor shall provide notice at its own cost that satisfies the requirements of applicable law to individuals whose information was compromised or likely compromised as a result of the Security Incident. If CPA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing the notice shall be reimbursed to CPA by Contractor. If Contractor does not reimburse such costs within thirty (30) days of CPA's written request, then CPA shall have the right to collect such costs. CPA reserves the right to conduct an independent investigation of any Security Incident, and should CPA choose to do so,

Contractor shall cooperate fully with CPA and assume responsibility at its own expense for making personnel, resources, and systems access available to CPA and CPA's authorized representative(s).

14.40 CPA Data Safeguard Standards.

- a. Defined Terms. The term "CPA Data" refers to CPA's information as well as other entity information in the possession of CPA that is processed, stored, or transmitted by a computer. CPA Data includes all data that is generated by Successful Respondent in performance of a contract with CPA. The term "CPA Information System" refers to those devices, software, networks and related infrastructure that CPA owns, operates or has obtained for use to conduct CPA business. Devices include, but are not limited to, CPA-owned or managed storage, processing, and communications devices, as well as personally owned devices.
- b. Access to CPA Data. Successful Respondent represents and agrees that it will implement, maintain, and use appropriate administrative, technical, and physical safeguards which are designed to preserve the confidentiality, integrity, and availability of CPA Data. Successful Respondent will not collect, access, use, disclose, or retain CPA Data other than as necessary to perform the services specified in a contract resulting from this solicitation or as otherwise authorized in writing by CPA. Successful Respondent will restrict access to CPA Data to only those personnel who must have the information on a "need to know" basis. Successful Respondent will not use CPA Data, or any information derived from CPA Data, for its own benefit or the benefit of any other person or entity. Successful Respondent will not share CPA Data with its parent company or other affiliate without CPA's express written consent.
- c. Web-Based Remote Access to CPA Information Systems. Successful Respondent may use third-party web-based remote access connections to CPA Information Systems to provide support services under the following conditions:
 1. CPA shall affirmatively initiate and accept Successful Respondent's connections to CPA Information Systems.
 2. CPA shall monitor Successful Respondent's connections to CPA Information Systems for the duration of the Services.
 3. CPA shall terminate Successful Respondent's connections to CPA Information Systems upon completion of the Services.
- d. Remote Access to CPA Information Systems. Successful Respondent shall accept the CPA Remote Access Terms and Conditions and obtain CPA's written approval of Successful Respondent's Remote Access Request Form before CPA will issue Successful Respondent with credentials to remotely access CPA Information Systems (e.g., for continuous access). Successful Respondent may contact the CPA Contract Manager for the applicable forms. Successful Respondent shall only access CPA Information Systems in accordance with CPA's security protocols using CPA-approved remote access technologies, processes, and procedures. CPA reserves the right to immediately terminate any access to a CPA Information System.
- e. CPA-Required Security Awareness Training. As a condition of CPA issuing credentials and Successful Respondent gaining access to a CPA Information System, Successful Respondent shall complete CPA's security awareness training or an equivalent DIR-approved training on an annual basis during the Contract term, including renewal periods. Successful Respondent shall submit to CPA at contract.administration@cpa.texas.gov: (i) the Contractor Cybersecurity Training Attestation (CCTA) form (Attachment G); and (ii) any other information reasonably requested by CPA to comply with Section 2054.5192 of the Texas Government Code. Successful Respondent must complete, sign, and return the CCTA form to CPA no later than sixty (60) calendar days following contract award and each anniversary

thereafter during the term of the Contract, including any renewal periods. Successful Respondent shall maintain records of all individuals who have completed the CPA-required training for the duration of the individual's employment or other business relationship with Successful Respondent, plus five years. CPA, in its sole discretion, may deny network or system access to any individual that does not complete the CPA-required training within thirty (30) calendar days following the date of CPA's grant of access to the CPA Information System(s).

- f. Location of CPA Data. Successful Respondent shall ensure that CPA Data (*i.e.*, primary and backup) remains, at all times, within the continental United States. Successful Respondent shall receive, process, transmit, and store all CPA Data within the continental United States. Successful Respondent's point of access to CPA Data shall be within the continental United States.
- g. Encryption Standards.
 - 1. Successful Respondent shall encrypt CPA Data in transit and at rest. Data in transit means data is moving via email, in applications, or through browsers and other web connections. Data at rest (including data backups) means data is stored in databases, the cloud, removable media, or mobile devices.
 - 2. Successful Respondent shall utilize encryption standards that are FIPS 140-2 compliant or, upon the written approval of CPA's Chief Information Security Officer, shall meet the intent of the standards as described in FIPS 140-2.
 - 3. The minimum cryptographic algorithm used by Successful Respondent must be Advanced Encryption Standard (AES) 128 or higher (256 AES is preferred).
 - 4. Successful Respondent shall encrypt CPA Data transmitted over a public or private network. CPA approved data encryption transmission protocols include the following: (1) SFTP (FTP over SSH), (2) FTPS (FTP over TLS), (3) HTTPS (HTTP over TLS), and (4) virtual private network.
- h. Reserved.
- i. Auditable Information Security Framework. Successful Respondent shall secure its own and its third-party service providers' systems (*e.g.*, IT service provider, Cloud Service Provider) in a manner consistent with an auditable information security framework *e.g.*, National Institute of Standards and Technology (NIST), International Organization for Standardization (ISO) 27001.
- j. Reserved.
- k. Supply Chain Risk Management. Successful Respondent shall provide CPA's Contract Manager a description of how it manages supply chain risks. During the term of the contract, Successful Respondent shall provide CPA's Contract Manager prompt, written notice of supply chain risks that impact the delivery of the products and services of the Contract. Examples of supply chain risks include supplier financial failure, production control/product quality, market supply and demand, labor disputes/shortages, cybersecurity threats, natural disasters.
- l. Independent Information Security Assessment. If Successful Respondent has access to a CPA Information System or receives, processes, transmits, or stores CPA Data, then Successful Respondent shall provide CPA's Contract Manager with its most recent information security assessment conducted by an independent third-party (*e.g.*, SSAE-18 SOC 2 Type II, ISO 27001) upon Contract award and annually upon CPA request thereafter. CPA, in its sole discretion, may conduct a security assessment of any information system holding CPA Data or connected to a CPA Information System. CPA's security assessment may consist of a review

of the following: (i) independent third-party assessment(s) contracted by Successful Respondent (*e.g.*, SSAE-18 SOC 2 Type II, ISO 27001) and (ii) access to view evidence of Successful Respondent's System Security Plan.

- m. Media Sanitization. Successful Respondent shall sanitize information system media, both digital and non-digital, in accordance with NIST Special Publication 800-88 (Guidelines for Media Sanitization) when CPA Data in the custody of Successful Respondent is no longer required to be retained by contract with CPA. Successful Respondent must maintain a record documenting each sanitization procedure that, at a minimum, includes the following information: (i) date sanitization completed, (ii) description of the item(s), serial number(s), inventory control number(s), if applicable, and (iii) sanitization method used. No later than sixty (60) calendar days from contract expiration or termination or as otherwise specified in the Contract, Successful Respondent must either (i) complete the sanitization and, upon CPA request, submit via email to the CPA Contract Manager confirmation of such destruction. Successful Respondent's obligations set forth in this clause survive the termination or expiration of the contract as long as Successful Respondent retains CPA Data. Notwithstanding the foregoing, Successful Respondent may, in accordance with applicable legal, disaster recovery and professional requirements, store copies of CPA Data in an archival format which may not be immediately returned or destroyed but which would remain subject to the confidentiality obligations set forth in the Agreement.
- n. Third-Party Service Providers. It is Successful Respondent's sole responsibility to provide that its access and the access Successful Respondent grants to its service providers to CPA Data or CPA Information Systems does not result in unauthorized access to CPA Data or CPA Information Systems.
- o. Reserved.
- p. Reserved.
- q. Reserved.
- r. State Authorization and Risk Management Program (TX-RAMP). Successful Respondent shall obtain TX-RAMP certification in accordance with the Department of Information Resources (DIR) Program Manual. CPA requires the following TX-RAMP certification based-on Agency criteria:
 - 1. X None. Product is out of scope/low impact in accordance with the DIR TX-RAMP Manual.
 - 2. Level 1 Certification. The product will administer Agency public data.
 - 3. Level 2 Certification. The product will administer Agency sensitive, confidential, and/or regulated data.

14.41 Information Security Requirements. Contractor represents and agrees that it will take all necessary and appropriate action within its abilities to safeguard sensitive or confidential Comptroller information and to protect it from unauthorized disclosure. If communications with Contractor necessitate the release of confidential Comptroller information, the Confidential Treatment of Information Acknowledgment (CTIA) form (Attachment F) must be signed by each individual who will require access to or may be exposed to Comptroller's confidential information. Contractor shall access Comptroller's systems and sensitive or confidential Comptroller information only for the purposes for which it is authorized.

14.42 Reserved.

14.43 Duty to Disclose. If circumstances change or additional information is obtained regarding any of

the representations and warranties, or any other disclosure statements, provided by Contractor subsequent to the date of this Contract, Contractor's duty to disclose continues throughout the term of this Contract.

14.44 Copies of Work; Partially Completed Work. No later than the first calendar day after the termination of this Contract, or at Comptroller's request, Contractor shall deliver to Comptroller all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Comptroller.

14.45 Business Attire; Conduct; Comptroller Guidelines. Contractor must ensure that its employees conduct themselves in a professional manner and are in appropriate business attire when on Comptroller's premises. In addition, Contractor must ensure that its employees comply with all guidelines established by Comptroller for independent contractors required to provide services on Comptroller's premises. These guidelines may address issues which include, but are not limited to, the following: building security, IT security, records, safety, professional conduct, use of State of Texas-owned property, non-disclosure of confidential information, drug and alcohol-free workplace rules, and other requirements for on-site independent contractors.

14.46 Use of State Property. Contractor is prohibited from using Comptroller's Equipment, Comptroller's location, or any other resources of Comptroller or the State of Texas for any purpose other than performing services under this Contract. For this purpose, Comptroller Equipment includes, but is not limited to, copy machines, fax machines, information technology resources, and telephones using State of Texas long distance services. Comptroller information technology resources include any Comptroller-issued hardware (e.g., laptops, portable personal printers, cell phones, BlackBerry devices, external hard drives, Universal Serial Bus (USB) data storage devices and data disks); any Comptroller-issued software or media (e.g., CD, DVD, diskette or tape); and Comptroller Virtual Private Network (VPN) client. Contractor shall not remove Comptroller Equipment from the United States. In addition, Contractor may not use any computing device to access Comptroller's network or e-mail while outside of the United States. During the time that Comptroller Equipment is in possession of Contractor, Contractor shall be responsible for reasonable repair or replacement charges for damage beyond normal wear and tear. Any charges incurred because of Contractor's use of Comptroller Equipment for any purpose other than performing services under this Contract must be fully reimbursed by Contractor to Comptroller immediately upon demand by Comptroller; such use shall constitute breach of contract and may result in termination of this Contract and other remedies available to Comptroller under the Contract and applicable law.

14.47 Discounts. If Contractor at any time during the term of this Contract provides a discount on the final negotiated Contract costs, Contractor will notify Comptroller in writing ten (10) business days prior to effective date of discount. Comptroller will generate a Purchase Order (PO) Change Notice (POCN) and send the POCN to the Contractor.

14.48 Excluded Parties. Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the U.S. Treasury, Office of Foreign Assets Control.

14.49 Executive Head of Comptroller Affirmation. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a State agency, Contractor certifies that it is not (1) the executive head of Comptroller, (2) a person who at any time during the four (4) years before the date of execution of this Contract was the executive head of Comptroller, or (3) a person who

employs a current or former executive head of Comptroller.

14.50 Foreign Terrorist Organizations. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

14.51 Entities that Boycott Israel. Contractor represents and warrants that (1) it does not, and shall not for the duration of this Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to this Contract. If circumstances relevant to this provision change during the course of this Contract, Contractor shall promptly notify Comptroller.

14.52 Human Trafficking. Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

14.53 Energy Company Boycotts. Contractor represents and warrants that: (1) it does not, and will not for the duration of this Contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to this Contract. If circumstances relevant to this provision change during the term this Contract, Contractor shall promptly notify CPA.

14.54 Firearm Entities and Trade Associations Discrimination. Contractor verifies that: (1) it does not, and will not for the duration of this Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Contract. If circumstances relevant to this provision change during the Contract Term, Contractor shall promptly notify CPA.

14.55 COVID-19 Vaccine Passport Prohibition. Under Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that it is not ineligible to receive this Contract.

14.56 No Third-Party Beneficiaries. This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Contract.

14.57 Recitals. The Recitals in Section I are hereby incorporated into the terms of this Contract.

14.58 SPD Statewide Contract. If this solicitation is authorized by a delegation letter from the Comptroller's Statewide Procurement Division's (SPD), the Contract may be terminated with thirty (30) days' written notice from Comptroller to Successful Respondent if SPD awards a statewide contract for the same or similar good or service.

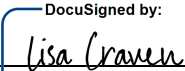
XVI. Merger; Severability

This Contract contains the entire agreement between Contractor and Comptroller relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Contract shall be of no force or effect unless contained in a subsequent writing, signed by both Parties. In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Signatories

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

**TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS**

By:  _____
Lisa Craven E450165D764443C...
Deputy Comptroller
Date: 2/4/2025 | 5:06 PM CST

ERNST & YOUNG, LLP

By: _____
Name: Philip Vaccaro
Title: Principal
Date: February 3, 2025 _____

ATTACHMENT A

Comptroller's RFP

Comptroller's RFP No. 239a, issued November 19, 2024 (RFP), is incorporated by reference for all purposes into this Contract as Attachment A. In the event of a conflict between Comptroller's RFP and an RFP Addendum, the RFP Addendum shall control.

ATTACHMENT B

Standards of Performance

Good Customer Service is very important to the Comptroller. This will include the minimum Standards of Performance in the RFP and any additional Standards of Performance proposed by Contractor and agreed to by Comptroller and the following:

1. Consultant shall discharge all duties solely in the interest of Comptroller and with the judgment, care, skill, prudence, and diligence that an expert would use in a similar situation.
2. Consultant shall comply with all applicable state and federal laws, regulations, requirements and guidelines, relating to professional consulting services, as they exist at the inception of this Contract and as they may be amended or revised during the term of this Contract.
3. Consultant shall carefully proof any documents provided to Comptroller for accuracy prior to their submittal to Comptroller. Contractor shall demonstrate rigorous quality control in reviewing work for accuracy prior to submission to Comptroller.
4. Consultant shall not invoice Comptroller for any work that is not pre-authorized or would result in exceeding the total amount of the Contract. Contractor shall provide time and cost estimates to Comptroller for pre-approval before performing work. Contractor shall be aware that Comptroller has limited funding for Services and work with Comptroller to maximize the impact of the available dollars, including limiting participation by non-vital Contractor personnel in meetings or when completing tasks.
5. Consultant shall invoice Comptroller for any Services provided under this Contract within 30 days of the end of the month in which the Services were provided.
6. Consultant shall notify Comptroller in advance of providing any work that would result in exceeding the Contract, including work requested by Comptroller.

ATTACHMENT C**Authorized Personnel and Compensation****1. Personnel:**

Contractor's authorized personnel are those individuals specified in the "Respondent and Proposed Subcontractor(s) Project Personnel and Organizational Information" portion of its Proposal.

Contractor's primary contact:

Phil Vaccaro
50 Rowes Wharf
Boston, MA 02110
Telephone: (617) 820-8004
Phil.vaccaro@parthenon.ey.com

Comptroller's primary contact:

Linda Fernandez
111 E. 17th St., Suite 910.10
Austin, TX 78774
Telephone: (512) 463-4863 (Office) and (512) 745-6120 (Cell)
Linda.Fernandez@cpa.texas.gov

2. Compensation:

Compensation will be based on hourly rates as Services are requested and pre-approved by Comptroller and rendered by Contractor.

Unless amended by Comptroller, the following price sheet includes all costs for providing the Services as described in the Contract. Comptroller will not prepay any amounts, The following rates shall apply during the term of this Contract, including any extensions:

Name of Authorized Personnel	Title	Contact Information	Hourly Compensation Rate
Phil Vaccaro	Partner	Phil.vaccaro@parthenon.ey.com ; (617)-820-8004	\$590
Seth Reynolds	Partner	Seth.reynolds@parthenon.ey.com ; (617)-820-7471	\$590
Laurie Patton	Advisor	Laurie.patton@ey.com ; (202)-330-3046	\$550
Reilly Harris	Project Manager	Reilly.a.harris@parthenon.ey.com ; (860)-338-0901	\$475
Kaitlyn Judge	Workstream Leader	Kaitlyn.judge@parthenon.ey.com ; (440)-477-0549	\$375
TBD	Associate Staff	TBD	\$340
TBD	Technical Staff	TBD	\$190
TBD	Technical Writer	TBD	\$125

TBD	Report Designer	TBD	\$95
TBD	Managed Document Review II	TBD	\$80
TBD	Managed Document Review I	TBD	\$60

Note: Subject to Part IV (Personnel; Subcontractors), Contractor may add additional names as the work progresses.

3. Out-of-State Travel

Travel costs will be invoiced to Comptroller based on actual expenses, and Comptroller shall not be liable for reimbursement of expenses that: (1) were not pre-approved in writing by Comptroller; or (2) exceed the current State of Texas Travel Regulations applicable to state of Texas employees. The current Travel Regulations are found in the Texas General Appropriations Act, available at:

https://www.lbb.texas.gov/Documents/GAA/General_Appropriations_Act_2024_2025.pdf (to be updated at www.lbb.texas.gov), which may be amended from time to time. The following website is a guide for compliance with state of Texas travel rules and regulations:

<https://fmxcpa.texas.gov/fmx/travel/texttravel/index.php>. The current reimbursement rates are available at: <https://fmxcpa.texas.gov/fmx/travel/texttravel/rates/current.php>, which may be amended from time to time.

ATTACHMENT D

HUB Subcontracting Plan

Contractor shall comply with the final executed HUB Subcontracting Plan, which is incorporated by reference for all purposes into this Contract as part of this Attachment D.

ATTACHMENT E

Contractor's Proposal

Contractor's Proposal dated December 18, 2024 is incorporated by reference for all purposes into this Contract as Attachment E.

ATTACHMENT F



Comptroller
of Public
Accounts
FORM

70-223
(Rev.8-
22/23)

Texas Comptroller of Public Accounts
Confidential Treatment of Information Acknowledgment (CTIA)

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

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

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

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

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

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

I understand that an attempt to circumvent any computer security system or other security control by any means is a violation of Comptroller policy. I also understand that failure to observe these restrictions may constitute a "Breach of Computer Security" as defined in Texas Penal Code, Section 33.02(b), and that such an offense constitutes a Class B misdemeanor, a state jail felony, or a felony of the first, second or third degree.

I understand that any copyrighted material including, but not limited to, commercial computer software, which may be made available to me for my use by the Comptroller's office, is protected by copyright laws and is not to be copied for any reason without permission from the copyright owner. I understand that the violation of copyright laws, including computer software, may result in fines and/or imprisonment.

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

Printed name of person requesting access	Name of employer
Signature of person requesting access sign here ☐	Date
Work phone (Area code and number)	Work email address

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

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

ATTACHMENT G

**Cybersecurity Training Attestation
Texas Comptroller of Public Accounts (CPA)**

**Attestation of Contractor Compliance with
State of Texas Cybersecurity Training Requirements**

Contractor Name:	
CPA Purchase Order Number:	
Contract Description:	

In accordance with [Section 2054.5192](#) of the Texas Government Code, the contractor identified above (“Contractor”) shall ensure that any employee or subcontractor who has access to a CPA computer system or database in performing services under the contract identified above (“Contract”) has completed a cybersecurity training program certified by the Texas Department of Information Resources (DIR) on an annual basis during the term of the Contract and during any renewal periods.

Please identify the completed course(s) from the list of [Department of Information Resources \(DIR\) Certified Training Programs](#). CPA will only accept attestation for DIR-certified training programs. CPA’s security awareness training includes DIR-certified training programs in compliance with [Section 2054.519](#) of the Texas Government Code.

Contractor must complete, sign, and return this form to CPA no later than sixty (60) calendar days following contract award and each anniversary thereafter during the term of the Contract, including any renewal periods,. Contractor must email the completed and signed form to CPA at contract.administration@cpa.texas.gov and reference “Cybersecurity Training Attestation” and the purchase order number in the subject line.

By signing below, Contractor hereby certifies that all applicable employees or subcontractors have completed a DIR-certified cybersecurity training program in accordance with by Section 2054.5192 of the Texas Government Code.

[Contractor Entity Name]

Signature: _____

Printed Name: _____

Title: _____

Date: _____