

**CONTRACT  
FOR  
CHILLER PREVENTATIVE MAINTENANCE  
AND REPAIR SERVICES  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
CARRIER CORPORATION**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Carrier Corporation (hereinafter referred to as "Contractor"), located at 11100 Metric Boulevard Suite 400, Austin, Texas 78758 enter into the following contract for chiller maintenance and repair services (hereinafter referred to as the "Contract") pursuant to TEX. GOV'T CODE ANN. Ch. 2165 (West 2016).

**I. STATEMENT OF WORK.**

1.1. **GENERAL.** (a.) Contractor shall provide chiller preventive maintenance and repair services for various State owned and/or maintained office buildings located in the Austin, Texas metropolitan area as listed in Exhibit A - Building and Equipment List, attached hereto and incorporated herein for all purposes. Contractor shall provide all labor, materials, equipment, tools and transportation required to perform these services. All chiller repair work and maintenance shall follow the manufacturer's recommendations.

(b.) Prior to chiller maintenance or repairs, Contractor must contact the Contract Administrator, as defined in Section 1.2 below, to have equipment taken out of service by shutting down, or being turned off, at the equipment disconnect. Once services are complete, the equipment shall be put back into service by TFC Plant Operations.

(c.) Contractor shall provide replacement parts for chillers within seventy two (72) hours from the date and time of notification by TFC. Exceptions to this must be approved by the Contract Administrator.

(d.) Contractor shall purchase and provide all manufacturers replacement parts for each model of chiller. After-market parts are not to be used unless approved by the Contract Administrator.

(e.) All maintenance, repair and alteration work must comply with the applicable rules and regulations of the United States Environmental Protection Agency, Section 608 of the Clean Air Act, 2012 Uniform Mechanical Code, 2012 International Mechanical Code, TAC Title 16, Chapter 75 Air Conditioning and Refrigeration, and Austin Ordinance Title 6 Environmental Control & Conservation, Chapter 6, Article 1.

(f.) Contractor shall provide, mobilize and connect temporary chillers on an as-needed basis. Mobilization shall occur within two (2) hours of notification. Temporary chillers shall be provided at the rates listed in Exhibit B - Compensation and Fees.

(i.) Contractor shall supply all chiller types and cooling tower trailer mounted, if requested.

(ii.) Contractor is responsible for the turnkey connection of all of the temporary equipment connections including electrical connections. Electrical connections will be coordinated through the TFC electrical core group. The chiller piping connection will be coordinated through the TFC Operations and HVAC Group.

(iii.) Temporary chillers, particularly water cooled centrifugal chillers, shall arrive on a trailer mounted platform as a self-contained plant with cooling towers and pumps, all trailer mounted if possible. Larger tonnage chillers may require an array of chillers depending upon the needed tonnage.

(iv.) A larger centrifugal chiller will need to be mounted on a trailer. Cooling towers will be mounted on a separate trailer, if applicable. A separate cooling tower will only be required if the plant cooling tower is inoperable or down for repairs, replacement or if TFC decides not to use the existing cooling towers for any reason.

(v.) Air cooled chillers will be trailer mounted unless requested differently by TFC. Air cooled plants shall arrive on a trailer mounted platform as a self-contained plant with pumps, all trailers mounted if possible. Some instances may require an array of chillers depending upon the needed tonnage.

1.2. **CONTRACT ADMINISTRATOR.** (a.) TFC shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between TFC and Contractor. The instructions of the Contract Administrator and/or the Contract Administrator's designated representative (hereinafter collectively referred to as "Contract Administrator") are to be strictly and promptly followed by Contractor at all times. The Contract Administrator is to have free access to Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor is to afford the Contract Administrator all necessary assistance during those inspections and/or audits. The Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The Contract Administrator will determine the amount of work performed and materials furnished which are to be paid under this Contract. Failure of the Contract Administrator during the progress of the Contract, to: (i.) discover or reject unacceptable work; (ii.) discover work not in accordance with the Contract; or, (iii.) failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof, nor a waiver, of TFC's right to full performance of the contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with Contract Administrator. Contractor understands and agrees that work, installation or any other service performed without the prior written direction of Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

1.3. **PERFORMANCE REQUIREMENTS.** Contractor's performance shall include, but not limited to, the following when performing chiller maintenance:

(i.) provide all major and minor chiller repairs, that include, but are not limited to, the following: diagnostic, rebuilds, overalls, teardowns, refrigerant reclamations, retrofits and re-tubes.

(ii.) perform annual preventative maintenance per the manufacturer's guidelines.

(iii.) remove and dispose of all trash and oil from floors when job is completed for the day.

(iv.) provide appropriate off-site disposal of used parts and trash

(v.) report any observed equipment deficiencies to the Contract Administrator the same day they have been observed.

(vi.) provide Contractor quote that is itemized as per Exhibit B - Compensation and Fees. Quotes for subcontracted services shall be included with, the Contractor quote and itemized by materials and labor.

**ANNUAL MAINTENANCE.** (a.) Contractor shall provide all required labor, tools, parts, and materials to complete scheduled maintenance tasks as per manufacturer recommendation which if applicable shall include, but not be limited to:

- (i.) review of diagnostics;
- (ii.) review of purge report;
- (iii.) conduct refrigerant leak check;
- (iv.) oil level and temperature check;
- (v.) oil analysis per circuit;
- (vi.) change oil filter;
- (vii.) check oil heater;
- (viii.) change purge filter drier;
- (ix.) lock out tag out units with potentially high or medium voltage starters;
- (x.) purge plus expiration date check (high performance);
- (xi.) vane linkage and valve lubrication;
- (xii.) motor bearing lubrication;

- (xiii.) condenser tube brushing including head removal;
- (xiv.) remove second (2<sup>nd</sup>) head;
- (xv.) replace magnesium donut anode;
- (xvi.) install threaded studs for anodes, as needed;
- (xvii.) open starter panel door(s);
- (xviii.) compressor starter inspection;
- (xix.) control panel electrical inspection;
- (xx.) control panel calibration check;
- (xxi.) low temperatures sensor calibration;
- (xxii.) drain rupture disc vent line;
- (xxiii.) clean coils;
- (xxiv.) top off fluids;
- (xxv.) remove lock out tag out and restore power for units with medium or high voltage starters;
- (xxvi.) pre-start chiller check;
- (xxvii.) start chiller;
- (xxviii.) manual log with electronic device; and
- (xxix.) check chiller for unusual noise and vibration.

(b.) Contractor shall record and report abnormal conditions and measurements taken.

(c.) The maintenance report shall be given to the Contract Administrator.

(d.) Contractor shall report completed buildings to the Contract Administrator on a Contractor supplied form approved by the Contract Administrator via e-mail daily.

1.5 **Ten (10) YEAR MAINTENANCE.** (a.) Contractor shall provide all required labor, tools, parts and materials to complete scheduled maintenance tasks as per manufacturer recommendation which if applicable, shall include, but not be limited to, the following.

(i.) Disassemble compressor section. The compressor motor bearings shall be replaced with new factory bearings. The first (1st) and third (3rd) stage vane assemblies shall be rebuilt using new bearings and bushings. The first and second stage impellers shall be balanced and inspected visually for cracks and wear. The compressor motor shall be completely disassembled cleaned, re-varnished, and baked. The compressor motor shall be balanced. The balancing of individual components shall be accomplished in a manner that will insure each component to be within a tolerance of two (2) milliliters.

(ii.) The oil sump shall be opened and thoroughly cleaned. The oil pump motor shall be cleaned, re-varnished and abated.

(iii.) The starter shall be thoroughly cleaned, checked and all connections tightened.

(iv.) During the reassembly process, all gaskets and O-ring, shall be replaced using new factory parts. On completion of the reassembly process, the unit shall be thoroughly leak checked and dehydrated. The unit shall be charged with existing refrigerant and placed in operation. The safety and operating controls shall be checked and calibrated and an operating log shall be completed along with the submission of a condition report.

(v.) Any parts not listed above which will require replacement shall be itemized, priced according to Exhibit B - Compensation and Fees, and submitted for approval to the Contract Administrator prior to replacing.

(vi.) Temporary Chiller: Provide a temporary chiller of appropriate size for operation while chiller is receiving ten (10) year maintenance services.

(b.) The maintenance report shall be given to the Contract Administrator.

(c.) Contractor shall report completed buildings daily via email to the Contract Administrator on a Contractor supplied form approved by the Contract Administrator.

1.6. **OIL CHANGES**, When requested by Contract Administrator, as advised by Contractor as per chiller manufacturer recommendations, Contractor shall provide all parts, materials and labor to replace the compressor motor oil as per manufacturer specifications at the amount included on Exhibit B - Compensation and Fees.

1.7. **DELIVERY RELEASE SERVICES**, (a.) TFC may, from time to time, initiate maintenance and repair projects based on deficiencies documented during chiller maintenance services under this Contract or to effect repairs due to system failures. Such requests for services shall be documented through a separate document (hereinafter referred to as a "Delivery Release"). Each Delivery Release will constitute an amendment to this Contract, subject to the terms and conditions set forth in this Contract, and shall include a description of the project assignment, scope of services, schedule and term, and compensation specific to the Delivery Release which shall be negotiated at the time of such Delivery Release. Any work completed by Contractor without a Delivery Release will not be paid for by TFC.

(b.) Contractor understands and agrees that no guaranteed minimum number of Delivery Releases or amount of work will arise from this Contract.

(c.) Contractor's response to an initial request shall include the following types:

(i.) Non-Emergency. Contractor's initial response shall be within one (1) business day, unless otherwise agreed to by the Contract Administrator. Contractor shall have a technician on site in the time frame agreed to by the Contract Administrator at the time of the Contractor's initial response.

(A.) Contractor, after reviewing conditions, will provide Contract Administrator a quote for services as per Exhibit B - Compensation and Fees.

(B.) Upon acceptance of quote, Contractor shall perform services as per the Contract.

(ii.) Emergency. Contractor's initial response shall be within fifteen (15) minutes, unless otherwise agreed to by the Contract Administrator. Contractor shall have a technician on site within two (2) hours, unless otherwise agreed to by the Contract Administrator at the time of the Contractor's initial response. In an emergency, Contractor may begin services upon verbal direction from the Contract Administrator. Written confirmation will follow within twenty-four (24) hours of initial call. As soon as possible, Contractor shall provide the Contract Administrator a quote for a not-to-exceed price for repairs as per Exhibit B - Compensation and Fees.

(d.) Travel time to and from a job site is not reimbursable under this Contract. Contractor shall check in and out with the Contract Administrator to ensure that the Contract Administrator logs the commencement and completion times for the "Service Ticket", or summary list, for the services performed under a Delivery Release. Contractors shall provide the following information on the Service Ticket:

- (i.) building name;
- (ii.) asset name and number;
- (iii.) TFC work order number;
- (iv.) name of Contractor personnel performing the work;
- (v.) trade category of person(s) performing work;
- (vi.) number of hours worked;
- (vii.) itemized list of parts/material used/replaced; and,

(viii.) narrative description of what the technician found that was causing the problem and what was done to correct it.

(e.) Contractor shall be responsible for examining all facilities in which the work will take place and to be familiar with the conditions under which the work will be accomplished. Contractor shall inspect existing conditions prior to commencing work, including elements subject to damage or movement during the project.

1.8. **CALLBACK.** For the purpose of evaluating Delivery Release performance under this Contract, a "Callback" is defined as a failure due to a technician's inability, negligence or lack of knowledge to perform services. Contractor is to perform Callback Service at no additional cost to TFC, regardless of whether the work is performed during normal working hours or overtime hours. Contractor shall maintain a complete, orderly written report of all Callbacks. These "Callback Reports" shall indicate the time, date, name of personnel, problems reported and corrective measures taken to complete or repair all problems. A consolidated Callback Report is to be furnished to TFC as soon as the service is provided.

1.9. **CALLBACK RESPONSE.** Failure by Contractor to successfully complete the work described in a Delivery Release will result in a Callback. The Contract Administrator will contact the Contractor and notify them of the Callback. Contractor will respond to the Callback no later than the next business day with a technician possessing the technical expertise, knowledge and any required material to correct the problem. Contractor shall check in and out with the Contract Administrator to ensure that the Contract Administrator logs the commencement and completion times for the "Callback Service Ticket", or summary list, for the services performed to correct the problem described in the original Delivery Release. Contractor shall provide the following information on the Service Ticket:

- (i) building name;
- (ii) asset name and number;
- (iii) TFC work order number;
- (iv) name of Contractor personnel performing the work;
- (v) trade category of person performing the work;
- (vi) number of hours worked;
- (vii) itemized list of parts/material used/replaced; and,

(viii) narrative description of what the technician found that was causing the problem and what was done to correct it.

1.10. **SECURITY AND IDENTIFICATION.** Contractor shall abide by all procedures and rules as conveyed by Contract Administrator regarding security requirements of the property where work is to be performed. Contractor employees must wear either uniforms or appropriate clothing identifying them as employees of the Contractor at all times when working in TFC facilities.

Shorts and/or muscle shirts shall not be worn at any time. Contractor personnel must have a TFC supplied identification badge visible at all times when working in TFC facilities.

1.11. **CONTRACTOR ACCESS.** Access routes, entrance gates or doors, parking and storage areas, and other necessary Contractor access, along with any imposed time limitations shall be designated by Contract Administrator. Contractor shall conduct operations in strict observation of the access routes and other areas established. Under no circumstances shall any of Contractor's employee, vehicles, or equipment enter or move upon any area not authorized by Contract Administrator for access by Contractor.

1.12. **EXAMINATION OF PREMISES.** Contractor shall be held to have examined all properties at which the work will take place and to be familiar with the conditions under which the work will be accomplished. Contractor shall inspect existing conditions prior to commencing work, including elements subject to damage or movement during the performance of services under this Contract.

1.13. **EXISTING UTILITIES AND STRUCTURES.** Contractor shall adequately protect the work, TFC's property, adjacent property and the public. In the event of damage to facilities as a result of Contractor's operations, Contractor shall take immediate steps to notify TFC's Contract Administrator and subsequently repair or restore all services to the satisfactory approval of TFC's Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services are restored. All costs involved in making repairs and restoring disrupted services shall be at the expense of Contractor, and Contractor shall be fully responsible for any and all claims resulting from the damage. TFC's Contract Administrator may elect to perform such repairs and deduct the cost of such repairs, replacements, and outside services from amounts due to Contractor. Upon the approval of TFC's Contract Administrator, Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets on TFC's property.

1.14. **WASTE REMOVAL.** Contractor shall keep the premises clean on a continual basis, and no trash or debris will be permitted to accumulate in work areas. Contractor shall be responsible for removal and disposal of all debris and waste materials associated with this Contract.

1.15. **SMOKING.** All TFC facilities where work is to be performed are nonsmoking buildings. Contractor's employees are prohibited from smoking in all areas except in areas designated for smoking.

## II. TERM.

2.1. **CONTRACT AWARD.** (a.) This Contract shall be effective as of the date of the last party to sign and shall expire on August 31, 2017 unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.03 below. This Contract may be renewed for one (1) additional two (2) year period. Any renewals shall be at the same terms and conditions, plus any approved changes.

(b.) Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records right to audit and

independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract.

2.2. **WORKING HOURS.** Contractor shall perform the services set forth in this Contract that will not interfere with the day to day business operations of TFC facilities between the hours of 7:30 a.m.–6:00 p.m. Monday through Friday. Other contract work may also be performed at hours other than normal business hours, at the direction of the Contract Administrator, in order to meet required schedules. Contractor will be on-call twenty four (24) four hours a day 365 days a year and respond to the Contract Administrator. No overtime will be paid without the prior written approval of the Contract Administrator.

2.3. **TERMINATION.** (a.) Termination with Default. TFC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TFC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or TFC resulting from Contractor's non-performance. 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 scope of work is significantly changed.

(b.) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.3(c.)

(c.) Implementation of Termination. Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. In the event of termination by TFC, TFC shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

(d.) Termination by Contractor. Contractor may terminate the Contract upon providing sixty (60) days' written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract, and shall perform the acts outlined in Section 2.3(c.) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

2.4. **UNSATISFACTORY PERFORMANCE.** TFC may consider the following levels of performance by Contractor as unsatisfactory. An unsatisfactory performance determination is not limited to the following:

- (i.) more than one (1) Callback to correct the same problem within thirty days; (30) calendar
- (ii.) more than one (1) instance within one (1) calendar year of Contractor personnel assigned to an authorized Service Call, test or inspection not having the skill or knowledge to perform the required service or test or inspection;
- (iii.) failure to timely complete and document required inspections;
- (iv.) failure to provide the tools necessary to complete the inspection, test or required service;
- (iv.) failure by Contractor, upon completion of testing, inspection or service, to place the serviced unit back into service or to leave it in other than it's normal state;
- (vi.) failure by Contractor to submit a complete and accurate invoice to the Contract Administrator no later than the fifth (5<sup>th</sup>) business day of the month following the month in which the services being invoiced were completed;
- (vii.) failure by Contractor to respond to an emergency call within the required timeframe;
- (viii.) the incorrect use, unsafe staging of equipment and/or inappropriate safety procedures;
- (ix.) failure by Contractor to provide suitable supervision;
- (x.) failure by Contractor to maintain a safe work environment;
- (xi.) improper or inaccurate reporting of job progress; and
- (xii.) failure by Contractor to leave worksite in a clean and orderly manner.

**2.5. CORRECTIVE ACTION PLAN.** If TFC identifies one or more instances of Contractor's unsatisfactory performance based on any of the circumstances set forth in Section 2.04 above or otherwise based on Contractor's obligations under this Contract, the Contract Administrator may request a corrective action plan (hereinafter referred to as "Corrective Action Plan") from Contractor by notifying Contractor in writing of the issue(s) which constitute unsatisfactory performance, and direct Contractor to provide a written Corrective Action Plan. Contractor shall deliver a Corrective Action Plan within ten (10) business days of Contract Administrator's notification, and such plan shall be subject to written approval by the Contract Administrator. The Corrective Action Plan shall address how Contractor will correct the instances of unsatisfactory performance identified by TFC, and provide that Contractor shall, unless otherwise approved in advance by the Contract Administrator, complete all actions set forth in the Corrective Action Plan no later than thirty (30) calendar days following Contractor Administrator's approval of the Plan. Failure to correct all identified elements of unsatisfactory performance included in the notice requesting the Corrective Action Plan, within the time as set

forth in this paragraph, shall entitle TFC to avail itself of one or more of the following remedies at TFC's sole discretion:

- (a.) TFC's removal of one or more facilities from the scope of this Contract; and/or
- (b.) TFC's termination of this Contract.

In addition, if Contractor is required to deliver and perform under more than one (1) Corrective Action Plan within any period of twelve (12) continuous months during the term of this Contract, and regardless of whether or not Contractor successfully completes such Correction Action Plans, TFC may consider such conduct to amount to Contractor's continuing material nonperformance of services under this Contract. In such an event, TFC shall be entitled to avail itself of one or more of the following remedies: TFC, in its sole discretion.

- (a.) TFC's removal of one or more facilities from the scope of this Contract;
- (b.) TFC's imposition of liquidated damages on Contractor in an amount equal to ten percent (10%) of the amount of compensation otherwise payable by TFC to Contractor under this Contract for work performed during the three (3) month period preceding the date the most recently submitted Corrective Action Plan was approved by the Contract Administrator; and/or
- (c.) TFC's termination of this Contract.

2.6. **NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, TFC 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 absent an award of damages pursuant to Texas Government Code, Chapter 2260.

### III. CONSIDERATION.

3.1. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a.) The total amount of this Contract shall not exceed the sum of Eighty Thousand Nine Hundred Sixty Four and No/100 Dollars (\$80,964.00), this includes the total contract base fee of Thirty Thousand Nine Hundred Sixty Four and No/100 Dollars (\$30,964.00) and Fifty Thousand and No/100 Dollars (\$50,000.00) to cover any Additional Services, as defined in Section 3.3 below. Pricing fees shall be invoiced in accordance with Exhibit B - Compensation and Fees, attached hereto and incorporated herein for all purposes. Any changes to the not to exceed amount of this Contract or pricing fees set forth in Exhibit B - Compensation and Fees shall be submitted to TFC for review and shall be approved by amendment to this Contract.

(b.) If, at any time during the term of this Contract, Contractor reduces the comparable price of any article or service covered by the Contract to customers other than TFC, the prices charged to TFC for such articles or services shall also be reduced proportionately. Such reduction shall be effective at the same time and in the same manner as the reduction in price to customers other than TFC. In addition to invoicing at the reduced prices, Contractor shall furnish promptly to TFC complete information regarding the reduction.

3.2. **PAYMENTS TO CONTRACTOR.** (a.) Payments to Contractor will be made on a monthly basis and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An

invoice is considered received on the date it is date stamped by TFC. Contractor will be paid for completion of work accepted and approved by TFC's Contract Administrator. For large projects, partial payment may be allowed once per month on completed work with acceptance and approval of the Contract Administrator.

(b.) Contractor will be paid for work performed to the end of the preceding month, provided that the work required to be performed under the Contract shall have been fully and satisfactorily completed, accepted, and approved by TFC's Contract Administrator. Inspections shall not be considered to be complete and payable unless the completed, signed inspection form along with copies of service tickets have been submitted to and received by TFC.

(c.) Freight and shipping charges are not an allowable expense under this contract. Expedited shipping charges, with prior approval from the TFC Contract Administrator, may be allowed.

(d.) Contractor shall invoice TFC for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number, the number of employees that worked on the job, the number of hours, and a copy of the project service ticket. Additionally, invoices for any materials purchased for each project must be provided. Address for submission is: Texas Facilities Commission, Accounts Payable, P.O. Box 13047, Austin, Texas 78711-3047 or accountspayable@tfc.state.tx.us.

(e.) Contractor shall list any costs for required payment or performance bonds as a separate line item on the invoice.

3.3. **ADDITIONAL SERVICES AND ADJUSTMENTS.** (a.) "Additional Services" are those services not included in Article I of this Contract which may be requested by TFC at any time for the duration of this Contract. Upon request by TFC for Additional Services, Contractor shall prepare and submit to TFC a proposal for such services requested. Additional Services will be charged at the rates set forth in Exhibit B – Compensation and Fees and shall be documented by a Delivery Release.

(b.) Additional Services may also include the addition of units and/or facilities for which no unit price was included in Exhibit B – Compensation and Fees, and may be added to this Contract, provided TFC and Contractor agree to a unit price. Prices for any additional units shall be calculated by comparing pricing to similar units included in Exhibit B – Compensation and Fees. The addition of units and/or facilities shall be documented by amendment to this Contract.

(c.) At any time, TFC may adjust the Contract, in whole or in part, with thirty (30) days' notice to Contractor. An adjustment will be made when a service is no longer required and shall be documented by amendment to this Contract.

#### IV. CONTRACTOR PERSONNEL.

4.1. **REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the necessary qualified

personnel, organization and facility to properly fulfill all the terms and conditions of this Contract. Service technicians must have a Universal EPA Refrigerant Certification.

4.2. **GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a) Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TFC as to the facts and circumstances surrounding the conviction.

(b.) Contractor's employees and subcontractors that will complete any work on-site at a state-owned property may be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor. If requested by TFC, a complete criminal background check shall be completed before any employee performs services at the site, and may be requested at any time thereafter. Criminal background checks must be accomplished by the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in Exhibit C - Criminal Background Checks and Application Guidelines, attached hereto and incorporated herein for all purposes.

4.3. **REMOVAL OF PERSONNEL.** TFC may request that the Contractor replace unsatisfactory personnel, which request shall not be unreasonably denied.

4.4. **CONTRACTOR COOPERATION.** Contractor agrees to cooperate and coordinate its work with that of other contractors retained by TFC. Upon discovery of an apparent conflict in the sequencing of work with another contractor, Contractor shall report the concern to TFC's Contract Administrator who will resolve the conflict.

4.5. **E-VERIFY.** (a.) By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of:

(i.) all persons employed to perform duties within the State of Texas, during the term of the Contract; and

(ii.) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

(b.) Contractor shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract.

(c.) For persons not eligible for E-Verify screening, Contractor (including sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

## V. STATE FUNDING.

5.01. **STATE FUNDING.** (a.) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b.) Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.

## VI. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.

6.1. **SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS.** (a.) Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

(b.) Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. The acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must

provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

6.2. **CONFIDENTIALITY**. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is:

- (i.) confidential by law;
- (ii.) marked or designated "confidential" (or words to that effect) by TFC; or
- (iii.) information that Contractor is otherwise required to keep confidential by this Contract.

6.4. **PUBLIC RECORDS**. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Contractor will cooperate with TFC in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Contractor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

6.5. **PUBLIC DISCLOSURE**. No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of TFC.

## **VII. CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES.**

7.1. **CONTRACTOR RESPONSIBILITIES**. Contractor shall be responsible for damage to TFC's equipment, and/or the workplace and its contents, by its works, its negligence in work, its personnel, or its equipment by Contractor's staff or subcontractors. Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TFC.

7.2. **PERFORMANCE STANDARDS**. (a.) All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all

federal, state, and local laws, rules, codes and ordinances and comply with the Occupational Safety and Health Administration (hereinafter referred to as "OSHA").

(b.) Appropriate dress is required for all personnel. Prohibited attire includes, but is not limited to, the following:

- (i.) athletic clothing and lounge attire of any type;
- (ii.) clothing that displays offensive messages (picture or print);
- (iii.) clothing that is see-through, low cut, or bares the midriff;
- (iv.) shorts; and,
- (v.) flip-flop sandals.

(c.) Eating is prohibited on jobsites except in designated cafeterias.

(d.) All facilities where work is to be performed are professional environments. Contractor employees using inappropriate language or behaving in an inappropriate manner will be asked to leave the premises and documented by the Contract Administrator.

(e.) All Contractor employees on jobsite will:

- (i.) wear clean uniforms in good repair daily;
- (ii.) keep shirttail tucked in during business hours;
- (iii.) bathe daily and be clean at the start of the work day;
- (iv.) wash hair daily, comb or brush before starting work and keep trimmed; and,
- (v.) be clean shaven or if facial hair is present, keep trimmed.

7.3. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS.** Contractor shall procure, at Contractor's expense, all necessary and required licenses and permits necessary for the performance of this Contract. Contractor represents and warrants that the services provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, the Occupational Safety and Health Administration (OSHA), and all Texas health and safety standards.

7.4. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction. Work performed under this Contract shall meet all applicable requirements of the latest revision of the NFPA codes. Contractor shall guarantee all work included in the Contract against any defects in workmanship and shall satisfactorily correct, at no cost to TFC, any such defect that may become apparent

within a period of one (1) year after completion of work. The warranty period shall commence upon the date of acceptance by TFC.

7.5. **MATERIAL WARRANTY.** All material and equipment furnished under this Contract is guaranteed by Contractor to be in compliance with this Contract, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Contract shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. **USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, RECONDITIONED, OR DISCONTINUED MODELS OR MATERIAL ARE NOT ACCEPTABLE.** The warranty period for Contractor-provided materials shall be for a period of one (1) year after completion of the installation or within the manufacturer's warranty, whichever is longer. The warranty period shall commence upon date of acceptance by TFC. Contractor shall provide TFC's Contract Administrator or his/her designated representative with all manufacturers' warranty documents within five (5) business days of completion of each project.

### **VIII. INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.**

8.1. **BONDS.** (a.) Prior to commencement of work under a Delivery Release issued under this Contract, Contractor is required to tender payment and performance bonds to TFC, as required by Texas Government Code, Chapter 2253, when the following circumstances apply:

(i.) A performance bond is required if the Delivery Release amount is in excess of \$100,000.00. The performance bond is solely for the protection of TFC. The performance bond is to be for the sum of the Delivery Release to guarantee the faithful performance of the work in accordance with the Contract. The performance bond shall be effective through Contractor's warranty period. When submitting a proposal for services as requested by the Contract Administrator, Contractor shall provide documentation for the cost of the performance bond.

(ii.) A payment bond is required if the Delivery Release amount is in excess of \$25,000.00. The payment bond is to be for the sum of the Delivery Release and is payable to TFC solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with Contractor or a subcontractor. When submitting a proposal for services as requested by the Contract Administrator, Contractor shall provide documentation for the cost of the payment bond.

(b.) Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to TFC, on TFC's form, attached hereto and incorporated herein as Exhibit D – TFC Bond Forms, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, TFC may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to TFC.

(c.) Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond)

authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

(d.) The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Texas Government Code, Chapter 2253. **IF FOR ANY REASON A STATUTORY PAYMENT OF PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**

(e.) TFC shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Texas Government Code, Section 2253.026.

(f.) Claims on payment bonds must be sent directly to Contractor and its surety in accordance with Texas Government Code, Section 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to TFC may result in loss of their rights against Contractor and/or its surety. TFC is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

(g.) The rights of subcontractors regarding payment are governed by Texas Property Code, Sections 53.231–53.239 when the value of a Delivery Release is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

(h.) Sureties shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (Department Circular 570).

8.2. **INSURANCE.** Prior to the commencement of work under this Contract, Contractor agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract, to furnish certificates of insurance, and make available, at no cost to TFC, copies of policy declaration pages and policy endorsements as evidence thereof:

(a.) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of \$100,000.00 bodily injury per accident, \$500,000.00 bodily injury disease policy limit and \$100,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096.

(b.) Commercial General Liability with a combined single limit of \$1,000,000.00 per occurrence for coverage A and B including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000.00 for bodily injury and for property damages. The policy shall contain the following provisions:

(i.) blanket contractual liability coverage for liability assumed under the Contract;

- (ii.) independent contractors' coverage;
- (iii.) State of Texas, TFC, its officials, directors, employees, representatives and volunteers must be listed as additional insureds;
- (iv.) thirty (30) day Notice of Cancellation in favor of TFC; and
- (v.) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

(c.) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are \$250,000.00 bodily injury per person, \$500,000.00 bodily injury per accident and at least \$100,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

- (i.) Waiver of Subrogation endorsement;
- (ii.) thirty (30) day Notice of Cancellation endorsement; and
- (iii.) Additional Insured endorsement.

(d.) Umbrella Liability Insurance for an amount of not less than \$1,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverage's required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

**8.3. GENERAL REQUIREMENTS FOR INSURANCE.** (a.) Contractor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b.) Contractor shall maintain coverage for the duration of this Contract. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Contract. Contractor shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Contractor.

(c.) Contractor shall not commence work under this Contract until they have obtained the required insurance and until such insurance has been reviewed by TFC. Contractor shall not allow any subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Contractor hereunder.

(d.) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e.) TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies.

(f.) Contractor shall produce endorsements upon TFC's request to each affected policy:

(i.) naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation and employers' Liability);

(ii.) that obligates the insurance company to notify TFC's Contract Administrator, TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation; and,

(iii.) that the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Contract, covering both TFC and Contractor, shall be considered primary coverage as applicable.

(g.) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(h.) Contractor shall not cause any insurance required under this Contract to cancel nor permit any insurance to lapse during the term of this Contract.

(i.) TFC reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Contractor (such adjustments shall be commercially available to Contractor).

(j.) Contractor shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(k.) Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

(l.) Contractor's insurance shall include a waiver of subrogation to TFC for the Workers' Compensation and Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

**8.3 INDEMNIFICATION AND LEGAL OBLIGATIONS CLAUSES. (a.) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY**

**AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**(b.) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM 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 IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**

**(c.) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**

**(d.) IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE: (i.) PROCURE FOR TFC 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 TFC'S USE IS NON-INFRINGEMENT.**

**(e.) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY**

RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR 'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

(f.) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

8.4. INFRINGEMENTS. (a) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM 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 IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. (b) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. (c) IF

CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR TFC 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 TFC'S USE IS NON-INFRINGEMENT.

**8.5. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE - INCLUDING INDEMNITY.** (a.) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. (b) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**8.6. LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

#### **IX. CONTRACTOR GENERAL AFFIRMATIONS.**

**9.1. FINANCIAL INTERESTS/GIFTS.** (a.) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor 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.

(b.) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, Contractor certifies that Contractor knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Contractor's company or corporation. Contractor further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of TFC.

9.2. **PRIOR EMPLOYMENT.** Contractor certifies that Contractor shall comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees including "revolving door" provisions. Furthermore, Contractor certifies that if it employs any former employee of TFC, such employee will perform no work in connection with this Purchase Order during the twelve (12) month period immediately following the employee's last date of employment at TFC.

9.3. **ELIGIBILITY.** Pursuant to Texas Government Code Section 2155.004(b), 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.

9.4. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Contract prior to its execution. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

9.5. **DEBTS OR DELINQUENCIES TO STATE.** Pursuant to Texas Government Code Section 403.055, Contractor understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.

9.6. **BUY TEXAS.** If Contractor is authorized to make purchases under this Contract, Contractor certifies that Contractor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code Ch. 2155.

9.7. **EQUAL OPPORTUNITY.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, sexual orientation or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Contractor shall include the above provisions in all subcontracts pertaining to the work.

9.8. **DECEPTIVE TRADE PRACTICE: UNEAIR BUSINESS PRACTICES.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, 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 allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

9.9. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Contractor represents that no person who, in the past four (4) years, served as an executive of TFC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Contractor. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor shall provide the following information : the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.

9.10. **LIABILITY FOR TAXES.** 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. TFC shall not be liable for any taxes resulting from this Contract.

9.11 **NO CONFLICTS.** Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

9.12 **PROHIBITION ON CERTAIN BIDS AND CONTRACTS.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, 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. Contractor represents and warrants that during the five (5) year period preceding the date of this Contract, Contractor has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

9.13. **IMMIGRATION REFORM.** (a.) The Immigration Reform and Control Act of 1986 and 1990 requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employee, nor any Subcontractor, to perform any Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

(b.) Contractor warrants that Contractor: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Contractor's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States.

(c.) Contractor further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of Contractor or any of its employees.

(d.) Contractor acknowledges, agrees, and warrants that all Subcontractors permitted by it to perform Services will be required to agree to these same terms as a condition to being awarded any Subcontract for such work.

9.14. **MINIMUM WAGE RATE REQUIREMENTS.** Notwithstanding any other provision of this Contract, Contractor hereby represents and warrants that the Contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, Contractor shall produce proof of compliance with this provision by Contractor to TFC. TFC shall withhold payments due to Contractor until Contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, Contractor shall submit Wage Rate Affidavits (on the Department's Standard Wage Rate Affidavit Form) with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

## **X. MISCELLANEOUS PROVISIONS.**

10.1. **ASSIGNMENT AND SUBCONTRACTS.** (a.) Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC.

(b.) Notwithstanding this provision, it is mutually understood and agreed that Contractor may subcontract with others for some or all of the services to be performed. TFC shall approve all subcontractors. Subcontractors providing service under this Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for the service. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:

(i.) Contractors planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Exhibit E – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes, as further described in Section 10.02 below;

(ii.) subcontracting shall be at the Contractor's expense;

(iii.) TFC retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors; and

(iv.) Contractor shall be the only contact for TFC and subcontractors. Contractor shall list a designated point of contact for all TFC and subcontractor inquiries.

10.2. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)**. In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor's obligations with TFC. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in Exhibit E – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes. In addition to information required by Section 10.01 above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit E-1 – HSP Progress Assessment Report, attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

10.3. **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-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas 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 the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

10.4. **PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**. Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising

from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TFC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

10.5. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a.) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(b.) If applicable, Contractor shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

10.6. **RELATIONSHIP OF THE PARTIES.** Contractor is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and TFC shall have no obligation with respect to:

- (i) withholding of income taxes, FICA or any other taxes or fees;
- (ii) industrial or workers compensation insurance coverage;
- (iii) participation in any group insurance plans available to employees of the State of Texas;

(iv) participation or contributions by the State of Texas to the State Employees Retirement System;

(v) accumulation of vacation leave or sick leave; or

(vi) unemployment compensation coverage provided by the State.

10.7. **DRUG FREE WORK PLACE.** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.8. **COMPLIANCE WITH OTHER LAWS.** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

10.9. **NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the TFC or Contractor, as the case may be, at the address set forth below:

For TFC:                      Texas Facilities Commission  
   1711 San Jacinto Blvd., Room 400  
   Austin, TX 78701  
   Attention: Legal Services Division  
   Phone: (512) 475-2400  
   Fax: (512) 236-6171

For Contractor:            Carrier Corporation  
   11100 Metric Boulevard, Suite 400  
   Austin, Texas 78758  
   Attention: Melissa House  
   Phone: (512) 364-6322  
   Fax: (860) 660-8748  
   Melissa.house@carrier.utc.com

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.10. **NAME AND ORGANIZATIONAL CHANGES.** (a.) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change.

Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

(b.) TFC may terminate the Contract due to any change to Contractor that materially alters Contractor's ability to perform under the Contract.

10.11. **GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

10.12. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

10.13. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

10.14. **FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor.

10.15. **LABOR ACTIVITY.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at TFC's facility, which results in the curtailment or discontinuation of services performed herein, TFC shall have the right during said period to employ any means legally permissible to have the work performed.

10.16. **DISPUTE RESOLUTION.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract.

10.17. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

10.18. **NO WAIVER.** Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Texas. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TFC does not waive any privileges, rights, defenses, or immunities available to TFC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

10.19. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

10.20. **SURVIVAL OF TERMS.** Termination of the Purchase Order for any reason shall not release Vendor from any liability of obligation set forth in the Purchase Order that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

10.21. **ENTIRE CONTRACT & MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

**TEXAS FACILITIES COMMISSION**

**CARRIER CORPORATION**

  
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Kay Molina

Printed Name: Steve Shelton

General Counsel

Title: Bus Mgr

Date of execution: 11/11/10

Date of execution: 10-25-16

DIR.   
DED 