STATE AUDITOR’S OFFICE

CONTRACT FOR <services being procured>

# **STATE OF TEXAS**

**COUNTY OF TRAVIS**

# **SECTION 1: PARTIES TO THE CONTRACT**

# **1.1** This contract is made and entered into by and between the State Auditor’s Office, a legislative branch agency of the State of Texas, hereinafter referred to as “SAO” and **<Vendor\_name>**, hereinafter referred to as “Contractor.” By execution of this contract, the parties acknowledge that they have agreed to and are bound by the obligations and to the performance of the tasks herein described.

# **SECTION 2: PERIOD OF PERFORMANCE**

# **(2.1 Select the option that best fits the procurement)**

# **2.1** This contract is effective on the date signed by the SAO Representative, after having first been signed by the Contractor, and shall end onthe date services are completed, as specified in **Attachment A, Statement of Work**. The terms and dates for all services offered under this agreement shall be determined by mutual agreement of both parties to this contract are contained in **Attachment A, Statement of Work**.

Or

2.1 This contract shall commence **<Enter Contract effective date>**, and shall terminate **<Enter Contract end date>**, except as provided by SECTION 12 of this contract. This contract may be extended through **<enter date>**, at the SAO's discretion. The SAO reserves the right to competitively rebid for any services required beyond the initial term of this contract.

# **SECTION 3: CONTRACTOR PERFORMANCE**

**3.1** Contractor shall, in a complete and satisfactory manner as determined solely by the SAO, perform the services specified in **Attachment A, Statement of Work**, of this contract.

**3.2** Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this agreement, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required by the SAO, contractor shall furnish SAO with satisfactory proof of its compliance.

**3.3** Contractor shall not subcontract, or otherwise convey or assign any right or interest in this contract, with an organization or entity to perform any or all of the services specified in **Attachment A, Statement of Work** without the prior written approval of the SAO. In the event the SAO approves of the use of any subcontractor, the Contractor is not relieved of its responsibility under this Contract. **The Contractor agrees to indemnify and hold the SAO harmless from any of the claims or actions of any of its subcontractors.**

**3.4** The Contractor shall be responsible for any damage to SAO’s equipment, and/or the workplace and its contents, by Contractor, or, if subcontractors are permitted under this contract, Contractor’s subcontractors’ work, negligence in work, personnel, and equipment. The Contractor shall be responsible and liable for the safety, injury and health of Contractor’s employees and contractors while they are performing work for SAO under this Contract.

**3.5** The Contractor shall ensure that its employees and subcontractors observe and comply with all regulations of the work site facilities, including but not limited to, smoking, parking, and all security regulations.

# **SECTION 4: STATE AUDITOR FUNDING OBLIGATIONS**

**4.1** Upon completion, in a satisfactory manner as determined by the SAO, of the performance identified in **Attachment A, Statement of Work** of this contract, Contractor shall bill SAO at the rate(s) specified in **Attachment A, Statement of Work** and in the form specified below.

**4.2** Contractor’s billing shall describe the service performed under this contract and its cost. Contractor agrees to supply further documentation of performance rendered under this contract as may be required by the SAO before payment for services can be made.

**4.3** The SAO shall not be liable for any fees or expenses incurred before commencement or after termination of this contract.

**4.4** This Contract is subject to termination, either in whole or in part, without penalty to the SAO, subject to appropriation or availability of state funds. The SAO is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If the SAO becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render contractor's delivery or performance under this Contract impossible or unnecessary, this Contract will be terminated, either in whole or in part. In the event of a termination under this Section, the SAO will not be liable to contractor or any other person or entity for any payments, damages or any other amounts which were otherwise due or which may be caused or associated with such termination and the SAO will not be required to give prior notice.

**(4.5 is optional, remove if not needed)**

**4.5** If the Contractor is to be reimbursed for travel expenses under the terms of this Contract, as specified in **Attachment A, Statement of Work**, the Contractor may only bill the SAO for actual, necessary, and reasonable travel expenses (including airfare, mileage, hotels, and meals) associated with the performance of the specified work, not to exceed an amount specified in **Attachment A, Statement of Work**. In order to receive reimbursement, the Contractor shall submit to the SAO itemized list detailing travel expenses. Any reimbursement of travel expenses is subject to the approval of the SAO. The Contractor may not request and the SAO will not approve reimbursement for items for which reimbursement is prohibited under state travel laws and rules.

# **SECTION 5: INDEPENDENT CONTRACTOR**

**5.1** It is expressly understood and agreed by both parties hereto that the SAO is contracting with Contractor as an independent contractor and that neither Contractor nor its associates and employees are to be considered employees of the SAO by virtue of this contract.

# **SECTION 6: CONFLICT OF INTEREST**

**6.1** Contractor covenants that it does not have, nor shall it knowingly acquire, any interest that would conflict in any manner with the performance of its obligations under this contract. Contractor further covenants that it has no actual or potential conflicts of interest in entering into this contract and that Contractor entering into this contract will not reasonably create an appearance of impropriety. Failure to disclose any actual or potential conflict of interest may result in contract termination, as determined by the SAO.

**6.2** Contractor further covenants that it has not given, nor intends to give, at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or any employee in connection with this contract or procurement.

**6.3** Contractor acknowledges and understands that state law prohibits a former state employee, who during the period of state employment participated in a procurement or contract negotiation, from accepting employment from that contractor before the second anniversary of the date the contract was signed, or the procurement was terminated or withdrawn.

**6.4** Pursuant to Section 2252.908, Texas Government Code, if applicable, Contractor must file a Disclosure of Interested Parties Form (Form 1295) with the Texas Ethics Commission and the SAO.

# **SECTION 7: PUBLICITY CONCERNING CONTRACT AWARD**

**7.1** Contractor agrees that it will use neither the SAO’s approval of this contract, nor the fact or content of post-course evaluations by attendees, in any way or through any medium, print or electronic, to advertise, promote or inform other potential clients and attendees about the training courses or other services in which Contractor engages without prior approval from the SAO.

**7.2** SAO agrees that Contractor may use the SAO as a reference in Contractor’s response to a request for proposal or other similar request initiated by a governmental entity.

**7.3** No public disclosures or news releases pertaining to this contract shall be made without prior written consent of the SAO.

**7.4** Contractor may not use the SAO’s official seal or any representation of the SAO’s official seal on any course materials or for any other purpose. Contractor also understands that Sec. 17.08, Business & Commerce Code, prohibits the private use of the Texas state seal, or any representation thereof, for a commercial purpose, unless a license for such use has been obtained from the Secretary of State.

**SECTION 8: PUBLIC DISCLOSURE AND CONFIDENTIALITY**

**8.1** Information, documentation, and other material in connection with this contract may be subject to public disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code. Any portions of this contract, including the Statement of Work, response to RFP, or other documentation, that may be excepted from disclosure under the Public Information Act must be clearly identified and the reason for the exception must be clearly stated. Failure to so designate will result in the presumption that all information submitted is public information. If the SAO receives a request for any information that is designated as exempted from disclosure, the SAO will forward the request and the information to the Attorney General for a decision. The SAO makes no representation or warranty that such information can or will be withheld from disclosure or that the SAO will brief the Attorney General on behalf of the contractor.

**8.2** In rendering performance hereunder, the Contractor shall ensure compliance with all applicable statutory requirements related to confidentiality of records set forth in Chapter 552, Texas Government Code, or other applicable state or federal law. The Contractor understands and agrees that no such confidential information shall be disclosed in any report or other document intended for public disclosure without the SAO's written permission, or as required by law, professional standards, or legal process.

# **SECTION 9: ADA AND EEO COMPLIANCE**

**9.1** In order to ensure compliance with the Americans with Disabilities Act of 1990 (ADA), Contractor hereby agrees to cooperate with the SAO in fulfilling any requests for reasonable accommodations made with regard to the provision of Contractor’s services by persons with disabilities pursuant to the ADA. The SAO agrees that such reasonable accommodation shall be provided at the SAO’s expense.

**9.2** Contractor agrees that no person shall, on the grounds of race, color, religion, gender, national origin, age, disability, political affiliation, or belief, be discriminated against in connection with any activity funded in whole or in part with funds made available under this contract.

**SECTION 10: AUDIT**

**10.1** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

# **SECTION 11: AMENDMENTS AND CHANGES**

**11.1** All oral and written agreements between the parties hereto relating to the subject matter of this contract have been reduced to writing and are contained herein. **Attachment A, Statement of Work** contains these agreements and is hereby made part of this contract.

**11.2** Any deletion of, or alteration or addition to, the terms of this contract shall be by amendment hereto in writing and executed by both parties. No change in contract terms or requirements shall be binding upon either party until such an amendment has been executed.

# **SECTION 12: EARLY TERMINATION**

# **12.1** Notwithstanding the period of performance specified in SECTION 2 of this contract or **Attachment A, Statement of Work**, the SAO may immediately terminate and bring to an end performance under this contract by providing written notification to the other party. Any purchase order resulting from this contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise not made available to the ordering entity. Such termination shall be effective upon receipt of notification. If this contract is terminated for any reason, the SAO and the State of Texas shall not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

**12.2** Prior to termination of this contract for cause, the SAO shall notify the Contractor of its intention to terminate this contract for cause, shall identify the alleged deficiencies in performance giving rise to the intention to terminate, and shall give the Contractor 30 days to cure such deficiencies prior to the effective date of termination.

**12.3** If Contractor defaults on the contract, SAO reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by SAO based on the seriousness of the default.

# **SECTION 13: SUBSTITUTION OF KEY PERSONNEL**

**13.1** Contractor represents that the services of the key personnel specified in **Attachment A, Statement of Work** shall be used in rendering performance under this contract.

**13.2** In the event the key personnel specified in **Attachment A, Statement of Work** should be unavailable for performance hereunder, Contractor immediately shall provide written notification to the SAO. Contractor understands and agrees that no substitution of key personnel may occur without the SAO’s prior written approval.

**SECTION 14: DELIVERY OF NOTICES**

**14.1** Any notice required or permitted to be given under this contract by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient’s physical address or on the date of certified receipt if placed in the United States mail, postage pre-paid by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified in **Attachment A, Statement of Work**.

# **SECTION 15: DISPUTE RESOLUTION**

# **15.1** The parties hereto agree that the dispute resolution process provided for in Chapter 2260, Texas Government Code, must be used to resolve all disputes arising under this contract.

# **SECTION 16: VENUE**

# **16.1** This contract shall be governed by and construed in accordance with the laws of the State of Texas. The parties hereto agree that venue for any suit brought under this contract is fixed in any court of competent jurisdiction in Travis County, Texas. The parties further agree that all payments shall be due and payable in Travis County, Texas.

**SECTION 17: REPRESENTATIONS**

**17.1** Pursuant to Section 231.006, Texas Family Code, the Contractor represents and warrants that the Contractor is not ineligible to receive this Contract due to delinquency in paying child support and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

**17.2** The Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas.

**17.3** The 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 the Contractor or its employees. The SAO shall not be liable for any such taxes resulting from this contract.

**17.4** The Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

**17.5** The Contractor represents and warrants that neither it nor any of its employees have been convicted of a felony criminal offense, or that if such a conviction has occurred, the Contractor has fully advised the SAO as to the facts and circumstances surrounding the conviction.

**17.6** The Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Chapter 15, Texas Business & Commerce code, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

***(Sections 17.7 and 17.8 only apply to contracts that are with a company that has 10 or more full-time employees and that have a value of $100,000 or more)***

**17.7** Pursuant to Chapter 2270, Texas Government Code, the Contractor represents and warrants that it does not boycott Israel and will not boycott Israel during the term of this contract.

**17.8** Pursuant to Chapter 2274, Texas Government Code, the Contractor represents and warrants that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this contract.

**SECTION 18: PROHIBITED PAYMENTS**

**18.1** If at any time during the term of this contract, the State is prohibited from issuing a warrant or electronic funds transfer to Contractor under Section 403.055, Texas Government Code, due to the Contractor’s indebtedness to the State or tax delinquency, all of the Contractor’s payments under this contract shall be applied toward the debt or delinquent taxes that the Contractor owes the State until the debt or delinquent taxes are paid in full.

* 1. The Contractor shall comply with the Comptroller’s rules adopted under Section 403.055, Texas Government Code.

**SECTION 19: AUTHORIZATION TO CONTRACT**

**19.1** The Contractor covenants that it has the legal authority to enter into this contract and perform the services described herein. The person signing this contract on behalf of the Contractor hereby warrants and guarantees that he has been duly authorized by the Contractor to execute the contract and legally bind the Contractor to the performance described herein.

**19.2** If the Contractor is an employee of a state agency or university, Contractor warrants that he/she has permission from his/her employing state agency or university to contract personally with the SAO for the purpose of providing services under the contract. The Contractor shall make clear to his/her audience that he/she does not represent any agency or other governmental entity and that his/her statements and opinions, either written or oral, should not be construed as the policy of any state agency or other governmental entity.

**SECTION 20: NO WAIVER**

**20.1** Neither this contract, nor the SAO’s conduct prior to or subsequent to entering this contract, shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the SAO as an agency of the State of Texas or otherwise available to the SAO.

**SECTION 21: EMPLOYMENT STATUS**

**21.1** If applicable, the Contractor agrees to utilize the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of all persons, including subcontractors, assigned to perform work pursuant to this agreement. The Contractor will provide written assurance that all persons performing work pursuant to this agreement are eligible to work in the United States.

**SECTION 22: FORCE MAJEURE**

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

**SECTION 23: INTELLECTUAL PROPERTY**

**(Use for professional development, remove if not needed)**

**23.1** Contractor agrees to indemnify and hold harmless the SAO with regard to any claim that Contractor has misused or failed to identify the intellectual property of a third party in its materials or presentations. By giving the SAO permission to copy materials for training purposes, Contractor provides assurance that all materials are either the intellectual property of the Contractor, or that Contractor has permission from the owner of the intellectual property to use it in course materials or presentations. The SAO is not responsible for obtaining the appropriate permission from the owners of intellectual property used in Contractor’s materials or presentations.

**SECTION 23: ACCESS TO WORK PRODUCT**

**(Use for audits, remove if not needed)**

**23.1** The Contractor agrees that the SAO or its designee(s) shall have access to the Contractor's completed working papers and documentation supporting its bills under the contract, whether such materials are maintained in hard-copy or electronic form. Any copies that have been reproduced from such materials will be made without expense or charge to the SAO or its designee. The Contractor agrees to retain all books, working papers, records, and other documents relating to this contract for eight years after the final audit report is completed, as is required of the SAO pursuant to Section 321.014, Texas Government Code.

**CONTRACTOR**

Signed: Date:

 «Vendor\_Name»

 Printed Name

Approved and accepted on behalf of the SAO, a legislative office of the State of Texas.

**ASSISTANT STATE AUDITOR**

Signed: Date:

 First Assistant State Auditor or

 Assistant State Auditor

This contract is not effective unless signed by the SAO representative indicated above. This contract takes effect on the date signed by the SAO representative indicated above after being signed by the Contractor.