

## MASTER OPEN-END VEHICLE LEASE AGREEMENT

MASTER OPEN-END VEHICLE LEASE AGREEMENT (“Master Lease”) is entered into as of November 8, 2024 (“Effective Date”) between COMMERCIAL VEHICLE LEASING, L.L.C., d/b/a D&M Leasing (“Lessor”) and The Texas General Land Office (“Lessee”).

1. **Vehicles.** Lessor will, from time to time at the request of Lessee, lease to Lessee motor vehicles (together with all parts, accessions and accessories individually a “Vehicle” and collectively the “Vehicles”) to be more fully described in schedules now or hereafter executed with reference to and incorporating therein this Master Lease (individually the “Schedule”). When Lessor accepts Lessee’s request to lease a Vehicle, Lessor will order the Vehicle. If, at the time it requests to lease a Vehicle, Lessee requires any Upfitting (as defined in Section 11 below), Lessee shall communicate its needs to Lessor. As appropriate or otherwise agreed upon, Lessor may coordinate, manage, schedule and/or facilitate the Upfitting and/or incorporate the Upfitting (and the cost of the Upfitting) into this Lease, a lease quote and/or a Schedule. Lessee will take delivery of the Vehicle upon notice that the Vehicle is available for delivery. The taking by Lessee of delivery of a Vehicle shall conclusively establish Lessee’s acceptance thereof for all purposes of this Master Lease. Subsequent to acceptance of the Vehicle, Lessor shall provide Lessee the Schedule applicable to the Vehicle which describes the Vehicle, indicates the applicable rent and sets forth certain other matters relative to the Vehicle as determined in accordance with the prior agreement of Lessor and Lessee. Lessee will promptly execute and return the specified copies of the Schedule to Lessor. Each Schedule shall constitute a separate lease incorporating the terms of this Master Lease. References in this Master Lease to the “Lease,” “this Lease”, “hereunder” and “herein” shall be construed to mean each Schedule together with this Master Lease as incorporated herein.

2. **Lessee’s Obligations.** Except as provided in Section 3, the obligations of Lessee under this Lease respecting the Vehicle commence at the earliest time any purchase order, confirming purchase order or contract of any nature transfers any right, title, and/or interest in the Vehicle to Lessor or creates or gives rise to any obligation or liability on the part of Lessor respecting the Vehicle. Except as provided in Sections 5, 14 and 19 and subject to Section 7, the term of this Master Lease with respect to the Vehicle shall end upon the date Lessor no longer has any interest therein.

3. **Rent and Other Payments.** Payment of rent and any other amounts due under this Master Lease shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Any and all amounts payable hereunder shall be paid to Lessor at 1400 W. 7th Street, Suite 200, Fort Worth, Texas 76102, or as otherwise directed by Lessor or Lessor's assignee.

4. **Essential Use.** Lessee has a need for the Equipment and expects to make use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term.

5. **Non-Appropriation.** Lessee agrees that its responsible financial officer will take all steps reasonably necessary to seek appropriations each year, to the extent permitted by law, that are sufficient to cover Lessee's payment obligations owed during the term of this Lease. Notwithstanding the foregoing and Section 3, in the event sufficient funds are not appropriated by the applicable government body or authority of Lessee for a budget period prior to the beginning of that budget period, or sufficient funds are otherwise not legally available with respect to the rent for the budget period for one or more Vehicle(s) (a "Non-Appropriation Event"), Lessee shall have no obligation to make payments for such Vehicle(s) for that budget period and shall only be obligated to make payments for the then current budget period, including any past due amounts. If a Non-Appropriation Event occurs, this Master Lease shall terminate as of the end of the then current budget period for all Vehicles and Schedules affected by the Non-Appropriation Event. Lessee agrees to provide notice of any Non-Appropriation Event promptly. If this Master Lease is terminated in accordance with this Section with respect to some or all Vehicles and Schedules, Lessee agrees to deliver and return the affected Vehicles to the location agreed upon by both parties.

The obligation of Lessee to pay rent hereunder will constitute a current expense of Lessee, is from year to year, and does not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder will not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

6. Intentionally Omitted.

7. **Unconditional Net Lease; No Offset; Survival.** This Lease is a net lease, and Lessee will not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever. Lessee hereby waives any and all existing and future claims and offsets, against any rent or other payments due hereunder and agrees to pay such rent and other amounts as and when due regardless of any claim which may be asserted by Lessee. Lessee by agreeing to make all payments under this Lease without offset has not waived any rights Lessee may have to prosecute any claim against Lessor in an action unrelated to this Lease. This Lease is terminable only as provided herein. The respective obligations of Lessor or Lessee will not be affected, nor will Lessor have any liability whatsoever to Lessee, by reason of any failure or delay in delivery of the Vehicle, any defect in or damage to or loss or destruction of the Vehicle from whatever cause, the prohibition of Lessee's use of the Vehicle, the interference with such use by any government, person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, any lack of right, power or authority of Lessor or Lessee to enter into this Lease or any other cause whether similar or dissimilar to the foregoing. The obligations and liabilities of Lessee hereunder respecting events

occurring with respect to the Vehicle while covered hereby will survive the termination of this Lease.

Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

Section 403.055 of the Texas Government Code shall govern for unpaid fees or rebates.

**8. Lessor's Disclaimer of Warranties; Finance Lease Treatment under UCC and Waiver of UCC and Similar Rights.** Lessee agrees that it has selected each Vehicle leased hereunder based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSEE ACKNOWLEDGES THAT: THE VEHICLE IS OF A SIZE, DESIGN, TYPE AND MANUFACTURE SELECTED BY LESSEE; LESSOR IS NOT THE MANUFACTURER OF THE VEHICLE; LESSOR IS NOT AN AGENT FOR THE MANUFACTURER OF THE VEHICLE; LESSOR IS NOT A DEALER WITH RESPECT TO THE VEHICLE; LESSEE IS LEASING THE VEHICLE **AS-IS** AND THAT ACCORDINGLY LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY EXPRESS AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE VEHICLE AND FURTHER SPECIFICALLY DISCLAIMS ANY AGREEMENT, REPRESENTATION OR WARRANTY IMPLIED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, WITH RESPECT THERETO, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. Lessor does warrant, however, that Lessor has whatever quality of title to the Vehicle Lessor obtains from the supplier thereof, subject to this Lease and any liens or encumbrances created by Lessor pursuant to Section 24 hereof or which Lessee is obligated to discharge or satisfy. Lessee will make any claims as to the Vehicle against the manufacturers or suppliers or other appropriate third parties, and in connection therewith Lessor agrees, so long as no event of default has occurred and is continuing hereunder, that Lessee will have the right to obtain the benefit of and enforce in Lessee's own name and at Lessee's sole expense any manufacturer's or other third party's warranty or agreement in favor of Lessor with respect to the Vehicle to the extent such warranty or agreement is assignable. Lessor will execute and deliver such instruments as may be reasonably requested by Lessee to enable Lessee to obtain such benefits.

LESSEE UNDERSTANDS AND AGREES THAT THIS LEASE WILL BE TREATED AS A "FINANCE LEASE" WITHIN THE PURVIEW OF THE UNIFORM COMMERCIAL CODE ("UCC") AND THUS UNDER LAW LESSEE WILL BE ENTITLED TO THE PROMISES AND WARRANTIES LESSOR RECEIVES UNDER THE CONTRACT EVIDENCING LESSOR'S PURCHASE OF THE VEHICLE, INCLUDING ANY MANUFACTURER, DEALER OR OTHER THIRD-PARTY WARRANTIES. LESSEE ACKNOWLEDGES THAT LESSOR HAS ADVISED LESSEE TO CONTACT THE DEALER FOR A DESCRIPTION OF THOSE PROMISES AND WARRANTIES, INCLUDING ANY RELATED DISCLAIMERS OR LIMITATIONS, INCLUDING OF REMEDIES. CONSISTENT WITH THE ASSUMPTION BY LESSEE OF ALL RISKS RESPECTING THE VEHICLE AND

THE TREATMENT OF THIS LEASE AS A "FINANCE LEASE," LESSEE WAIVES ANY RIGHTS, DEFENSES AND CLAIMS AGAINST LESSOR WHICH RELATE TO THE VEHICLE ARISING UNDER THE UCC OR SIMILAR APPLICABLE LAW.

LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE VEHICLE OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. LESSOR SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE VEHICLE.

9. **No Agency.** LESSEE ACKNOWLEDGES THAT NO AGENT OF A LEASE FACILITATOR OR THE DEALER OF THE VEHICLE IS AN AGENT OF LESSOR. LESSOR IS NOT BOUND BY A REPRESENTATION OF ANY SUCH PARTY AND, AS CONTEMPLATED IN SECTION 29 BELOW, THE ENTIRE AGREEMENT OF LESSOR AND LESSEE CONCERNING THE LEASING OF THE VEHICLE IS CONTAINED IN THIS LEASE AS IT MAY BE AMENDED AS PROVIDED IN THAT SECTION.

10. **Location; Inspection; Use.** Lessee will permanently garage the Vehicle at the Garaging Location designated in the Schedule, or at such other location at which the Vehicle may be garaged with the prior written consent of Lessor, and at all times, unless Lessor otherwise consents in writing, keep the Vehicle in Lessee's possession and control. Lessee will not remove the Vehicle from the United States for any period or from the state in which the Garage Location is located as specified in the applicable Schedule for more than thirty (30) consecutive days without Lessor's prior written consent. Whenever requested by Lessor, Lessee will advise Lessor as to the exact location of the Vehicle. Lessor will have the right to inspect the Vehicle and observe its use during normal business hours, and Lessee will ensure Lessor's ability to enter into and upon the premises where the Vehicle may be located for such purpose. The Vehicle will at all times be used primarily for commercial or business purposes, exclusive of transportation for hire, and operated by duly licensed adult drivers in a careful and proper manner and in compliance with all applicable laws, ordinances, rules and regulations, all conditions and requirements of the policy or policies of insurance required to be carried by Lessee under the terms of this Lease and all manufacturer's instructions and warranty requirements. Any modifications or additions to the Vehicle required by any such governmental edict or insurance policy will be promptly made by Lessee at its own expense.

11. **Alterations and Upfitting.** For purposes of this Lease, the term "Upfitting" means any augmentation, alteration or customization by adding or installing extra or auxiliary features or equipment to a Vehicle. When requesting Upfitting prior to delivery of a Vehicle, Lessor shall have discretion to accept any Upfitting request from Lessee, which will generally not be withheld so long as the requested Upfitting does not detract from or impair the Vehicle's value or functional

utility. Notwithstanding the foregoing, after delivery of a Vehicle, Lessee shall obtain Lessor's prior written consent before making any Upfitting, or any other alterations, additions or improvements of whatever kind or nature to a Vehicle. All additions and improvements of whatever kind or nature made to the Vehicle which cannot be removed without detracting from the Vehicle's value or functional utility shall belong to and immediately become the property of Lessor and shall be returned to Lessor with the Vehicle upon the Vehicle's return to Lessor.

12. **Vehicle Maintenance; Factory Recall.** Lessee, at its own expense, will: (i) maintain the Vehicle in good repair, condition and working order; (ii) will furnish all parts, mechanisms, devices and labor required to keep the Vehicle in such condition; and (iii) will pay all costs of the Vehicle's operation. All maintenance will be procured through qualified service facilities. If the manufacturer announces a recall campaign of which Lessee has knowledge for the repair and/or replacement of defective parts in/on the Vehicle, Lessee shall promptly have the relevant work performed on the Vehicle by a factory-authorized dealer. Lessor will send Lessee a copy of any manufacturer's notification received by Lessor indicating that the Vehicle or any part attached thereto has a potential defect or other possibly unsafe condition unless Lessor has previously sent Lessee the same notice as to another Vehicle of the same type. Lessor has no further obligation with respect to any manufacturer's recall campaign respecting the Vehicle.

13. **Loss and Damage.** Lessee assumes the risk of loss or damage to the Vehicle and, except as provided in this Section, no such event will affect the duties of the parties under this Lease. If the Vehicle is lost, stolen, damaged, confiscated, requisitioned, destroyed or otherwise rendered incapable of being in service, Lessee will notify Lessor thereof within five (5) business days. If the Vehicle has been damaged, and Lessor determines the Vehicle is repairable and/or Lessee's insurer does not declare the Vehicle a total loss, Lessee will cause the repairs to be made. Upon receipt of proof of the making thereof, Lessor will reimburse Lessee's repair costs up to the amount of any insurance proceeds Lessor receives under any insurance Lessee maintains hereunder with any excess being applied as contemplated in Section 15. If Lessor determines the Vehicle is not reasonably repairable, Lessee's insurer declares the Vehicle a total loss or any of the other events specified in the second preceding sentence occurs, Lessee will pay Lessor the Termination Value (as defined and set forth in Section 14 below) of the Vehicle. Upon such payment this Lease shall terminate with respect to such Vehicle, and Lessee or Lessee's insurer will be entitled to retain possession and ownership of the Vehicle on an **AS-IS, WHERE-IS** basis.

14. **Lease Settlement; Termination Value.**

a. **Surrender of Vehicle.** At any time after the expiration of one (1) year from delivery of the Vehicle to Lessee (such one year date, the "First Anniversary Date"), or upon proper notification of Non-Appropriation Event as described in Section 5, Lessee, upon not less than thirty (30) days prior notice to Lessor, may surrender the Vehicle to Lessor, for purposes of Lessor selling the Vehicle, at a location reasonably specified by Lessor, as more fully set forth below, provided the Lease is not then in default. Lessee shall so surrender the Vehicle upon expiration of the term hereof, as specified in the Schedule, unless Lessor and Lessee agree to extend this Lease, in which case the Vehicle will be returned on or prior to expiration of

the extended term with the same thirty (30) day notice to be given if the return is prior to expiration of the extended term. The parties agree to return the surrendered Vehicle to a location mutually agreed upon. Following such surrender, Lessee's obligation to make further rent payments will cease (except as otherwise noted in this Section with respect to any rental adjustments), and Lessor shall sell the Vehicle through Lessor's standard wholesale sales procedure for the highest bona fide bid received and open at the time of sale; provided Lessor may choose ultimately to retain the Vehicle. Lessor may move the Vehicle from the location where surrendered to any other location Lessor deems advisable and/or clean or repair the Vehicle in connection with such sale in Lessor's sole discretion. If the amount received by Lessor on account of such sale or the highest bona fide bid received and open at the time of crediting when the Vehicle is retained by Lessor, as appropriate, net in either instance, Lessor's costs of sale (including but not limited to sales commission costs and costs of cleaning, repairing or transporting the Vehicle) exceeds the Vehicle's then Termination Value, Lessee shall have no further settlement obligation to Lessor as to the Vehicle, and the excess shall be returned to Lessee after application to any amounts then owed by Lessee to Lessor. If the net amount is less than the Vehicle's Termination Value, Lessee shall pay Lessor the deficiency.

b. Termination Value. The "Termination Value" of the Vehicle shall equal the sum of: (a) all then due amounts hereunder other than rent; and (b) the then-outstanding Capitalized Cost (as set forth in the Schedule) of the Vehicle plus any accrued and unpaid lease charges. For purpose of calculating the outstanding Capitalized Cost, any Capitalized Cost Reduction (as set forth in the Schedule) will be deducted at lease inception and thereafter rents will be applied as of receipt first to related taxes, then to lease charges which have accrued on the outstanding Capitalized Cost since the prior rent payment at the "level yield" rate implicit in the Lease as to the Vehicle and finally to reduce the outstanding Capitalized Cost. The level yield rate will be calculated as contemplated in Financial Accounting Standards Board, Standard No. 13 for direct financing leases with reference to the net Capitalized Cost after deducting any Capitalized Cost Reduction, Residual Value (as set forth in the Schedule), rents and term for the Vehicle and the 30 day month, 360 day year and timely payment assumptions employed under that Standard.

c. Purchase of Vehicle.

i. Early Termination Purchase. As an alternative to surrendering the Vehicle to Lessor, so long as the Master Lease is not in default, Lessee may purchase the Vehicle for a purchase fee of \$500 plus the Vehicle's then fair market value as reasonably determined by Lessor; provided, however, that such purchase option may only be exercised on the First Anniversary Date. Payment of such purchase price will be subject to the same credit and deficiency rules which apply when a Vehicle is surrendered to Lessor,

including but not limited to accrued taxes, lease charges, tolls and other amounts owed by Lessee per this Master Lease. Any transfer of Lessor's interest in a Vehicle, whether to Lessee or a third party, shall be **AS-IS, WHERE-IS** and without any other warranty.

ii. Scheduled Termination Purchase. Further, as an alternative to surrendering the Vehicle to Lessor on the scheduled lease maturity, if the Lease is not in default, Lessee may purchase the Vehicle for a purchase fee of \$500 plus the Residual Value, as specified in the Schedule. Payment of such purchase price will be subject to the same credit and deficiency rules which apply when a Vehicle is surrendered to Lessor, including but not limited to accrued taxes, lease charges, tolls and other amounts owed by Lessee per this Master Lease. Any transfer of Lessor's interest in a Vehicle, whether to Lessee or a third party, shall be **AS-IS, WHERE-IS** and without any other warranty.

15. Insurance. Lessee shall keep the Vehicle insured under a standard collision and comprehensive policy providing coverage for not less than the Termination Value thereof and deductibles not in excess of \$1,000 naming Lessor and/or such other party as Lessor may designate as loss payee, and shall carry public liability and property damage insurance and uninsured motorist coverage with limits of not less than \$1,000,000 single limit covering the Vehicle and naming Lessor and such other parties as Lessor may designate as additional insureds and/or loss payee(s). All said insurance shall be primary, shall name Lessee as a named insured and shall be in a form and with companies approved by Lessor. Lessee shall deliver to Lessor a certificate or other evidence of the required insurance satisfactory to Lessor. Lessee's insurance company shall be listed on the certificate of insurance. Such insurance shall be in full force and current as of the date of this Master Lease and/or any Schedule, and Lessee shall maintain such insurance for the entire term of the Lease for the Vehicle or as long as Lessee has possession of the Vehicle, whichever is longer. Each insurer shall agree to give Lessor at least thirty (30) days written notice before the policy in question may be altered or canceled. Lessee agrees that Lessor and any assignee of Lessor are authorized by Lessee to contact Lessee's insurance provider, change the insurance limits, and obtain a copy of the policy in its entirety. The proceeds of such insurance, at the option of Lessor, will be applied toward (a) the restoration or repair of the Vehicle or (b) payment of amounts due under Section 12 and/or 13 and (c) payment of other obligations of Lessee then due hereunder. Any excess of such proceeds remaining shall belong to Lessee.

In the event Lessee is a self-insured governmental unit pursuant to Chapter 2259 of the Texas Government Code, then Lessee shall provide Lessor a certificate or other documentation that demonstrates that insurance coverage is provided through Lessee's self-insurance fund, and that Lessee's self-insurance and/or self-insurance fund meets the requirements of the State of Texas and this Master Lease. If Lessee is a State agency, then in lieu of any insurance from a third-party insurer required under this Section, Lessee may supply Lessor with a letter that agrees to insure the Vehicle(s) for risk of loss or damage with funds available from the Lessee's appropriations. Notwithstanding the foregoing, in the event Lessee is a State agency, Lessee's obligations in this

Section are subject to and superseded by any constitutional or statutory restrictions or limitations imposed upon Lessee and its ability to procure insurance.

16. **Titling; Registration.** Lessor shall retain title to all Vehicles leased pursuant to this Master Lease, and no right, title or interest in any Vehicles leased hereunder shall pass to Lessee except as expressly set forth in the Master Lease. Except as Lessor may effect titling or registration, in which event Lessee will reimburse Lessor its related expenses, the Vehicle will at all times be titled and/or registered by Lessee, at its own expense and as Lessor's agent and attorney-in-fact with full power and authority to register (but without power to affect title to) the Vehicle, in such manner and in such jurisdiction or jurisdictions as Lessor directs. Lessee will promptly notify Lessor of any necessary or advisable re-titling and/or re-registration of the Vehicle in a jurisdiction other than one in which the Vehicle is then titled and/or registered. Lessee will use reasonable efforts to cause any and all documents of title to be furnished Lessor within sixty (60) days of the date of filing any application for titling or for re-titling of the Vehicle by or at the direction of Lessee. Absent Lessee's purchase of the Vehicle, Lessee understands and agrees that the Vehicle shall never be titled in Lessee's name; rather, title for any Vehicle shall reflect Lessor, Lessor's assignee, if any, or any other person as Lessor may determine in its sole discretion as the title owner of the Vehicle.

17. **Taxes; Fines.** Lessee will pay as directed by Lessor or reimburse Lessor for all taxes, including but not limited to property, excise and sales and use taxes (exclusive of federal and state taxes based on Lessor's net income, unless such net income taxes are in substitution for or relieve Lessee from any taxes which Lessee would otherwise be obligated to pay under the terms of this section 17), registration and other fees, charges and assessments whatsoever, however designated, whether based on the rent or levied, assessed or imposed upon the Vehicle or upon, or in respect of, the manufacture, purchase, delivery, ownership, leasing, use, return or other disposition of the Vehicle, now or hereafter levied, assessed or imposed under the authority of a federal, state or local taxing jurisdiction, regardless of when and by whom payable. Returns required in connection with the obligations which Lessee has assumed under this Section 17 will, at Lessor's option, be prepared and filed by Lessor or by Lessee in such manner as Lessor may direct. Each party will upon request furnish the other a copy of any such filing made or any governmental invoice received by such party covering such obligations.

a. **Tax Exemption.** If Lessee holds an exemption which would exempt Lessor and Lessee from any assessment contemplated hereby, Lessee agrees to provide a tax-exempt certificate (or other satisfactory evidence of the exemption) to Lessor within five (5) business days of the Effective Date of this Master Lease. Upon receipt of the tax-exempt certificate, Lessor will not attempt to pay taxes on Lessee's behalf, and Lessee will not be obligated to reimburse Lessor for any such taxes paid. Until presentation of a tax-exempt certificate, Lessor will proceed on the assumption that any applicable tax assessment is due. Once Lessee has provided a tax-exempt certificate, Lessor will adjust its procedures prospectively, but not retroactively. Lessor agrees to assign to Lessee, to the extent assignable, any claim for refund Lessor has with respect to prior payment of an assessment. If Lessee provides a tax-exempt certificate or otherwise claims to be tax exempt and

it is subsequently determined that Lessee owes taxes and/or is not tax exempt, then Lessee shall be solely responsible and liable for any and all taxes.

b. Tickets, Tolls and Fines. Lessee is solely responsible for paying and shall be liable for all amounts incurred due to Lessee's possession, use and operation of the Vehicle, including but not limited to traffic tickets, parking tickets, toll charges, and all other charges, fines or fees incurred.

18. Lessor's Payment. If Lessee fails to procure or maintain insurance that is required to be carried by Lessee under the terms of this Lease, to pay any taxes or other assessments required to be paid by Lessee or to perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, to effect such insurance, pay said assessments or perform such other obligation. In that event, Lessee will reimburse Lessor's cost thereof and pay Lessor a service charge of \$25.

19. Intentionally Omitted.

20. Default. Any of the following will constitute an "Event of Default" hereunder:

a. Lessee's failure to pay any amounts due in accordance with Chapter 2251 of the Texas Government Code (provided that a Non-Appropriation Event shall not be considered an Event of Default hereunder);

b. Lessee's failure to perform any other covenant, obligation or condition of this Master Lease or any other agreement between Lessor and Lessee, provided that such default continues for more than twenty (20) days, except as provided in c. and d. below;

c. any writ or order of attachment or execution or legal process being levied on or charged against the Vehicle as a result of Lessee's conduct and such is not released or satisfied within ten (10) calendar days;

d. Lessee's failure to comply with its obligations under Section 15 or any attempted assignment of Lessee's interest in this Lease or to the Vehicle in violation of Section 24;

e. the filing by Lessee of a petition under the Bankruptcy Act, or any amendment thereto, or under any other insolvency law or law providing for the relief of debtors, or the commission by Lessee of an act of bankruptcy;

f. Lessee ceases to exist or function, in any respect; or;

g. any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Lessee that contain false statements or information or prove to be false in any material respect.

21. **Remedies.** Upon the occurrence of an Event of Default, Lessor may exercise any one or more of the following remedies:

- a. for an Event of Default under 20.a above, Lessor may suspend performance in accordance with Chapter 2251 of the Texas Government Code, which can include the suspension of any obligation Lessor has to permit possession and use of a Vehicle(s);
- b. if Lessee is a "unit of state government," then Lessor may pursue a claim and recover all amounts due hereunder in accordance with Chapter 2260 of the Texas Government Code;
- c. to the extent permitted under Texas law, Lessor may declare all amounts under the Lease due in the current fiscal year of Lessee immediately due and payable, whereupon such amounts shall be immediately due and payable;
- d. to the extent permitted by law, Lessee agrees to deliver and return the affected Vehicles to the location agreed upon by both parties;
- e. to the extent permitted by law, as liquidated damages for the loss of the bargain and not as a penalty in the event a Vehicle is not returned, Lessor may declare due and payable, and Lessee shall pay a sum equal to, the Termination Value;
- f. to the extent permitted by law, Lessor may retain the Vehicle and credit the reasonable value thereof, after deducting all disposition- or -retrieval-related costs incurred to the date of crediting, to the Termination Value, in which case the credit and deficiency rules set forth in this Master Lease shall apply;
- g. to the extent permitted by law, Lessor may sell or otherwise dispose of the Vehicle(s), whether or not in Lessor's possession, at public or private sale with or without notice, and apply the net proceeds of such disposal, after deducting all costs thereof, including but not limited to costs of transportation, repossession, storage, refurbishing, advertising and broker's fees, to the Termination Value, in which case the credit and deficiency rules set forth in this Master Lease shall apply. If such a disposition is by a re-lease, the proceeds of the disposition shall equal the present value of the rental stream, excluding taxes, under the new lease using as the discount rate the implicit rate in the new lease, or if none, the most recently published Wall Street Journal Prime Rate (or its equivalent) per annum; or;
- h. all other remedies permitted by or available at law or in equity.

No right or remedy conferred herein is exclusive of any other right or remedy conferred herein or by law; but all such remedies are cumulative of every other right or remedy conferred hereunder or at law or in equity, by statute or otherwise, and may be exercised concurrently or separately from time to time, except to the extent a conflict exists by law.

22. **Dispute Resolution.** To the extent applicable, and in the event of a dispute regarding whether Lessee has breached the Lease, the parties shall comply with the dispute resolution process as provided in Chapter 2260 of the Texas Government Code. The procedures contained in Chapter 2260 are a prerequisite to suit.

23. **Lessor's Expenses.** Lessee will pay or reimburse Lessor for all costs and expenses, including repossession, Vehicle disposition and court costs and attorney's fees and other legal expenses (including a reasonable fee for services of salaried counsel employed by Lessor) as provided or permitted by law (including but not limited to Texas Government Code § 2251.043), not offset against amounts recovered or credited as contemplated in Section 21, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof. This obligation includes the payment or reimbursement of all such amounts whether an action is ultimately filed and whether an action filed is ultimately dismissed.

24. **Assignment; Liens.** Without the prior written consent of Lessor, Lessee shall not: (a) assign or otherwise transfer any of Lessee's rights or obligations under this Lease, (b) lend the Vehicle to any party or transfer any other interest in the Vehicle to any party by sublease or otherwise or (c) permit the Vehicle or this Lease to be subject to any lien, charge or encumbrance of any nature not created by Lessor.

Consent to any of the foregoing prohibited acts applies only in the specific, given instance and is not a consent to any subsequent like act by Lessee or any other person. Lessee's rights hereunder are not assignable and shall not be assigned or transferred by operation of law.

All rights of Lessor hereunder and in and to the Vehicle may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to Lessee, but always, however, subject to the rights of Lessee under this Lease. If Lessee is given notice of any such assignment, Lessee will acknowledge receipt thereof in writing and will thereafter pay any amounts due hereunder specified in said notice as directed therein. In the event Lessor assigns this Lease or the rent due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor and Lessee will excuse performance by Lessee of any provision hereof, it being understood that in the event of default or breach by Lessor that Lessee will pursue any rights on account thereof solely against Lessor, that the rights of the assignee will be free of any claim or defense Lessee may have against Lessor and that Lessee will not assert against the assignee any claim or defense Lessee may have against Lessor. Without limiting the generality of the foregoing, the rights of an assignee will not be affected by any claim Lessee may have against Lessor resulting from Lessor's rejection of the Lease in a bankruptcy proceeding or Lessor's interference with Lessee's quiet enjoyment of the Vehicle. No such assignee will be obligated to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Lease, and Lessee agrees that no such assignment shall be deemed to increase or change Lessee's obligations hereunder.

Subject always to the foregoing, this Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

25. **Late Charge; Dishonored Check.** Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

26. **Markings.** If Lessor supplies Lessee with decals or other markings stating that the Vehicle is owned by Lessor, Lessee will affix and keep the same displayed on the Vehicle as directed by Lessor.

27. **Additional Documents.** If requested by a party, the other party shall procure and deliver to the requesting party such documents as the requesting party shall reasonably deem necessary or desirable in connection with this Lease. Without limiting the generality of the foregoing, Lessee further will furnish Lessor: (a) any other information normally provided by Lessee to the public; and (b) such other financial data or information relative to this Lease and the Vehicle as Lessor may from time to time request.

28. **Non Waiver.** No covenant or condition of this Lease can be waived except by the written consent of the party whose rights are affected. Forbearance or indulgence by a party in any regard whatever shall not constitute a waiver of the covenant or condition to be performed by the other party, and, until complete performance by said party of said covenant or condition, the party to which the performance is owed shall be entitled to invoke any remedy available to that party despite such forbearance or indulgence.

29. **Entire Agreement; Amendment and Modification.** This Master lease incorporates all terms and conditions of the Base Contract, as amended, and any other exhibits or addenda hereto, including but not limited to the Schedule(s), Texas Comptroller of Public Accounts Statewide Procurement Division Texas Multiple Award Schedule Terms and Conditions (attached hereto as Attachment A - Exhibit A, and herein referred to as "TXMAS Terms and Conditions" for TXMAS Contract 23-97501), the Addendum to Exhibit A, as amended, and TXMAS Offer Packet Application Checklist (attached hereto as Attachment A - Exhibit B for TXMAS) (collectively, the aforementioned documents, Schedule(s) and this Master Lease are referred to in this Section as the "Agreement"). The Agreement constitutes and contains the entire agreement between Lessee and Lessor regarding the leasing of Vehicles by Lessor to Lessee and any other matters set forth herein, and it supersedes any and all prior agreements and understandings of the parties, whether written or oral, that relate to the subject matter hereof. This Agreement cannot be amended or modified orally; rather, the parties may amend, alter or supplement only by a written agreement signed by both parties. In the event of a conflict between this Agreement and any of the exhibits and attachments referenced herein, the conflict shall be resolved in the following order of priority:

- a. Purchase Orders (with respect to nonmonetary terms and excluding order of precedence);

- b. TXMAS Addendum to Exhibit A, including Amendment 1 – Attachment A;
- c. TXMAS Terms and Conditions - Attachment A;
- d. TXMAS Offer Packet Application Checklist – Attachment A;
- e. This Master Lease; and
- f. Purchase Orders (with respect to monetary obligations).

30. **Notices; Designation of Authorized Representative.** Notices under this Lease shall be sufficient if in writing and given personally, mailed, U.S. mail certified postage prepaid, or sent by electronic means (such as email) to the party involved at its respective address set forth below or at such address as such party may provide from time to time on notice given as provided in this Section. Any such notice so mailed to such address shall be effective when deposited in the United States mail, duly addressed, with postage prepaid. Notices personally delivered will be effective upon delivery. Notice sent via electronic means is effective on the date the recipient receives the notice. For purposes of this Lease, Lessee shall designate its chief administrative officer or other officer or person as its Authorized Representative to receive any notices or other communications required under this Lease. Accordingly, Lessee hereby names and designates the following person as its Authorized Representative:

Authorized Representative Name:	Kelly McBride
Title/Position:	Director, GLO Contracts Management
Address:	1700 North Congress Avenue, 7 <sup>th</sup> Floor
Phone Number:	(512)305-9108
Email Address:	<a href="mailto:kelly.mcbride@glo.texas.gov">kelly.mcbride@glo.texas.gov</a>

31. **Number; Joint and Several Liability.** Whenever the context of this Lease requires, the singular number includes the plural. If there is more than one Lessee named in this Lease, the liability of each shall be joint and several.

32. **Titles.** The titles to the sections of this Lease are solely for the convenience of the parties and are not an aid in the interpretation hereof.

33. **Time.** Time is of the essence of this Lease and each and all of its provisions.

34. **Governing Law; Venue.** This Lease will be governed by the laws of the State of Texas. This Lease is performable in whole or in part in Travis County, Texas. Venue for any action related hereto will be in an appropriate court in Travis County, Texas, to which all parties consents.

35. **Lessee’s Representations and Warranties.** As of the Effective Date of this Master Lease, and the date on which Lessee signs the Schedule, Lessee represents and warrants to Lessor: (a) RESERVED; (b) Lessee is authorized under the constitution and laws of the State to enter into this Lease and the transaction contemplated hereby and to perform all of its obligations hereunder; (c) the execution and delivery of this Master Lease and any Schedule and the performance of Lessee’s obligations hereunder and thereunder have been duly authorized by all

necessary action on the part of Lessee; (d) no event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof; (e) as of the date of entering into this Master Lease and/or any Schedule, Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to pay the rent scheduled to come due during the current fiscal year and to meet its other obligations under this Lease during the current fiscal year, and such funds have not been expended for other purposes; (f) Lessee has complied with such public bidding requirements as may be applicable to this Lease and the acquisition by Lessee of the Vehicle(s) hereunder; (g) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Lease or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Lease or materially adversely affect the financial condition or properties of Lessee; (h) all authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Lease or in connection with the carrying out by Lessee of its obligations hereunder have been obtained; (i) the entering into and performance of this Lease or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Vehicle(s) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided; (j) each person executing this Master Lease, the Schedule or any other related document on behalf of Lessee has been duly authorized to do so (each person so signing, joins in and makes this representation and warranty along with Lessee); (k) any and all financial data and other information which Lessee has submitted, or will submit, to Lessor is, or shall be at the time of delivery, as appropriate, a true, correct and complete statement of the matters therein contained; (l) this Master Lease and the Schedule constitute a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally; (m) the Vehicle, if delivered in conjunction herewith by Lessor to a department or agency of Lessee or to any other entity or person designated by Lessee, whether at the request of Lessee, such department, agency, entity or person, is the Vehicle for all purposes of this Lease, and Lessee is primarily liable and shall remain primarily liable for its obligations under this Lease with respect to the Vehicle; (n) the Vehicle is essential to the governmental functions of Lessee, that Lessee has an immediate need for the Vehicle and will be used by Lessee solely for the purpose of performing one or more of Lessee's essential governmental functions consistent with the permissible scope of Lessee's governmental authority immediately after delivery and for the foreseeable future; and (o) the Vehicle will not be used in a non-governmental capacity such as by a business or for the personal use of a person or entity other than the Lessee.

36. **Waiver of Trial by Jury.** LESSOR AND LESSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL

PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT A RIGHT TO A JURY IS A CONSTITUTIONAL RIGHT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY THE PARTIES. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

37. **Prohibition Against Boycotting Israel & Doing Business with Foreign Terrorist Organization.** Pursuant to sections 2252.152 and 2270.002 of the Texas Government Code, Lessor represents and warrants that it does not boycott Israel and will not boycott Israel during the term of the Master Lease. Further, Lessor represents and warrants that it does not engage in business with Iran, Sudan, or any foreign terrorist organization (as defined and/or determined by the Texas Comptroller).

38. **Severability.** If any provision in this Master Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect, as if this Master Lease had been executed without any such invalid provision having been included.

39. **Electronic Signatures.** The parties hereto agree that this Master Lease (and any Schedules or any other related or ancillary documents) may be signed by electronic means. Any electronic signature and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law including the Electronic Signatures in Global and National Commerce Act and/or any State law based on the Uniform Electronic Transactions Act. Each party agrees that any electronic signatures may used by the parties in lieu of an original, manual signature page(s) for any and all purposes, and each party agrees that they shall be entitled to rely on any such electronic signature purportedly given by or on behalf of the executing party without further verification. Notwithstanding anything contained herein to the contrary, Lessor is under no obligation to accept an electronic signature in any form or in any format unless expressly agreed to by Lessor pursuant to procedures approved by it. Lessee agrees that, if requested by Lessor, Lessee will provide an original manually executed counterpart.

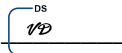
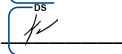
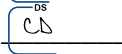
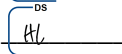
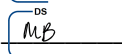
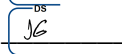
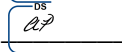
Certification by Lessee under Section 7701(h)  
of the Internal Revenue Code

Lessee hereby certifies under penalty of perjury that Lessee intends that more than 50% of the use of each Vehicle will be in Lessee's trade or business. Lessee further states that Lessee has been advised that Lessee will not be treated as the owner of any of the Vehicles for federal income tax purposes.

**LESSEE:**

The Texas General Land Office

Signed by:  
*Jennifer G Jones*  
By: \_\_\_\_\_  
E70CDF09B50540E...  
Jennifer G. Jones  
Chief Clerk and Deputy Land Commissioner

OGC   
PM   
PM   
SDD   
DGC   
GC   
DCC 

**Signature Page Follows**


IN WITNESS WHEREOF, the parties hereto have executed this Master Lease as of the Effective Date set out above.


**LESSOR:**

**LESSEE:**

COMMERCIAL VEHICLE LEASING,  
L.L.C., d/b/a D&M Leasing








The Texas General Land Office

By:   
DocuSigned by:  
18CE34B55E794FB...  
Name: Lauren Crysup  
Title: Commercial Lease Servicer  
Date: 11/18/2024

By:   
Signed by:  
E70CDF09B56540E...  
Jennifer G. Jones  
Chief Clerk and Deputy Land Commissioner  
Date: 11/18/2024

Address:  
17090 N Dallas Parkway,  
Dallas, Texas 75248

Address:  
1700 Congress Ave.,  
Austin, TX 78701

OGC   
PM   
PM   
SDD   
DGC   
GC   
DCC 

**GLENN HEGAR** TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

---

**NOTICE OF AWARD**

Commercial Vehicle Leasing, L.L.C. dba D&M Leasing  
Attn: Ed Cain  
1400 W. 7<sup>th</sup> St., Suite 200  
Ft. Worth, TX 76102

Contract No. & Description: TXMAS-23-97501 Vehicle Leasing Services  
Term of Contract: Date of Deputy Comptroller's signature on this Notice of Award through  
April 18, 2026

The Comptroller of Public Accounts (CPA) accepts the TXMAS Offer Packet of Commercial Vehicle Leasing, L.L.C. dba D&M Leasing (Contractor) and hereby awards Contractor a TXMAS contract (Contract). Contractor's awarded services will be processed through our Statewide Contract Management office (SCM) and will be available for purchase on the Texas SmartBuy online ordering system.

The Contract consists of the documents stated in Section 2 Contract Documents of the TXMAS Terms and Conditions. The attached final catalog consists of services and pricing submitted and agreed upon by CPA and Contractor. The final catalog may exclude any items or services that CPA has decided not to award. Any excluded services are not permitted to be sold under the Contract and may not be added at any time during the life of the Contract.

To the extent there are conflicts between the Base Contract (between Sourcewell and Contractor, dated April 13, 2022) and the TXMAS Terms and Conditions, the TXMAS Terms and Conditions control.

Only those assumptions and exceptions specifically noted in the Addendum to Exhibit A – TXMAS Exceptions, have been accepted by CPA. All other assumptions and exceptions are specifically denied. Any oral discussions, representations, or accommodations regarding assumptions or exceptions are specifically disclaimed.

Contractor may advertise the awarded Contract to Texas state agencies and Texas SmartBuy Member entities. Prior to mass advertising, a draft must be submitted to the TXMAS program for approval. Please complete the attached ECSM Submission Checklist submit it with the draft advertisement to: [txmas@cpa.texas.gov](mailto:txmas@cpa.texas.gov)

Contractor shall be responsible for the fulfilment of any Purchase Order issued through Texas SmartBuy pursuant to the terms and conditions of the Contract. Contractor shall not ship any products or provide services until receipt of a Purchase Order issued through Texas SmartBuy.

Contractor may accept offline orders, defined as orders placed outside the Texas SmartBuy system. Customers may order goods or services available under this Contract directly from the Contractor when the purchase cannot be placed through Texas SmartBuy. Each calendar quarter, Contractor must report to CPA the past quarter's offline sales of goods and services to Customers under the Contract. Quarterly Offline Sales Reports are due no later than 45 days after the end of each calendar quarter. The dollar value of the sale is the price paid by the Customer for the goods or services under the Contract. If no sales occur, the Contractor must report no sales in a manner prescribed by CPA. Contractor must submit Quarterly Offline Sales Report electronically to [tsb.offline.sales@cpa.texas.gov](mailto:tsb.offline.sales@cpa.texas.gov) in the format prescribed by CPA.

TXMAS-23-97501

Page 2 of 2

CPA does not guarantee a specific volume to be purchased throughout the term of the Contract. No minimum compensation to the Contractor is guaranteed.

Texas Comptroller of Public Accounts

DocuSigned by:  
  
11EA6DEF0EC441E...

---

Lisa Craven  
Deputy Comptroller

Date: 6/19/2023 | 12:06 PM CDT

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**Exhibit A**

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



**STATEWIDE PROCUREMENT DIVISION**

**TEXAS MULTIPLE AWARD SCHEDULE  
(TXMAS)  
TERMS AND CONDITIONS**

**STATE OF TEXAS  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) CONTRACT**

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## 1. BACKGROUND

Contractor has entered into a contract with a governmental entity, which was awarded using a competitive process (the “Base Contract”). This Contract modifies the Base Contract to comply with state and federal law and incorporates it into the schedule of multiple award contracts (“TXMAS”) of the Texas Comptroller of Public Accounts (“CPA”), as authorized by Subchapter I, Chapter 2155 of the Texas Government Code. The purpose of this Contract is to make items and pricing in the Base Contract available to customers authorized to purchase from CPA statewide contracts, including CPA.

## 2. CONTRACT DOCUMENTS

- (a) **List of Documents.** This Contract consists of: (1) this TXMAS Terms and Conditions document, (2) the Base Contract, (3) the latest TXMAS Offer Packet Application Checklist submitted by Contractor, (4) the Texas SmartBuy Catalog approved by CPA, and (5) the Notice of Award executed by CPA.
- (b) **Base Contract.** This Contract incorporates the entire Base Contract, including all documents incorporated by reference into the Base Contract. Such documents may include the solicitation, the Contractor’s response, catalogs, and price lists.
- (c) **Base Contract Modifications.** Modifications of the Base Contract are not automatically incorporated into this Contract. CPA may adopt such modifications in its sole discretion and shall notify the Contractor of any modification it adopts.
- (d) **Entire Agreement.** This Contract is intended as a final, complete, and exclusive expression of the agreement between CPA and Contractor about the subjects it contains. There are no restrictions, promises, warranties or undertakings related to this agreement, other than those stated or referred to in this Contract.
- (e) **Amendments.** This Contract may be amended only by written agreement between CPA and Contractor.

## 3. INTERPRETATION OF BASE CONTRACT

- (a) **Order of Precedence.** To the extent there are conflicts between the Base Contract and other Contract documents, the Base Contract is superseded by the other Contract documents.
- (b) All rights and obligations of Contractor to the awarding governmental entity under the Base Contract are obligations are owed by the Contractor to CPA under this Contract. All rights and obligations of Contractor to an entity receiving goods and services under the Base Contract are owed by the Contractor to the state of Texas, CPA, and Customers under this Contract.
- (c) If the Base Contract requires Contractor to notify the awarding governmental entity of information affecting the Base Contract, Contractor shall provide the same notices to CPA.
- (d) If the Base Contract is modified or terminated, Contractor shall notify CPA within 30 days.

## 4. CUSTOMERS

- (a) In this Contract, “Customer” is defined as any entity authorized by law or by CPA to purchase goods and services under this Contract, or an entity that is purchasing or has purchased goods or services under this Contract.

- (b) Customers have the same rights and remedies of the state of Texas and CPA under this Contract including indemnification, as to their own purchase orders under this Contract.
- (c) Customers may not modify or waive any provision of this Contract.

## 5. TEXAS SMARTBUY CATALOG

- (a) **Contractor's Catalog.** Contractor shall submit a Texas SmartBuy Catalog (the "Catalog") to CPA for upload to the Texas SmartBuy online ordering system. Contractor shall not include in the Catalog any goods or services that are not included in the Base Contract. All goods and services included in the Catalog must be verifiable using the Base Contract or Contractor's website. At its sole discretion, CPA may exclude goods and services on the Base Contract from the Catalog. CPA will provide the final Texas SmartBuy catalog upon award.
- (b) **Base Price Decreases.** Contractor shall notify CPA of any decrease in prices offered under the Base Contract within 30 working days and offer such pricing under this Contract. If Contractor fails to notify CPA of a Base Contract price decrease, Contractor shall refund any overpayment to Customers.
- (c) **Base Contract Amendments and Modifications.** Contractor shall notify CPA of any amendments and modifications, including but not limited to renewals, item additions, or item deletions under the Base Contract within 30 working days and applicable to this Contract.
- (d) **Price Negotiation.** Catalog Prices are the maximum prices allowed under this Contract. A Customer may negotiate a lower price for goods and services with the Contractor.
- (e) Pricing and related information are not confidential or proprietary. CPA intends to publish pricing and related information on Texas SmartBuy. Contractor agrees that the information it has submitted to CPA is not confidential or proprietary. Contractor consents to the publication of Contractor's pricing and related information on Texas SmartBuy or in any other format.

## 6. PURCHASE ORDERS

- (a) **Effect.** A purchase order constitutes an agreement between Contractor and Customer. Contractor will look solely to the Customer for performance, including but not limited to, payment, and will hold CPA harmless with regard to such orders.
- (b) **Customer-Specified Terms and Conditions.** Customers other than CPA do not have the authority to modify this Contract; however, Customers may add terms and conditions that do not conflict with this Contract and are acceptable to Contractor in a purchase order. In the event of a conflict between a purchase order and this Contract, this Contract controls. If Contractor cannot honor terms specified on a purchase order, it shall notify the Customer without delay.
- (c) **Off-Contract Items.** Other than incidental items expressly allowed under this Contract, Contractor may not sell and Customers may not purchase goods or services under this Contract that are not included in the TXMAS Catalog for this Contract. Therefore, to the extent the Base Contract contains terms which allow additional items to be purchased such as blanket purchase agreements and Contractor team arrangements, those terms are excluded from to this Contract.
- (d) **Incidental Items.** A Customer may purchase incidental items that are not included in the TXMAS

Catalog for this Contract if they are necessary for product integration or project completeness, subject to the following conditions. The Customer must determine that the quoted price is determined to be fair and reasonable, and the purchase represents best value to the State. The purchase must not conflict with applicable laws, rules, and regulations. Only products or services listed in the Base Contract may be purchased from this Contract. Incidental items must be clearly labeled as "Incidental." These incidental items may not exceed the lesser of \$5,000.00, or 50% of the total purchase order value. CPA may review incidental purchases and may decide whether to allow them to proceed through Texas SmartBuy. If incidental purchases do not meet these requirements, the purchase order may be void.

- (e) **Offline Ordering.** To utilize the Contract pricing, Customers will issue an internal purchase order referencing the number for the TXMAS Contract and current item descriptions and pricing. Contractor agrees not to deliver goods or provide services under this Contract until receipt of a Purchase Order from Customer.

## 7. TEXAS SMARTBUY ADMINISTRATIVE FEE AND TXMAS SALES REBATE

- (a) **Texas SmartBuy Administrative Fee.** Contractor shall pay a 1.5% administrative fee to CPA on all Contract sales. If Contractor wishes to recover this fee from Customers, Contractor may charge up to 1.5228% more for goods and services under the Contract than it does under the Base Contract. Contractor must make any price adjustment permitted by this section before submitting the Texas SmartBuy Catalog to CPA.
  - (i) CPA will invoice Contractor the 1.5% administrative fee on the first day of the month following the After Receipt of Order date identified for each item. Payment is due on date indicated on the invoice.
  - (ii) The administrative fee payment should be identified as "Texas SmartBuy Administrative Fee" and made payable to "**Texas Comptroller of Public Accounts.**" Contractor may remit payment by check to Texas Comptroller of Public Accounts, Attn: Texas SmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.
  - (iii) The Texas SmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the Texas SmartBuy administrative fee.
  - (iv) TXMAS Sales rebate. Contractor shall pay a rebate of 0.73875% of sales under the Contract. CPA will invoice Contractor each calendar quarter for the previous quarter's sales. Payment is due on date indicated on the invoice. The sales rebate payment should be identified as "TXMAS Sales Rebate" and made payable to "**Texas Comptroller of Public Accounts.**" Contractor may mail its check payment to Texas Comptroller of Public Accounts, TXMAS Sales Rebate, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.
- (b) Warrant hold for unpaid fees or rebates. Section 403.055 of the Texas Government Code generally prohibits the state treasury from making payments to anyone indebted to the state of Texas. Payments to Contractor may be held and applied to the Contractor's debt.

## 8. MISCELLANEOUS TXMAS PROGRAM REQUIREMENTS

- (a) **New Items.** Contractor shall only supply new (unused) goods and replacement parts.
- (b) **Statewide Coverage.** Contractor shall serve all Customers and all locations throughout the state of Texas.
- (c) **Warranty.** Contractor shall provide a warranty for goods sold under the Contract. At a minimum, the warranty period will begin on the date the equipment is accepted by the Customer and will continue in effect for a continuous period of (i) one year from that date, or (ii) the duration of the manufacturer's standard warranty, whichever is longer. If no time or specific protocol for acceptance is specified elsewhere in the Contract or the Customer purchase order, items are presumed accepted ten working days after receipt. The warranty will apply to any warranty service or repair requested by Customer during the warranty period by contacting the Contractor's authorized warranty service provider with such request, regardless of the amount of time required to complete the requested warranty service or repair. Contractor's warranty obligations will survive the termination of this Contract.
- (d) **Warranty Shipment.** Contractor shall pay for shipment of goods under warranty. Contractor may not require a Customer to pay for shipping in order to obtain warranty repairs or replacement.
- (e) **Risk of Loss.** Contractor shall bear the risk of loss or damage of goods during shipment. Any attempt by Contractor to shift this risk without the express approval of CPA will have no effect.
- (f) **Contractor Addresses.** The ordering and payment addresses under this Contract are those stated in the TXMAS Offer Packet Application.
- (g) **Time Zone.** All references to time of day are Central Time, including times in the Base Contract that designate another time zone.
- (h) **Travel.** Any travel required by Contractor to perform its obligations under this Contract will be at Contractor's expense. Any additional travel shall not exceed limitations applicable to Texas employees.
- (i) **Independent Contractor.** In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the state of Texas, CPA, or Customers.
- (j) **Subcontracts.** If Contractor subcontracts any part of the performance of this Contract, the state of Texas, CPA, and Customers will have no obligation to any subcontractor. Contractor shall ensure that subcontracts are performed in compliance with this Contract.
- (k) **Professional Services.** This Contract specifically excludes professional services as defined by Subchapter A, Chapter 2254 of the Texas Government Code. Contractor may not sell any professional services under this this Contract.
- (l) **Consulting Services.** This Contract specifically excludes consulting services as defined by Subchapter B, Chapter 2254 of the Texas Government Code. Contractor may not sell any consulting services under this Contract.
- (m) **Information Technology.** CPA will work with the Texas Department of Information Resources and Contractor to identify information technology commodity items as defined in Section 2157.068 of the Texas Government Code and exclude them from the Texas SmartBuy Catalog for this Contract. CPA lacks authority to include these items in TXMAS, and any purchases of these items through this Contract may be void.

- (n) **Intellectual Property.** “Work Product” is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. In the event that this Contract or the Base Contract is terminated for any reason, or upon the expiration of either this Contract or the Base Contract, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Base Contract through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

## 9. DEALERS

- (a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must submit the Letter of Authorization in the format provided by CPA. Contractor shall submit a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be on Contractor’s official letterhead, signed by an authorized representative, and addressed to the attention of the CPA Statewide Procurement Division Director. The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and agrees to the following:
- i. The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract, and such agreement specifies that it is for the benefit of the state of Texas, CPA, and Customers, as well as Contractor.
  - ii. Contractor agrees to be liable for any breach of this Contract by the dealer. Contractor shall pay all fees and rebates to CPA for sales by the dealer.
  - iii. Customers will pay the dealer for goods and services ordered from the dealer. Customers will have no obligation to pay the Contractor for goods and services ordered from the dealer.
  - iv. Contractor’s Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that it is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer’s official letterhead, signed by an authorized representative of the dealer, in a format provided by CPA, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Base Contract, it agrees to be bound by the terms and conditions of this Contract and the Base Contract, as both may be amended from time to time, and such agreement specifically provides that it is for the benefit of the state of Texas, CPA, and Customers, as well as Contractor.
- (d) CPA may reject a Letter of Authorization that does not comply with this Contract, or that CPA chooses in its sole discretion not to approve.

## 10. UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES

In accordance with Chapter 2161 of the Texas Government Code and 34 Texas Administrative Code (“TAC”) §§20.281 *et seq.*, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (“HUB”) in contracts for construction, services, and commodities. Contractors are urged to utilize HUB as defined in Section 2161.001 of the Texas Government Code or small businesses as defined in Section 2155.505(a) of the Texas Government Code to sell or provide services under the TXMAS Contract. A Contractor’s failure to make a good faith effort to use HUB and small businesses may result in exclusion of Contractor from participation in TXMAS. A list of Certified Texas HUB Vendors can be accessed on CPA’s website.

## 11. INVOICE REQUIREMENTS

- (a) In order to request payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. The invoice must include the following:
  - (i) Name and address of Contractor as designated in this Contract.
  - (ii) Contractor’s Federal Employer Identification Number (“EIN”).
  - (iii) Contractor’s payments address as designated in this Contract.
  - (iv) The purchase order number.
  - (v) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the goods and services.
  - (vi) If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer’s information should be supplied in lieu of Contractor’s information.
- (c) If an invoice does not meet this section’s requirements, Customer will send Contractor written notice. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.
- (d) Customer may, in its sole discretion, request additional documentation to support payment. Contractor shall respond to any such requests within five calendar days of receipt. Customer is required to make payments only upon receipt of a correct invoice, including all required supporting documentation.
- (e) Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.
- (f) In the event of a disputed invoice, a Customer may withhold from its payment no more than 110% of the disputed amount.

## 12. REPORTING REQUIREMENTS (OFFLINE SALES)

By the 10th day of every calendar month, Contractor must report to CPA the past month’s sales of goods and

services to Customers under the Contract. The dollar value of the sale must be the price paid by the Customer for the goods and services under the Contract. If no sales occur, Contractor must report no sales in a manner prescribed by CPA.

Contractor must submit Monthly Sales Report electronically to Texas SmartBuy Offline Sales at [tsb.offline.sales@cpa.texas.gov](mailto:tsb.offline.sales@cpa.texas.gov) in the format prescribed by CPA. CPA reserves the right to modify contract reporting requirements at its sole discretion to meet the evolving needs of CPA and its Customers. If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, CPA may terminate the Contract pursuant to Section 20 (Term and Termination).

### **13. AUDIT REQUIREMENTS**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, 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. Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

### **14. PUBLIC INFORMATION**

Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, 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 Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Contractor further represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provide by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and Contractor agrees that the Contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

## 15. CONFIDENTIALITY AND SECURITY

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations. The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

## 16. RECORDS RETENTION

Contractor shall maintain and retain all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable state of Texas requirements. These records will be maintained and retained by Contractor for a period of seven years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

## 17. DISCLOSURE OF INTERESTED PARTIES

If CPA determines that Section 2252.908 of the Texas Government Code may apply to this Contract, CPA will advise Contractor of its obligation to disclose interested parties to the Texas Ethics Commission (“TEC”) and CPA as specified in the statute.

Upon receiving instruction from CPA, Contractor shall submit the required disclosures to TEC by completing TEC Form 1295, Certificate of Interested Parties.

TEC Form 1295 is an online form available at TEC’s website:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

Contractor shall submit the completed form online to TEC and then print the completed form that includes the Certificate Number automatically assigned by TEC. Contractor’s authorized agent must sign the printed form and submit it to CPA.

## 18. INSURANCE

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor represents and warrants that all of the required coverage will be obtained from companies that are licensed in the state of Texas, have an “A-” rating from AM Best, and are authorized to provide the coverage. Contractor shall insure all motor vehicles used to fulfill its duties under the Contract. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract. Contractor shall furnish proof of insurance upon request to a Customer or CPA.

If performing work in a Customer facility, the following requirements apply:

- (a) Contractor shall maintain for the term of the Contract the following insurance coverage:
  - (i) Worker’s Compensation Insurance (if Contractor has employees in the state of Texas).
  - (ii) Employer’s Liability Insurance with an aggregate policy limit of at least \$1,000,000, including coverage for bodily injury of \$500,000 per accident and disease of \$500,000 per employee.

- (iii) Commercial Automobile Liability Insurance for owned, hired, and non-owned vehicles of at least \$1,000,000 combined single limit for each accident.
  - (iv) Commercial General Liability Insurance of at least (1) \$2,000,000 per occurrence if the policy is issued for bodily injury and property damage combined, or (2) \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.
  - (v) Excess Liability or Umbrella Insurance for all required liability policies (excluding Worker's Compensation Insurance, which is not liability insurance) of at least \$1,000,000 in the aggregate.
- (b) All policies of insurance shall include the following provisions:
- (i) The state of Texas and its officers and employees are named as additional insureds on the Commercial Automobile Liability, Commercial General Liability, Umbrella, and Excess Liability policies.
  - (ii) Waiver of subrogation in favor of the state of Texas, its officers and employees for bodily injury (including death), property damage or any other loss arising from this Contract or any purchase order.
  - (iii) The Contractor's insurance is primary insurance with respect to the state of Texas and its officers and employees.
- (c) Contractor will ensure all subcontractors maintain adequate insurance in types and amounts appropriate for the work to be performed under the Contract.

TXMAS Customers may further add to purchase orders mutually-acceptable insurance provisions that do not conflict with the Contract, as set out in Section 6(b) (Customer-specified Terms and Conditions).

## 19. TAXES

Customers may be exempt from certain taxes. Customers will furnish proof of tax-exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Base Contract. Customers will not reimburse Contractor's tax liability related to this Contract.

## 20. TERM AND TERMINATION

This Contract shall become effective when it has been signed by all parties. This Contract will expire on the sooner of (1) five years from the effective date, or (2) the expiration of the Base Contract. Purchase orders issued during the term of this Contract shall survive cancellation or termination of this Contract.

- (a) **Termination for Convenience.** CPA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice. CPA may terminate the Contract for convenience if it has low sales over time, for example.
- (b) **Termination for Cause.**
  - (i) If Contractor fails to perform under this Contract, or fails to comply with any of the terms or conditions of this Contract, or its conduct reflects a lack of business integrity, CPA may issue a written notice of default to Contractor and immediately terminate all or any part of this Contract. For example, sale of non-contract items, other than authorized incidental items, may be cause for termination.

- (ii) CPA may exercise any other remedy which may be available to it under law, including seeking damages. The exercise of any remedies will not constitute a termination of this Contract. Contractor shall remain liable for all covenants and indemnities under this Contract and the Base Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by CPA to enforce any contractual remedy.
- (c) **Change in Federal or State Requirements.** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either CPA or Contractor cannot reasonably fulfill this Contract the parties may agree to an amendment that would allow for continuation of this Contract. Otherwise, CPA may terminate the Contract by issuing a notice invoking this clause.
- (d) **Non-Appropriation of Funds.**
- (i) **CPA and Customer Obligations Contingent.** All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract. Contractor acknowledges that the ability of Customers to make payments under this Contract is contingent upon the continued availability of funds. CPA and the Customers will use reasonable efforts to ensure that such funds are available.
- (ii) **Termination due to Non-Appropriation.** In the event of a reduction in funding, CPA may terminate this Contract, either in whole or in part, and a Customer may terminate a pending purchase order under this Contract, either in whole or in part.
- (e) **No Liability Upon Termination.** If this Contract is terminated for any reason, the state of Texas, CPA, and Customers shall not be liable to Contractor for any damages arising from or related to the termination. The sole and maximum obligation of the state of Texas, CPA, and Customers shall be to pay for goods and services ordered under the Contract, performed in accordance with all requirements of this Contract and delivered and accepted prior to termination.
- (f) **Survival of Terms.** Termination of this Contract or the Base Contract for any reason shall not release Contractor from any liability or obligation set forth in this Contract or the Base Contract 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 fees verification.
- (g) **Lack of Contract Sales.** If the Contract has a limited amount of sales over a period of 12 consecutive months, the Contract may be subject to termination in CPA's sole discretion. CPA may, upon written notice to Contractor, immediately terminate the Contract. Contractor may not submit a new TXMAS Offer Packet Application within 12 months from the effective date of the termination.

## 21. FORCE MAJEURE

CPA, a Customer, or Contractor will not be responsible for failure or delays in performance under the Contract due to an act of war, order of legal authority, act of God, disaster, or other unavoidable cause not attributable to its own the fault or negligence. A party may be excused from performance for as long as such circumstances prevail, and it continues to use commercially reasonable efforts to perform. Each party shall immediately notify other affected parties by telephone and confirm in writing within five calendar days that it is invoking this provision and its reasons for doing so.

## **22. DISASTER RECOVERY**

Upon request of CPA, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.

## **23. VENDOR PERFORMANCE**

CPA may use vendor performance to analyze whether a vendor is eligible for a TXMAS contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract and during the entire term of the TXMAS contract. Under Section 2155.089 of the Texas Government Code, CPA or state agency Customers may review Contractor's performance under this Contract. These reviews and any resulting classification grades may be posted online.

## **24. DELIVERIES**

All deliveries for orders placed under this Contract shall be free on board ("FOB") destination and Contractor retains the risk of loss until the goods reach the Customer. If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

## **25. EQUAL EMPLOYMENT OPPORTUNITY**

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

## **26. AMERICANS WITH DISABILITIES ACT**

Contractor shall comply with the requirements of the Americans with Disabilities Act (ADA).

## **27. CIVIL RIGHTS**

Contractor shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

## **28. IMMIGRATION**

Contractor shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.).

## **29. INDEMNIFICATION**

### **(a) Acts or Omissions**

- (i) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, 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 CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**(b) Infringements**

- (i) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, 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 THE CUSTOMER 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.**
- (ii) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) CUSTOMER'S 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 CONTRACTOR PURSUANT TO CUSTOMER'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO CUSTOMER, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY CUSTOMER THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**
- (iii) IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR CUSTOMER PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST CUSTOMER, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT CUSTOMER'S USE IS NON-INFRINGEMENT.**

(c) **Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- (i) **CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, 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 CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER SHALL NOT BE LIABLE TO 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.**
- (ii) **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, CUSTOMERS, 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 CONTRACT. 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 THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

### **30. REPRESENTATIONS AND CERTIFICATIONS**

Contractor certifies each of the following statements, except to the extent that its TXMAS Offer Packet Application specifically identifies one or more of the statements and describes every fact and circumstance that prevents it from making the certification. Contractor further promises to promptly notify CPA if any of these certifications is no longer true.

- (a) **Base Contract Documents.** Contractor represents and certifies that the Base Contract documents submitted to CPA are genuine and complete.
- (b) **Base Contract Representations and Certifications.** Contractor represents and certifies that the representations and certifications it made in the Base Contract are true.
- (c) **Anti-Fraud Policy of CPA.** Contractor represents and warrants that it has read and understood and will comply with Comptroller's Anti-Fraud Policy as such Policy currently reads and as it is amended throughout the term of the Contract. The policy can be found at <https://www.comptroller.texas.gov/about/policies/ethics.php>
- (d) **Antitrust.** The Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated

any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this TXMAS Offer Packet Application to any competitor or any other person engaged in the same line of business as Contractor.

- (e) **Buy Texas Affirmation.** To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- (f) **Dealings with Public Servants Affirmation.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or the Base Contract.
- (g) **Financial Participation Prohibited Certification.** Pursuant to Section 2155.004(a) of the Texas Government Code, Contractor certifies that neither Contractor nor any person or entity represented by Contractor has received compensation for participation in the preparation of specifications for this Contract. Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
- (h) **Former or Retired CPA Employees.** In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the CPA during the twelve (12) month period immediately prior to the date of execution of the contract.
- (i) **Executive Head of a State Agency Affirmation.** Pursuant to Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of CPA, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of CPA, then Contractor shall provide the following information to be considered for award: name of the former executive, name of the state agency, date of separation from the state agency, position held with Contractor, and date of employment with Contractor.
- (j) **COVID-19 Vaccine Passport Prohibition.** Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.
- (k) **Energy Company Boycotts.** If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Contractor does not make that verification, Contractor must so indicate in its offer and state why the verification is not required.
- (l) **Foreign Terrorist Organizations.** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

- (m) **Entities that Boycott Israel.** If Contractor is required to make a certification pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the Contract. If Contractor does not make that certification, Contractor must inform CPA and state why the certification is not required.
- (n) **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102 of the Texas Government Code, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of the Texas Government Code, or (2) headquartered in any of those countries.
- (o) **Legal and Regulatory Actions.** Contractor represents and warrants that it is not aware of and has not received notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the TXMAS Offer Packet Application within the five (5) calendar years immediately preceding the submission of the TXMAS Offer Packet Application that would or could impair Contractor's performance under the Contract.

If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its TXMAS Offer Packet Application a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of the TXMAS Offer Packet Application.

In addition, Contractor represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of the Contract.

- (p) **No Felony Criminal Convictions.** Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised CPA of the facts and circumstances surrounding the convictions.

Contractor has a continuing duty to amend, supplement, or correct this representation and warranty not later than ten days after discovering additional information relating to felony criminal convictions of Contractor or any of its employees. Contractor will not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from CPA.

- (q) **Prior Disaster Relief Contract Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract that involves financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (r) **Firearm Entities and Trade Associations Discrimination.** If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1)

does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If Contractor does not make that verification, Contractor must so indicate in its TXMAS Offer Packet Application and state why the verification is not required.

- (s) **Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, Contractor certifies that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (t) **Abortion Funding Limitation.** Contractor represents and warrants that this Contract is not a taxpayer resource transaction prohibited by Section 2273.003 of the Texas Government Code, and that payments made by CPA to Contractor and Contractor's receipt of appropriated funds under the Contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
- (u) **Professional Sports Teams – National Anthem Verification.** If the Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State. CPA or the Attorney General may strictly enforce this provision.
- (v) **Prohibition on Lobbying.** Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005 or 556.008 of the Texas Government Code.
- (w) **Deceptive Trade Practices; Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice 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 any such practices in such proceedings.
- (x) **Debts and Delinquencies Affirmations.** Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed the state of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
- (y) **Suspension and Debarment.** Contractor certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, state or local governmental entity. Contractor further certifies Contractor is in compliance with the state of Texas statutes and rules relating to procurement and that Contractor does not have a designated exclusion on SAM, which can be accessed at: <https://www.sam.gov/>.
- (z) **Excluded Parties.** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- (aa) **Terminated Contracts.** Contractor certifies that it has not had a contract terminated or been denied the

renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency. If the Contractor does have such a terminated contract, Contractor must identify each and provide an explanation for the termination.

- (bb) **Conflicts of Interest.** Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (cc) **Competitively-Awarded Contract.** Contractor certifies that the Base Contract was awarded using a competitive process by a governmental entity in compliance with Section 2155.502 of the Texas Government Code.
- (dd) **Certifications Apply to Customer Purchase Orders.** Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that all affirmations and certifications are true and correct.

### **31. NO DEBT AGAINST THE STATE**

This Contract does not create any debt by or on behalf of the state of Texas.

### **32. COMPLIANCE WITH LAWS**

Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to an Contractor providing goods and services to the state of Texas as these laws, regulations, requirements, and guidelines currently exist and as they are amended throughout the term of this Contract.

### **33. CYBERSECURITY TRAINING**

Contractor shall comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program when Contractor or a subcontractor, officer, or employee of Contractor has access to a state computer system or database. When required, the cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Contractor shall verify to the Customer completion of the program by each such officer, employee, or subcontractor.

### **34. COOPERATION**

Contractor shall cooperate with CPA and Customers for purposes relating to the administration of this Contract. Contractor shall cooperate with CPA's contractors, subcontractors, and third-party representatives as requested by CPA.

### **35. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES**

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

Contractor must provide CPA with written notification of all name changes and organizational changes relating

to Contractor 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 (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

### **36. PUBLICITY**

Contractor shall not issue news releases, advertisements, or any other public statement about this Contract without CPA's written consent. Contractor may not send unsolicited electronic mail or facsimile transmissions to CPA or Customers for any reason.

### **37. COMMUNICATION**

Unless otherwise specified, Contractor, CPA, and Customers may communicate, send notices, or transmit documents by email to an address associated with the party and its staff identified with this Contract, or by mail or messenger to the addresses below.

- (a) The mailing address for Contractor will be the address specified on Contractor's TXMAS Offer Packet Application.
- (b) The address for CPA is:

*For Overnight or Express Mail:*

Texas Comptroller of Public Accounts  
Statewide Procurement Division  
Attn: Statewide Contract Management  
1711 San Jacinto Blvd.  
Room 174-A (CPA mailroom, N.E. Back Door)  
Austin, TX 78701

*For Other U.S. Mail:*

Texas Comptroller of Public Accounts  
Statewide Procurement Division  
Attn: Statewide Contract Management  
P.O. Box 13186  
Austin, TX 78711-3186

Either party may change its mailing address by written notification to the other party.

### **38. DISPUTE RESOLUTION**

Disputes arising under the Contract shall be resolved pursuant to one of the following two procedures.

- (a) Unless Contractor provides construction services under this Contract, disputes are subject to Chapter 2260 of the Texas Government Code. The dispute resolution process provided for in Chapter 2260 of the

Texas Government Code and applicable CPA rules shall be used by CPA and Contractor to resolve any such disputes arising under this Contract. To initiate the process, Contractor shall submit written notice to the Deputy Comptroller or their designee, and to the Director of the Statewide Procurement Division. CPA and Contractor shall first attempt to resolve any contract dispute outside the scope of Chapter 2260 of the Texas Government Code through the procedure for negotiation and mediation of contract disputes specified in CPA rules. Those rules are incorporated into this Contract. Contractor shall continue to perform its Contract obligations during the dispute resolution process.

- (b) If Contractor performs construction services under this Contract, and subject to Section 2260.002 of the Texas Government Code, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set out below in subsections (i)-(iv) shall be used by the parties to attempt to resolve all disputes arising under this Contract. In accordance with Section 114.005 of the Texas Civil Practice and Remedies Code, the parties agree claims encompassed by Section 2260.002(3) of the Texas Government Code and Section 114.002 of the Texas Civil Practice and Remedies Code shall be governed by the dispute resolution process set out below in subsections (i)-(iv).
- (i) Notwithstanding Section 2260.002(3) of the Texas Government Code and Section 114.012 of the Texas Civil Practice and Remedies Code and any other statute or applicable law, if Contractor's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Contractor may make a claim against CPA for breach of contract and CPA may assert a counterclaim against Contractor as is contemplated by Subchapter B, Chapter 2260 of the Texas Government Code. In such event, Contractor must provide written notice to CPA of a claim for breach of the Contract not later than the 180<sup>th</sup> day after the date of the event giving rise to the claim. The notice must state with particularity (1) the nature of the alleged breach, (2) the amount Contractor seeks as damages and (3) the legal theory of recovery.
  - (ii) The Deputy Comptroller, Director of the Statewide Procurement Division or other designated officer of CPA shall examine the claim and any counterclaim and negotiate with Contractor in an effort to resolve them. The negotiation must begin no later than the 120<sup>th</sup> day after the date the claim is received, as is contemplated by Section 2260.052 of the Texas Government Code.
  - (iii) If the negotiation under paragraph (ii) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Contract as to the parts of the claim that are not resolved.
  - (iv) If a claim is not entirely resolved under paragraph (ii) above by or before the 270<sup>th</sup> day after the date the claim is filed with CPA, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim under this dispute resolution procedure. This dispute resolution procedure is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of the Contract by CPA if the parties are unable to resolve their disputes as described in this section.
  - (v) Nothing in this Contract shall be construed as a waiver of the State's or CPA's sovereign immunity. 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. CPA does not waive any privileges, rights, defenses, or immunities available to

CPA by entering into this Contract or by its conduct, or by the conduct of any representative of CPA, prior to or subsequent to entering into this Contract.

- (vi) Compliance with the dispute resolution process provided for in Subchapter B, Chapter 2260 of the Texas Government Code and incorporated by reference in subsections (i)-(iv) above is a condition precedent to the Contractor's (1) filing suit pursuant to Chapter 114 of the Texas Civil Practice and Remedies Code or (2) initiating a contested case hearing pursuant to Subchapter C, Chapter 2260 of the Texas Government Code.

### **39. SOVEREIGN IMMUNITY**

CPA and Contractor expressly agree that no provision of the contract is in any way intended to constitute a waiver by CPA or the state of Texas of any immunities from suit or from liability that CPA or the state of Texas may have by operation of law.

### **40. LIMITATION OF AUTHORITY**

Contractor shall have no authority to act for or on behalf of the state of Texas, CPA, or Customers except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas, CPA, or Customers.

### **41. LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

### **42. HEADINGS**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

### **43. GOVERNING LAW AND VENUE**

The Contract shall be governed by and construed in accordance with the laws of the state of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a state statute which directly names or otherwise identifies its applicability to CPA.

### **44. SEVERABILITY**

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

## Addendum to Exhibit A – TXMAS Exceptions

This Addendum to Exhibit A (“Addendum”) to Contract No. TXMAS-23-97501 (“Contract”) is entered into between Commercial Vehicle Leasing, L.L.C. dba D&M Leasing (“Contractor”) and the Texas Comptroller of Public Accounts (“Comptroller”), an agency of the State of Texas (collectively referred to as “the parties”).

### I. Addendum

1. To the extent there are conflicts between the Base Contract (between Contractor and the State of Minnesota, on behalf of Sourcewell Purchasing Program, dated effective April 13, 2022) and the Texas Comptroller of Public Accounts Texas Multiple Award Schedule Terms and Conditions (TXMAS Terms and Conditions), the TXMAS Terms and Conditions control, including the following stipulations:
  - a. With respect to CPA’s or any Customer’s liability or obligations, the terms of this Contract shall control over the terms of any Rental Agreement.
  - b. Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.
  - c. Notwithstanding any terms and conditions in the Base Contract providing otherwise, State Agencies will not pay a deposit.
  
2. Contractor and CPA further agree to amend the Base Contract (Sourcewell) Terms and Conditions as follows:
  - a. Base Contract (Sourcewell) Terms and Conditions Table 8: Value-Added Attributes (Line Item 40 – Response Column), is replaced in its entirety with the following:

Line Item 40 – Response Column:  
For members that warrant online reporting, D&M provides program user guides and online training for personnel tasked with managing maintenance, safety/risk management and telematics. This training is provided to each customer and is free of charge.

Contractor will not sell, give, or offer fuel card services through this contract.
  
  - b. Base Contract (Sourcewell) Terms and Conditions Table 8: Value-Added Attributes (Line Item 41 – Response Column), is replaced in its entirety with the following:

Line Item 41 – Response Column:  
Data analytics is the key to fleet management. D&M and our partners are on the forefront of technology and data capture. Our programs capture data which can be used to lower costs, increase efficiency and increase driver safety. Our custom reporting can integrate hundreds of data points from maintenance, driver safety and telematics into a condensed dashboard which allows our fleet customers to make sound decisions. D&M has partnered with the largest and most advanced players in their respective fields. This will allow the Sourcewell members to know they are receiving cutting edge technology and comprehensive offerings.

Contractor will not sell, give, or offer fuel card services through this contract.

- c. Base Contract (Sourcewell) Terms and Conditions Table 11A: Pricing Grid: Acquisition Terms (Line Item 68 – Charged/Percentage and Details Columns), is replaced in its entirety with the following:

Line Item 68 – Charged/Percentage and Details Columns:

The basis point adder is fixed at 250 basis points for all entities and will not increase for the life of the Contract. Contractor must immediately implement any decrease in the basis point adder that becomes available under the agreed upon terms and conditions. Contractor shall notify CPA of any decrease in the basis point adder by email to: [spd.cmo@cpa.texas.gov](mailto:spd.cmo@cpa.texas.gov)

- d. Base Contract (Sourcewell) Terms and Conditions Table 14A: Depth and Breadth of Offered Equipment Products and Services (Line Item 88 – Response Column), is replaced in its entirety with the following:

Line Item 88 – Response Column:

D&M is a full-service fleet management provider. D&M offers our customers needs-based solutions which allow them to operate their fleet more efficiently while reducing the overall costs associated with operating the fleet. Our programs and services are tailored to provide assistance throughout the lifecycle of the fleet. D&M can provide our customers with any make or model vehicle sold. While this allows our customers access to the complete universe of vehicles, D&M assists our customers in getting the right vehicle for their needs in an unbiased manner. Our goal is to lift as much of the burden of managing the fleet from the member's shoulders as possible. We have programs that provide solutions for every facet of operating a fleet. During our initial needs assessment, we identify areas where our programs or services may/may not be beneficial to the member. We do not try to fix what isn't broken. Our goal is to become a trusted advisor which means we seek to add value on every interaction with the customer. D&M's products and services include: Lifecycle analysis, Full Maintenance program (where maintenance costs are fixed and guaranteed during the life of the lease), Maintenance and Repair Management (where maintenance costs are billed to the end user as they occur), Accident Management, License and Registration, Insurance (Physical Damage and Liability Coverage), Emergency Roadside Assistance, Glass Repair and Replacement, Rental Replacement Vehicles, Vehicle Disposal, a Driver Safety Program, Telematics, and custom reporting.

Contractor will not sell, give, or offer fuel card services through this contract.

- e. Base Contract (Sourcewell) Terms and Conditions Table 14A: Depth and Breadth of Offered Equipment Products and Services (Line Item 89 – Response Column), is replaced in its entirety with the following:

Line Item 89 – Response Column:

Vehicle Leasing, Fleet Management, Disposal, Maintenance, Insurance, Telematics, Reporting.

Contractor will not sell, give, or offer fuel card services through this contract.

- f. Base Contract (Sourcewell) Terms and Conditions Table 14B: Depth and Breadth of Offered Equipment Products and Services (Line Item 93 – Category or Type Column), is replaced in its entirety with the following:

Line Item 93 – Category or Type Column:

In addition to the solutions described in Lines 90-92 above, proposers may include a complementary offering of the following ancillary services:

- i. Short-term rental programs;
- ii. Upfitting of after-market programs;
- iii. Fleet management information technologies, such as: telematics, fleet monitoring, and motor pool/fleet sharing software and systems;
- iv. Roadside assistance including towing, emergency towing, and repairs;
- v. Installation, operation, and maintenance of dedicated charging stations; and
- vi. Vehicle battery longevity monitoring and replacement plans.

Contractor will not sell, give, or offer fuel card services through this contract.

3. Contractor and CPA further agree to amend the Master Lease Agreement as follows:
- a. Master Lease Agreement, Section 3 (Rent and Other Payments) is replaced in its entirety with the following:

3. Rent and Other Payments. Payment of rent and any other amounts due under this Master Lease shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Any and all amounts payable hereunder shall be paid to Lessor at 1400 W. 7th Street, Suite 200, Fort Worth, Texas 76102, or as otherwise directed by Lessor or Lessor's assignee.
  - b. Master Lease Agreement, Section 5 (Non-Appropriation) is replaced in its entirety with the following:

5. Non-Appropriation. Lessee agrees that its responsible financial officer will take all steps reasonably necessary to seek appropriations each year, to the extent permitted by law, that are sufficient to cover Lessee's payment obligations owed during the term of this Lease. Notwithstanding the foregoing and paragraph 3, in the event sufficient funds are not appropriated by the applicable government body or authority of Lessee for a budget period prior to the beginning of that budget period, or sufficient funds are otherwise not legally available with respect to the rent for the budget period for one or more Vehicle(s) (a "Non-Appropriation Event"), Lessee shall have no obligation to make payments for such Vehicle(s) for that budget period and shall only be obligated to make payments for the then current budget period, including any past due amounts. If a Non-Appropriation Event occurs, this Master Lease shall terminate as of the end of the then current budget period for all Vehicles and Schedules affected by the Non-Appropriation Event. Lessee agrees to provide notice of any Non-Appropriation Event promptly. If this Master Lease is terminated in accordance with this Section with respect to some or all Vehicles and Schedules, Lessee agrees to deliver and return the affected Vehicles to the location agreed upon by both parties. The obligation of Lessee to pay rent hereunder will constitute a current expense of Lessee, is from year to year, and does not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder will not in any way be construed to be an

indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

- c. Master Lease Agreement, Section 6 (Deposit) is replaced in its entirety with the following:

6. Deposit. [Intentionally omitted]

- d. Master Lease Agreement, Section 7 (Unconditional Net Lease; No Offset; Survival.) is replaced in its entirety with the following:

7. Unconditional Net Lease; No Offset; Survival. This Lease is a net lease, and Lessee will not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever. Lessee hereby waives any and all existing and future claims and offsets, against any rent or other payments due hereunder and agrees to pay such rent and other amounts as and when due regardless of any claim which may be asserted by Lessee. Lessee by agreeing to make all payments under this Lease without offset has not waived any rights Lessee may have to prosecute any claim against Lessor in an action unrelated to this Lease. This Lease is terminable only as provided herein. The respective obligations of Lessor or Lessee will not be affected, nor will Lessor have any liability whatsoever to Lessee, by reason of any failure or delay in delivery of the Vehicle, any defect in or damage to or loss or destruction of the Vehicle from whatever cause, the prohibition of Lessee's use of the Vehicle, the interference with such use by any government, person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, any lack of right, power or authority of Lessor or Lessee to enter into this Lease or any other cause whether similar or dissimilar to the foregoing. The obligations and liabilities of Lessee hereunder respecting events occurring with respect to the Vehicle while covered hereby will survive the termination of this Lease. Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

Section 403.055 of the Texas Government Code shall govern for unpaid fees or rebates.

- e. Master Lease Agreement, Section 14 (Lease Settlement; Termination Value) is replaced in its entirety with the following:

14. Lease Settlement; Termination Value.

(a) Surrender of Vehicle. At any time after the expiration of one (1) year from delivery of the Vehicle to Lessee (such one year date, the "First Anniversary Date"), or upon proper notification of Non-Appropriation Event as described in Paragraph 5, Lessee, upon not less than thirty (30) days prior notice to Lessor, may surrender the Vehicle to Lessor, for purposes of Lessor selling the Vehicle, at a location reasonably specified by Lessor, as more fully set forth below, provided the Lease is not then in default. Lessee shall so surrender the Vehicle upon expiration of the term hereof, as specified in the Schedule, unless Lessor and Lessee agree to extend this Lease, in which case the Vehicle will be returned on or prior to expiration of the extended term with the same thirty (30) day notice to be given if the return is prior to expiration of the extended term. The parties agree to

return the surrendered Vehicle to a location mutually agreed upon. Following such surrender, Lessee's obligation to make further rent payments will cease (except as otherwise noted in this Section with respect to any rental adjustments), and Lessor shall sell the Vehicle through Lessor's standard wholesale sales procedure for the highest bona fide bid received and open at the time of sale; provided Lessor may choose ultimately to retain the Vehicle. Lessor may move the Vehicle from the location where surrendered to any other location Lessor deems advisable and/or clean or repair the Vehicle in connection with such sale in Lessor's sole discretion. If the amount received by Lessor on account of such sale or the highest bona fide bid received and open at the time of crediting when the Vehicle is retained by Lessor, as appropriate, net in either instance, minus Lessor's costs of sale (including but not limited to sales commission costs and costs of cleaning, repairing or transporting the Vehicle) exceeds the Vehicle's then Termination Value, Lessee shall have no further settlement obligation to Lessor as to the Vehicle, and the excess shall be returned to Lessee after application to any amounts then owed by Lessee to Lessor. If the net amount is less than the Vehicle's Termination Value, Lessee shall pay Lessor the deficiency.

The "Termination Value" of the Vehicle shall equal the sum of: (a) all then due amounts hereunder other than rent; and (b) the then-outstanding Capitalized Cost (as set forth in the Schedule) of the Vehicle plus any accrued and unpaid lease charges. For purpose of calculating the outstanding Capitalized Cost, any Capitalized Cost Reduction (as set forth in the Schedule) will be deducted at lease inception and thereafter rents will be applied as of receipt first to related taxes, then to lease charges which have accrued on the outstanding Capitalized Cost since the prior rent payment at the "level yield" rate implicit in the Lease as to the Vehicle and finally to reduce the outstanding Capitalized Cost. The level yield rate will be calculated as contemplated in Financial Accounting Standards Board, Standard No. 13 for direct financing leases with reference to the net Capitalized Cost after deducting any Capitalized Cost Reduction, Residual Value (as set forth in the Schedule), rents and term for the Vehicle and the 30 day month, 360 day year and timely payment assumptions employed under that Standard.

(b) Purchase of Vehicle: As an alternative to surrendering the Vehicle to Lessor, so long as the Master Lease is not in default, Lessee may purchase the Vehicle for a purchase fee of \$500 plus its then fair market value as reasonably determined by Lessor; provided, however, that such purchase option may only be exercised on the First Anniversary Date. Payment of such purchase price will be subject to the same credit and deficiency rules which apply when a Vehicle is surrendered to Lessor, including but not limited to accrued taxes, lease charges, tolls and other amounts owed by Lessee per this Master Lease. Any transfer of Lessor's interest in a Vehicle, whether to Lessee or a third party, shall be AS-IS, WHERE-IS and without any other warranty.

Further, as an alternative to surrendering the Vehicle to Lessor on the scheduled lease maturity, if the Lease is not in default, Lessee may purchase the Vehicle for a purchase fee of \$500 plus the Residual Value, as specified in the Schedule. Payment of such purchase price will be subject to the same credit and deficiency rules which apply when a Vehicle is surrendered to Lessor, including but not limited to accrued taxes, lease charges, tolls and other amounts owed by Lessee per this Master Lease. Any transfer of Lessor's interest in a Vehicle, whether to Lessee or a third party, shall be AS-IS, WHERE-IS and without any other warranty.

- f. Master Lease Agreement, Section 15 (Insurance) is replaced in its entirety with the following:

15. Insurance. Lessee shall keep the Vehicle insured under a standard collision and comprehensive policy providing coverage for not less than the Termination Value thereof and deductibles not in excess of \$1,000 naming Lessor and/or such other party as Lessor may designate as loss payee, and shall carry public liability and property damage insurance and uninsured motorist coverage with limits of not less than \$1,000,000 single limit covering the Vehicle and naming Lessor and such other parties as Lessor may designate as additional insureds. All said insurance shall be primary, shall name Lessee as a named insured and shall be in a form and with companies approved by Lessor. Lessee shall deliver to Lessor a certificate or other evidence of the required insurance satisfactory to Lessor. Each insurer shall agree to give Lessor at least thirty (30) days written notice before the policy in question may be altered or canceled. The proceeds of such insurance, at the option of Lessor, will be applied toward (a) the restoration or repair of the Vehicle or (b) payment of amounts due under paragraph 12 and/or 13 and (c) payment of other obligations of Lessee then due hereunder. Any excess of such proceeds remaining shall belong to Lessee. In the event Lessee is a self-insured governmental unit pursuant to Chapter 2259 of the Texas Government Code, then Lessee shall provide Lessor a certificate or other documentation that demonstrates that insurance coverage is provided through Lessee's self-insurance fund, and that Lessee's self-insurance and/or self-insurance fund meets the requirements of the State of Texas.

- g. Master Lease Agreement, Section 19 (Indemnification) is intentionally omitted.

- h. Master Lease Agreement, Section 20 (Default and Remedies) is replaced in its entirety with the following:

20. Default and Remedies.

- (a) Events of Default: Any of the following will constitute an "Event of Default" hereunder:

(1) Lessee's failure to pay any amounts due in accordance with Chapter 2251 of the Texas Government Code (provided that a Non-Appropriation Event shall not be considered an Event of Default hereunder);

(2) Lessee's failure to perform any other covenant, obligation or condition of this Master Lease or any other agreement between Lessor and Lessee, provided that such default continues for more than twenty (20) days, except as provided in (3) and (4);

(3) any writ or order of attachment or execution or legal process being levied on or charged against the Vehicle as a result of Lessee's conduct and such is not released or satisfied within ten (10) calendar days;

(4) Lessee's failure to comply with its obligations under paragraph 15 or any attempted assignment of Lessee's interest in this Master Lease or the Vehicle in violation of paragraph 23;

(5) the filing by Lessee of a petition under the Bankruptcy Act, or any amendment thereto, or under any other insolvency law or law providing for the relief of debtors, or the commission by Lessee of an act of bankruptcy;

(6) Lessee ceases to exist or function, in any respect; or

(7) any certificate, statement, representation, warranty, or audit heretofore or hereafter furnished by or on behalf of Lessee that contain false statements or information or prove to be false in any material respect.

(b) Remedies: Upon the occurrence of an Event of Default, Lessor may exercise any one or more of the following remedies:

(1) for an Event of Default under (a)(1) above, Lessor may suspend performance in accordance with Chapter 2251 of the Texas Government Code, which can include the suspension of any obligation Lessor has to permit possession and use of a Vehicle(s);

(2) if Lessee is a "unit of state government," then Lessor may pursue a claim and recover all amounts due hereunder in accordance with Chapter 2260 of the Texas Government Code;

(3) to the extent permitted under Texas law, Lessor may declare all amounts under the Lease due in the current fiscal year of Lessee immediately due and payable, whereupon such amounts shall be immediately due and payable;

(4) to the extent permitted by law, Lessee agrees to deliver and return the affected Vehicles to the location agreed upon by both parties.;

(5) to the extent permitted by law, as liquidated damages for the loss of the bargain and not as a penalty in the event a Vehicle is not returned, Lessor may declare due and payable, and Lessee shall pay a sum equal to, the Termination Value;

(6) to the extent permitted by law, Lessor may retain the Vehicle and credit the reasonable value thereof, after deducting all disposition- or -retrieval-related costs incurred to the date of crediting, to the Termination Value, in which case the credit and deficiency rules set forth in this Master Lease shall apply;

(7) to the extent permitted by law, Lessor may sell or otherwise dispose of the Vehicle(s), whether or not in Lessor's possession, at public or private sale with or without notice, and apply the net proceeds of such disposal, after deducting all costs thereof, including but not limited to costs of transportation, repossession, storage, refurbishing, advertising and broker's fees, to the Termination Value, in which case the credit and deficiency rules set forth in this Master Lease shall apply. If such a disposition is by a re-lease, the proceeds of the disposition shall equal the present value of the rental stream, excluding taxes, under the new lease using as the discount rate the implicit rate in the new lease, or if none, the most recently published Wall Street Journal Prime Rate (or its equivalent) per annum; or

(8) all other remedies permitted by or available at law or in equity.

No right or remedy conferred herein is exclusive of any other right or remedy conferred herein or by law; but all such remedies are cumulative of every other right or remedy conferred hereunder or at law or in equity, by statute or otherwise, and may be exercised concurrently or separately from time to time, except to the extent a conflict exists by law.

- i. Master Lease Agreement, Section 24 (Late Charge; Dishonored Check) is replaced in its entirety with the following:

24. Late Charge; Dishonored Check. Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

- j. Master Lease Agreement, Section 28 (Entire Agreement; Amendment and Modification) is replaced in its entirety with the following:

28. Entire Agreement; Amendment and Modification. This Master Lease incorporates all terms and conditions of the Base Contract, as amended, and any other exhibits or addenda hereto, including but not limited to the Schedule(s), Texas Comptroller of Public Accounts Statewide Procurement Division Texas Multiple Award Schedule Terms and Conditions (attached hereto as Exhibit A, and herein referred to as "TXMAS Terms and Conditions"), the Addendum to Exhibit A, and TXMAS Offer Packet Application Checklist (attached hereto as Exhibit B) (collectively, the aforementioned documents, Schedule(s) and this Master Lease are referred to in this paragraph as the "Agreement"). The Agreement constitutes and contains the entire agreement between Lessee and Lessor regarding the leasing of Vehicles by Lessor to Lessee and any other matters set forth herein, and it supersedes any and all prior agreements and understandings of the parties, whether written or oral, that relate to the subject matter hereof. This Agreement cannot be amended or modified orally; rather, the parties may amend, alter or supplement only by a written agreement signed by both parties. In the event of a conflict between this Agreement and any of the exhibits and attachments referenced herein, the conflict shall be resolved in the following order of priority:

- (a) Addendum to Exhibit A;
- (b) TXMAS Terms and Conditions;
- (c) TXMAS Offer Packet Application Checklist; and
- (d) this Master Lease.

- k. Master Lease Agreement, Section 33 (Governing Law; Venue) is replaced in its entirety with the following:

33. Governing Law; Venue. This Lease will be governed by the laws of the State of Texas. This Lease is performable in whole or in part in Travis County, Texas. Venue for any action related hereto will be in an appropriate court in Travis County, Texas, to which all parties consent.

4. Contractor and CPA further agree to amend the Base Contract Response to Solicitation as follows:
- a. Base Contract Response to Solicitation Table 9A: Warranty, Line Item 51, strikes the following language:

Vehicles are built to the exact specifications of the customer. D&M works with the Sourcewell Member to understand their needs and through these discussions, vehicle specifications are produced for the Member to examine. After close examination by the Member, the Member signs off on the vehicle specs and the order is placed through the OEM. D&M goes through this process, so the needs of the Members are met and to eliminate possible mistakes. ~~Vehicles cannot be exchanged or returned without possible financial repercussions.~~

5. Contractor and CPA further agree to amend the TXMAS Terms and Conditions as follows:
- a. TXMAS Terms and Conditions Section 7(a)(i) and Section 7(a)(iv) (TXMAS Sales Rebate), are deleted in their entirety.
- b. TXMAS Terms and Conditions Section 7(a) (Texas SmartBuy Administrative Fee) is replaced in its entirety with the following:

#### **7. TEXAS SMARTBUY ADMINISTRATIVE FEE AND TXMAS SALES REBATE**

- (a) **Texas SmartBuy Administrative Fee.** CPA will invoice Contractor a per unit fee based upon the total units accumulated for the quarter as outlined below;
- a. \$150 administrative fee per unit delivered to a customer up to 100 units
- b. \$250 administrative fee for all units delivered to a customer exceeding the quarterly volume of 101+ units

Invoicing occurs on the first day of the month following submittal of the quarterly sales report. Payment is due on date indicated on the invoice.

- c. TXMAS Terms and Conditions Section 12 Reporting Requirements (Offline Sales) is replaced in its entirety with the following:

#### **12. REPORTING REQUIREMENTS (OFFLINE SALES)**

Each calendar quarter, Contractor must report to CPA the past quarter's offline sales of goods or services to Customers under the Contract. Quarterly Offline Sales Reports are due no later than 45 days after the end of each calendar quarter. The dollar value of the sale must be the price paid by the Customer for the goods and services under the Contract. If no sales occur, Contractor must report no sales in a manner prescribed by CPA.

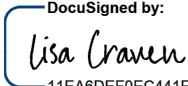
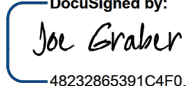
Contractor must submit Quarterly Offline Sales Report electronically to Texas SmartBuy Offline Sales at [tsb.offline.sales@cpa.texas.gov](mailto:tsb.offline.sales@cpa.texas.gov) in the format prescribed by CPA. CPA reserves the right to modify contract reporting requirements at its sole discretion to meet the evolving needs of CPA and its Customers. If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, CPA may terminate the Contract pursuant to Section 20 (Terms and Termination).

**II. Other Terms and Signatures**

1. In the event of conflict between the Contract and this Addendum, this Addendum controls.
2. This Addendum is effective as of the effective date of the Contract as set out in the Notice of Award.
3. The undersigned represent and warrant that they are authorized to sign this Addendum on behalf of the respective parties named below.

**TEXAS COMPTROLLER  
 OF PUBLIC ACCOUNTS**

**COMMERCIAL VEHICLE LEASING,  
 L.L.C. DBA D&M LEASING  
 (CONTRACTOR)**

<p>Signature:</p> <p>DocuSigned by:                    11EA6DEF0EC441E...</p>	<p>Signature:</p> <p>DocuSigned by:                    48232865391C4F0...</p>
<p>Name:                  Lisa Craven</p>	<p>Name:                  Joe Graber</p>
<p>Title:                  Deputy Comptroller</p>	<p>Title:                  President</p>
<p>Date:                  6/19/2023   12:06 PM CDT</p>	<p>Date:                  6/16/2023   12:50 PM PDT</p>

## TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



## STATEWIDE PROCUREMENT DIVISION

**Texas Multiple Award Schedule (TXMAS)  
Offer Packet Application Checklist****TXMAS Requirements**

Applicant must meet the following requirements to be considered for a TXMAS award:

1. Submission of a competitively-awarded base contract ("Base Contract") from a governmental entity with a minimum of one year remaining. See [here](#) for Base Contracts Not Accepted.
2. The Base Contract must be suitable for general use by Texas Comptroller of Public Accounts ("CPA") customers and not specific to a geographical location or limited in use to a specific entity.
3. Submission of a Texas SmartBuy ("TSB") Catalog Template. The catalog must mirror the Base Contract's items/services. The catalog shall comply with TXMAS template requirements and contain verifiable pricing. During the review process, Applicant will be provided an opportunity to correct errors in the submitted catalog. Three erroneous catalog submissions will be grounds for rejection of the Offer Packet. CPA requires all orders under TXMAS contracts to be placed through the Texas SmartBuy online ordering system unless Applicant submits a request for offline sales and accompanying detailed justification for evaluation by CPA's Statewide Procurement Division ("SPD"). Offline sales are sales not specifically ordered through the TSB online ordering system. SPD has sole discretion to decide whether to authorize offline sales.
4. Submission of Base Contract sales for the most recent 12-month period.
5. TXMAS will not accept Free on Board ("FOB") Origin shipping terms for contracts for goods. Applicant agrees to FOB Destination terms and retains risk of loss of the goods (and is therefore responsible for replacing damaged or lost goods) until the goods have reached their final destination.
6. Texas Secretary of State registration or registration in Applicant's formation state.
7. Active Franchise Tax registration with CPA.
8. An Applicant's past performance may affect a potential award and will be considered during evaluation of the Offer Packet. Applicant may be required to provide references for a contract in similar size and scope.

SPD may request additional information during the evaluation of a TXMAS Offer Packet. If SPD does not receive the requested information by the deadline provided, the Offer Packet will be rejected and Applicant may not submit a new TXMAS Offer Packet for similar or the same goods or services for a period of 180 days from the date of rejection. Submission of a Offer Packet does not guarantee award of a TXMAS contract and SPD may reject any response at its discretion.

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



**STATEWIDE PROCUREMENT DIVISION**

**Dealers**

Applicant must identify dealers used on the potential TXMAS contract. The Dealer Authorization and Acceptance forms will be sent separately to Applicant after award and must be completed for each authorized dealer.

**Applicant Information**

**Applicant Information** (All fields are required)

Applicant's Full Legal Name	Commercial Vehicle Leasing, LLC dba D&M Leasing
Base Contract Description	Sourcewell Contract- Fleet Management Services
Base Contract Number	<b>030122-CVL</b>
Current Base Contract Expiration	<b>April 18, 2026</b>
Base Contract Renewal Terms Remaining	Contract may be extended one additional year after expiration
Previous TXMAS Contract Number (if applicable)	<b>N/A</b>
Texas/Federal EIN	<b>90-0996325</b>
Mailing Address	1400 W. 7th St., Suite 200, Ft. Worth, TX 76102
Physical Address (if different)	<b>same</b>
Business Address (if different)	<b>same</b>
Authorized Applicant Representative (AR)	<b>Ed Cain</b>
AR Title	<b>President, Government Division</b>
AR Phone No. & Email	214-412-1656, <a href="mailto:ecain@dmautoleasing.com">ecain@dmautoleasing.com</a>
Alternative Contact (AC)	<b>Coleen Greblick</b>
AC Phone No. & Email	817-509-8919, <a href="mailto:coleen.greblick@dmcommercial.com">coleen.greblick@dmcommercial.com</a>
Purchase Order Email	<a href="mailto:coleen.greblick@dmcommercial.com">coleen.greblick@dmcommercial.com</a>
Accounts Payable Email(s) (For receipt of invoices)	<a href="mailto:lori.andrus@dmcommercial.com">lori.andrus@dmcommercial.com</a> , <a href="mailto:payables@dmautoleasing.com">payables@dmautoleasing.com</a>

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



**STATEWIDE PROCUREMENT DIVISION**

**Required Documents (Label Accordingly in Offer Packet Submission)**

The Offer Packet consists of the following required documents. Incomplete Offer Packets are subject to immediate rejection. All required documents must be submitted by email to: [txmasoffer@cpa.texas.gov](mailto:txmasoffer@cpa.texas.gov).

- |  | YES                                 | NA                                  |
|--|-------------------------------------|-------------------------------------|
| • Signed TXMAS Offer Packet Checklist (this document)  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Base Contract Original Award Notice, signed (for non-GSA base contract)  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Base Contract Original Solicitation (for non-GSA base contract)  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Base Contract Response to Solicitation (for non-GSA base contract)   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Base Contract Terms and Conditions   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Base Contract Amendments / Modifications (GSA SF30)  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Base Contract Renewal / Extension Documents (if applicable)  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Base Contract Exceptions (if applicable)   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Current Base Contract Price List   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Completed Texas Smartbuy Catalog Template  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Base Contract Sales Report for Most Recent 12 Month Period   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Certificate of Insurance (meeting requirements of the Base Contract and the TXMAS Terms and Conditions), if applicable | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ○ Does Applicant employ anyone in the state of Texas?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ○ Would Applicant work in a Customer facility?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

**Applicant is requesting Dealer Authorization forms**

YES  NO

**Exceptions**

**Applicant requests exceptions**

YES  NO

Applicant must identify any requested exceptions on company letterhead or in a Microsoft Excel® spreadsheet. Applicant must clearly identify each exception taken, noting the specific section number and title, detailed description of exception taken, and Applicant’s proposed alternative language using the following format:

Section	Section Title	Exception	Proposed Language

CPA may reject an incomplete exception without consideration. ***Exceptions are discouraged and rarely granted.***

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



STATEWIDE PROCUREMENT DIVISION

**FOB Destination**

Vendor agrees to FOB Destination.

- Yes – Freight included in pricing
- Yes – Freight added as a separate line item
- N/A – Services-only contract

**Child Support Obligation Certification**

Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Applicant certifies that the individuals or business entity named in this TXMAS Offer Packet are not ineligible to receive the specified payment and acknowledges that an awarded Contract may be terminated and payment may be withheld if the certification is inaccurate.

Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must provide in its TXMAS Offer Packet the names and the LAST 4 DIGITS of the social security numbers of each person with at least 25% ownership of the business entity submitting the Offer Packet. This information must be provided to CPA in writing signed by Applicant’s duly authorized representative with its Offer Packet. Submission of an Offer Packet without the required identity disclosures pursuant to Section 231.006(d) of the Texas Family Code constitutes a certification by Applicant that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Applicant. Applicants meeting the ownership criteria must complete the following:

	XXX-XX-
Name	Social Security Number
	XXX-XX-
Name	Social Security Number
	XXX-XX-
Name	Social Security Number
	XXX-XX-
Name	Social Security Number

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



**STATEWIDE PROCUREMENT DIVISION**

**Execution of TXMAS Offer**

By submitting this TXMAS Offer Packet, Applicant represents and warrants that the individual submitting the Offer Packet is authorized to sign such documents on behalf of and bind Applicant. Applicant certifies the information and documentation provided in its Offer Packet are current, accurate, and complete. Applicant has reviewed and agrees to the TXMAS Terms and Conditions with a revision date of August 2022 and takes no exceptions unless otherwise stated in the Offer Packet. Applicant has read and understands the TXMAS Requirements and acknowledges that if its Offer Packet is rejected, Applicant may not resubmit a TXMAS Offer Packet for at least 180 days from the date of rejection. This Offer Packet constitutes a binding offer. In exchange for being considered by CPA for a contract, Applicant gives CPA the right to accept this offer until withdrawn by Applicant. Failure to sign and date the TXMAS Offer Packet where indicated below will result in rejection.

Signature – Authorized Representative: **Charles E. Cain**

Digitally signed by Charles E. Cain  
Date: 2022.11.17 08:55:42 -06'00'

Printed Name: **Charles E. Cain**

Date: **11/17/22**

**AMENDMENT NO. 1  
TO CONTRACT NO. TXMAS-23-97501 – VEHICLE LEASING SERVICES  
BETWEEN  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
AND  
COMMERCIAL VEHICLE LEASING, L.L.C. DBA D&M LEASING**

This Amendment No. 1 (“Amendment”) to Contract No. TXMAS-23-97501 is entered into between Commercial Vehicle Leasing, L.L.C. dba D&M Leasing (“Contractor”) and the Texas Comptroller of Public Accounts (“Comptroller”), an agency of the State of Texas (collectively referred to as “the parties”).

**I. Recitals**

**WHEREAS**, on June 19, 2023, Comptroller and Contractor entered into Contract No. TXMAS-23-97501 (“Contract”); and

**WHEREAS**, the parties desire to amend the Contract to fully replace the original Master Lease Agreement with a revised Master Lease Agreement;

**NOW, THEREFORE**, in consideration of mutual covenants and agreements, contained herein, Comptroller and Contractor agree as follows:

**II. Amendment**

The original Master Lease Agreement with a revision date of November 2022 for Contract No. TXMAS-23-97501 is deleted in its entirety and replaced with a revised Master Lease Agreement with a revision date of November 2023, and attached to this Amendment as Exhibit 1.

**III. Terms and Conditions**

1. Except as expressly stated herein, all other terms of the Contract remain unchanged and are in full force and effect.
2. In the event of conflict between the Contract and this Amendment, this Amendment controls.
3. This Amendment shall become effective as of the date of the signature of the Comptroller, after having first been signed by Contractor.

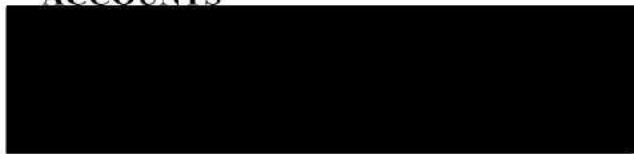
**IV. Signatures**

The undersigned signatories represent and warrant that they have full authority to enter into this Amendment on behalf of the respective parties named below.

**IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS AMENDMENT.**

**TEXAS COMPTROLLER OF PUBLIC  
ACCOUNTS**

**COMMERCIAL VEHICLE LEASING,  
L.L.C. DBA D&M LEASING**



Lisa Craven, Deputy Comptroller

Joe Graber President

\_\_\_\_\_  
(Name, Title)

Date: 11/30/2023 | 6:11 PM CST

Date: 11/30/2023 | 1:20 PM PST

## Exhibit 1

**MASTER OPEN-END VEHICLE  
LEASE AGREEMENT**

MASTER OPEN-END VEHICLE LEASE AGREEMENT ("Master Lease") is entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date") between COMMERCIAL VEHICLE LEASING, L.L.C., d/b/a D&M Leasing ("Lessor") and \_\_\_\_\_ ("Lessee").

1. **Vehicles.** Lessor will, from time to time at the request of Lessee, lease to Lessee motor vehicles (together with all parts, accessions and accessories individually a "Vehicle" and collectively the "Vehicles") to be more fully described in schedules now or hereafter executed with reference to and incorporating therein this Master Lease (individually the "Schedule"). When Lessor accepts Lessee's request to lease a Vehicle, Lessor will order the Vehicle. If, at the time it requests to lease a Vehicle, Lessee requires any Upfitting (as defined in Section 11 below), Lessee shall communicate its needs to Lessor. As appropriate or otherwise agreed upon, Lessor may coordinate, manage, schedule and/or facilitate the Upfitting and/or incorporate the Upfitting (and the cost of the Upfitting) into this Lease, a lease quote and/or a Schedule. Lessee will take delivery of the Vehicle upon notice that the Vehicle is available for delivery. The taking by Lessee of delivery of a Vehicle shall conclusively establish Lessee's acceptance thereof for all purposes of this Master Lease. Subsequent to acceptance of the Vehicle, Lessor shall provide Lessee the Schedule applicable to the Vehicle which describes the Vehicle, indicates the applicable rent and sets forth certain other matters relative to the Vehicle as determined in accordance with the prior agreement of Lessor and Lessee. Lessee will promptly execute and return the specified copies of the Schedule to Lessor. Each Schedule shall constitute a separate lease incorporating the terms of this Master Lease. References in this Master Lease to the "Lease," "this Lease", "hereunder" and "herein" shall be construed to mean each Schedule together with this Master Lease as incorporated herein.

2. **Lessee's Obligations.** Except as provided in Section 3, the obligations of Lessee under this Lease respecting the Vehicle commence at the earliest time any purchase order, confirming purchase order or contract of any nature transfers any right, title, and/or interest in the Vehicle to Lessor or creates or gives rise to any obligation or liability on the part of Lessor respecting the Vehicle. Except as provided in Sections 5, 14 and 19 and subject to Section 7, the term of this Master Lease with respect to the Vehicle shall end upon the date Lessor no longer has any interest therein.

3. **Rent and Other Payments.** Payment of rent and any other amounts due under this Master Lease shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Any and all amounts payable hereunder shall be paid to Lessor at 1400 W. 7th Street, Suite 200, Fort Worth, Texas 76102, or as otherwise directed by Lessor or Lessor's assignee.

4. **Essential Use.** Lessee has a need for the Equipment and expects to make use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term.

5. **Non-Appropriation.** Lessee agrees that its responsible financial officer will take all steps reasonably necessary to seek appropriations each year, to the extent permitted by law, that are sufficient to cover Lessee's payment obligations owed during the term of this Lease. Notwithstanding the foregoing and Section 3, in the event sufficient funds are not appropriated by the applicable government body or authority of Lessee for a budget period prior to the beginning of that budget period, or sufficient funds are otherwise not legally available with respect to the rent for the budget period for one or more Vehicle(s) (a "Non-Appropriation Event"), Lessee shall have no obligation to make payments for such Vehicle(s) for that budget period and shall only be obligated to make payments for the then current budget period, including any past due amounts. If a Non-Appropriation Event occurs, this Master Lease shall terminate as of the end of the then current budget period for all Vehicles and Schedules affected by the Non-Appropriation Event. Lessee agrees to provide notice of any Non-Appropriation Event promptly. If this Master Lease is terminated in accordance with this Section with respect to some or all Vehicles and Schedules, Lessee agrees to deliver and return the affected Vehicles to the location agreed upon by both parties.

The obligation of Lessee to pay rent hereunder will constitute a current expense of Lessee, is from year to year, and does not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder will not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

6. Intentionally Omitted.

7. **Unconditional Net Lease; No Offset; Survival.** This Lease is a net lease, and Lessee will not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever. Lessee hereby waives any and all existing and future claims and offsets, against any rent or other payments due hereunder and agrees to pay such rent and other amounts as and when due regardless of any claim which may be asserted by Lessee. Lessee by agreeing to make all payments under this Lease without offset has not waived any rights Lessee may have to prosecute any claim against Lessor in an action unrelated to this Lease. This Lease is terminable only as provided herein. The respective obligations of Lessor or Lessee will not be affected, nor will Lessor have any liability whatsoever to Lessee, by reason of any failure or delay in delivery of the Vehicle, any defect in or damage to or loss or destruction of the Vehicle from whatever cause, the prohibition of Lessee's use of the Vehicle, the interference with such use by any government, person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, any lack of right, power or authority of Lessor or Lessee to enter into this Lease or any other cause whether similar or dissimilar to the foregoing. The obligations and liabilities of Lessee hereunder respecting events

occurring with respect to the Vehicle while covered hereby will survive the termination of this Lease.

Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

Section 403.055 of the Texas Government Code shall govern for unpaid fees or rebates.

8. **Lessor's Disclaimer of Warranties; Finance Lease Treatment under UCC and Waiver of UCC and Similar Rights.** Lessee agrees that it has selected each Vehicle leased hereunder based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSEE ACKNOWLEDGES THAT: THE VEHICLE IS OF A SIZE, DESIGN, TYPE AND MANUFACTURE SELECTED BY LESSEE; LESSOR IS NOT THE MANUFACTURER OF THE VEHICLE; LESSOR IS NOT AN AGENT FOR THE MANUFACTURER OF THE VEHICLE; LESSOR IS NOT A DEALER WITH RESPECT TO THE VEHICLE; LESSEE IS LEASING THE VEHICLE AS-IS AND THAT ACCORDINGLY LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY EXPRESS AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE VEHICLE AND FURTHER SPECIFICALLY DISCLAIMS ANY AGREEMENT, REPRESENTATION OR WARRANTY IMPLIED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, WITH RESPECT THERETO, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. Lessor does warrant, however, that Lessor has whatever quality of title to the Vehicle Lessor obtains from the supplier thereof, subject to this Lease and any liens or encumbrances created by Lessor pursuant to Section 24 hereof or which Lessee is obligated to discharge or satisfy. Lessee will make any claims as to the Vehicle against the manufacturers or suppliers or other appropriate third parties, and in connection therewith Lessor agrees, so long as no event of default has occurred and is continuing hereunder, that Lessee will have the right to obtain the benefit of and enforce in Lessee's own name and at Lessee's sole expense any manufacturer's or other third party's warranty or agreement in favor of Lessor with respect to the Vehicle to the extent such warranty or agreement is assignable. Lessor will execute and deliver such instruments as may be reasonably requested by Lessee to enable Lessee to obtain such benefits.

LESSEE UNDERSTANDS AND AGREES THAT THIS LEASE WILL BE TREATED AS A "FINANCE LEASE" WITHIN THE PURVIEW OF THE UNIFORM COMMERCIAL CODE ("UCC") AND THUS UNDER LAW LESSEE WILL BE ENTITLED TO THE PROMISES AND WARRANTIES LESSOR RECEIVES UNDER THE CONTRACT EVIDENCING LESSOR'S PURCHASE OF THE VEHICLE, INCLUDING ANY MANUFACTURER, DEALER OR OTHER THIRD-PARTY WARRANTIES. LESSEE ACKNOWLEDGES THAT LESSOR HAS ADVISED LESSEE TO CONTACT THE DEALER FOR A DESCRIPTION OF THOSE PROMISES AND WARRANTIES, INCLUDING ANY RELATED DISCLAIMERS OR LIMITATIONS, INCLUDING OF REMEDIES. CONSISTENT WITH THE ASSUMPTION BY LESSEE OF ALL RISKS RESPECTING THE VEHICLE AND

THE TREATMENT OF THIS LEASE AS A "FINANCE LEASE," LESSEE WAIVES ANY RIGHTS, DEFENSES AND CLAIMS AGAINST LESSOR WHICH RELATE TO THE VEHICLE ARISING UNDER THE UCC OR SIMILAR APPLICABLE LAW.

LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE VEHICLE OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. LESSOR SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE VEHICLE.

9. **No Agency.** LESSEE ACKNOWLEDGES THAT NO AGENT OF A LEASE FACILITATOR OR THE DEALER OF THE VEHICLE IS AN AGENT OF LESSOR. LESSOR IS NOT BOUND BY A REPRESENTATION OF ANY SUCH PARTY AND, AS CONTEMPLATED IN SECTION 29 BELOW, THE ENTIRE AGREEMENT OF LESSOR AND LESSEE CONCERNING THE LEASING OF THE VEHICLE IS CONTAINED IN THIS LEASE AS IT MAY BE AMENDED AS PROVIDED IN THAT SECTION.

10. **Location; Inspection; Use.** Lessee will permanently garage the Vehicle at the Garaging Location designated in the Schedule, or at such other location at which the Vehicle may be garaged with the prior written consent of Lessor, and at all times, unless Lessor otherwise consents in writing, keep the Vehicle in Lessee's possession and control. Lessee will not remove the Vehicle from the United States for any period or from the state in which the Garage Location is located as specified in the applicable Schedule for more than thirty (30) consecutive days without Lessor's prior written consent. Whenever requested by Lessor, Lessee will advise Lessor as to the exact location of the Vehicle. Lessor will have the right to inspect the Vehicle and observe its use during normal business hours, and Lessee will ensure Lessor's ability to enter into and upon the premises where the Vehicle may be located for such purpose. The Vehicle will at all times be used primarily for commercial or business purposes, exclusive of transportation for hire, and operated by duly licensed adult drivers in a careful and proper manner and in compliance with all applicable laws, ordinances, rules and regulations, all conditions and requirements of the policy or policies of insurance required to be carried by Lessee under the terms of this Lease and all manufacturer's instructions and warranty requirements. Any modifications or additions to the Vehicle required by any such governmental edict or insurance policy will be promptly made by Lessee at its own expense.

11. **Alterations and Upfitting.** For purposes of this Lease, the term "Upfitting" means any augmentation, alteration or customization by adding or installing extra or auxiliary features or equipment to a Vehicle. When requesting Upfitting prior to delivery of a Vehicle, Lessor shall have discretion to accept any Upfitting request from Lessee, which will generally not be withheld so long as the requested Upfitting does not detract from or impair the Vehicle's value or functional

utility. Notwithstanding the foregoing, after delivery of a Vehicle, Lessee shall obtain Lessor's prior written consent before making any Upfitting, or any other alterations, additions or improvements of whatever kind or nature to a Vehicle. All additions and improvements of whatever kind or nature made to the Vehicle which cannot be removed without detracting from the Vehicle's value or functional utility shall belong to and immediately become the property of Lessor and shall be returned to Lessor with the Vehicle upon the Vehicle's return to Lessor.

12. **Vehicle Maintenance; Factory Recall.** Lessee, at its own expense, will: (i) maintain the Vehicle in good repair, condition and working order; (ii) will furnish all parts, mechanisms, devices and labor required to keep the Vehicle in such condition; and (iii) will pay all costs of the Vehicle's operation. All maintenance will be procured through qualified service facilities. If the manufacturer announces a recall campaign of which Lessee has knowledge for the repair and/or replacement of defective parts in/on the Vehicle, Lessee shall promptly have the relevant work performed on the Vehicle by a factory-authorized dealer. Lessor will send Lessee a copy of any manufacturer's notification received by Lessor indicating that the Vehicle or any part attached thereto has a potential defect or other possibly unsafe condition unless Lessor has previously sent Lessee the same notice as to another Vehicle of the same type. Lessor has no further obligation with respect to any manufacturer's recall campaign respecting the Vehicle.

13. **Loss and Damage.** Lessee assumes the risk of loss or damage to the Vehicle and, except as provided in this Section, no such event will affect the duties of the parties under this Lease. If the Vehicle is lost, stolen, damaged, confiscated, requisitioned, destroyed or otherwise rendered incapable of being in service, Lessee will notify Lessor thereof within two (2) business days. If the Vehicle has been damaged, and Lessor determines the Vehicle is repairable and/or Lessee's insurer does not declare the Vehicle a total loss, Lessee will cause the repairs to be made. Upon receipt of proof of the making thereof, Lessor will reimburse Lessee's repair costs up to the amount of any insurance proceeds Lessor receives under any insurance Lessee maintains hereunder with any excess being applied as contemplated in Section 15. If Lessor determines the Vehicle is not reasonably repairable, Lessee's insurer declares the Vehicle a total loss or any of the other events specified in the second preceding sentence occurs, Lessee will pay Lessor the Termination Value (as defined and set forth in Section 14 below) of the Vehicle. Upon such payment this Lease shall terminate with respect to such Vehicle, and Lessee or Lessee's insurer will be entitled to retain possession and ownership of the Vehicle on an **AS-IS, WHERE-IS** basis.

14. **Lease Settlement; Termination Value.**

a. **Surrender of Vehicle.** At any time after the expiration of one (1) year from delivery of the Vehicle to Lessee (such one year date, the "First Anniversary Date"), or upon proper notification of Non-Appropriation Event as described in Section 5, Lessee, upon not less than thirty (30) days prior notice to Lessor, may surrender the Vehicle to Lessor, for purposes of Lessor selling the Vehicle, at a location reasonably specified by Lessor, as more fully set forth below, provided the Lease is not then in default. Lessee shall so surrender the Vehicle upon expiration of the term hereof, as specified in the Schedule, unless Lessor and Lessee agree to extend this Lease, in which case the Vehicle will be returned on or prior to expiration of the extended term with the same thirty (30) day

notice to be given if the return is prior to expiration of the extended term. The parties agree to return the surrendered Vehicle to a location mutually agreed upon. Following such surrender, Lessee's obligation to make further rent payments will cease (except as otherwise noted in this Section with respect to any rental adjustments), and Lessor shall sell the Vehicle through Lessor's standard wholesale sales procedure for the highest bona fide bid received and open at the time of sale; provided Lessor may choose ultimately to retain the Vehicle. Lessor may move the Vehicle from the location where surrendered to any other location Lessor deems advisable and/or clean or repair the Vehicle in connection with such sale in Lessor's sole discretion. If the amount received by Lessor on account of such sale or the highest bona fide bid received and open at the time of crediting when the Vehicle is retained by Lessor, as appropriate, net in either instance, Lessor's costs of sale (including but not limited to sales commission costs and costs of cleaning, repairing or transporting the Vehicle) exceeds the Vehicle's then Termination Value, Lessee shall have no further settlement obligation to Lessor as to the Vehicle, and the excess shall be returned to Lessee after application to any amounts then owed by Lessee to Lessor. If the net amount is less than the Vehicle's Termination Value, Lessee shall pay Lessor the deficiency.

b. Termination Value. The "Termination Value" of the Vehicle shall equal the sum of: (a) all then due amounts hereunder other than rent; and (b) the then-outstanding Capitalized Cost (as set forth in the Schedule) of the Vehicle plus any accrued and unpaid lease charges. For purpose of calculating the outstanding Capitalized Cost, any Capitalized Cost Reduction (as set forth in the Schedule) will be deducted at lease inception and thereafter rents will be applied as of receipt first to related taxes, then to lease charges which have accrued on the outstanding Capitalized Cost since the prior rent payment at the "level yield" rate implicit in the Lease as to the Vehicle and finally to reduce the outstanding Capitalized Cost. The level yield rate will be calculated as contemplated in Financial Accounting Standards Board, Standard No. 13 for direct financing leases with reference to the net Capitalized Cost after deducting any Capitalized Cost Reduction, Residual Value (as set forth in the Schedule), rents and term for the Vehicle and the 30 day month, 360 day year and timely payment assumptions employed under that Standard.

c. Purchase of Vehicle.

i. Early Termination Purchase. As an alternative to surrendering the Vehicle to Lessor, so long as the Master Lease is not in default, Lessee may purchase the Vehicle for a purchase fee of \$500 plus the Vehicle's then fair market value as reasonably determined by Lessor; provided, however, that such purchase option may only be exercised on the First Anniversary Date. Payment of such purchase price will be subject to the same credit and deficiency rules which apply when a Vehicle is surrendered to Lessor, including but not limited to accrued taxes, lease charges, tolls and other amounts owed by Lessee per this Master Lease. Any transfer of Lessor's interest in a Vehicle, whether to Lessee or a third party, shall be **AS-IS, WHERE-IS** and without any other warranty.

ii. **Scheduled Termination Purchase.** Further, as an alternative to surrendering the Vehicle to Lessor on the scheduled lease maturity, if the Lease is not in default, Lessee may purchase the Vehicle for a purchase fee of \$500 plus the Residual Value, as specified in the Schedule. Payment of such purchase price will be subject to the same credit and deficiency rules which apply when a Vehicle is surrendered to Lessor, including but not limited to accrued taxes, lease charges, tolls and other amounts owed by Lessee per this Master Lease. Any transfer of Lessor's interest in a Vehicle, whether to Lessee or a third party, shall be **AS-IS, WHERE-IS** and without any other warranty.

15. **Insurance.** Lessee shall keep the Vehicle insured under a standard collision and comprehensive policy providing coverage for not less than the Termination Value thereof and deductibles not in excess of \$1,000 naming Lessor and/or such other party as Lessor may designate as loss payee, and shall carry public liability and property damage insurance and uninsured motorist coverage with limits of not less than \$1,000,000 single limit covering the Vehicle and naming Lessor and such other parties as Lessor may designate as additional insureds and/or loss payee(s). All said insurance shall be primary, shall name Lessee as a named insured and shall be in a form and with companies approved by Lessor. Lessee shall deliver to Lessor a certificate or other evidence of the required insurance satisfactory to Lessor. Lessee's insurance company shall be listed on the certificate of insurance. Such insurance shall be in full force and current as of the date of this Master Lease and/or any Schedule, and Lessee shall maintain such insurance for the entire term of the Lease for the Vehicle or as long as Lessee has possession of the Vehicle, whichever is longer. Each insurer shall agree to give Lessor at least thirty (30) days written notice before the policy in question may be altered or canceled. Lessee agrees that Lessor and any assignee of Lessor are authorized by Lessee to contact Lessee's insurance provider, change the insurance limits, and obtain a copy of the policy in its entirety. The proceeds of such insurance, at the option of Lessor, will be applied toward (a) the restoration or repair of the Vehicle or (b) payment of amounts due under Section 12 and/or 13 and (c) payment of other obligations of Lessee then due hereunder. Any excess of such proceeds remaining shall belong to Lessee.

In the event Lessee is a self-insured governmental unit pursuant to Chapter 2259 of the Texas Government Code, then Lessee shall provide Lessor a certificate or other documentation that demonstrates that insurance coverage is provided through Lessee's self-insurance fund, and that Lessee's self-insurance and/or self-insurance fund meets the requirements of the State of Texas and this Master Lease. If Lessee is a State agency, then in lieu of any insurance from a third-party insurer required under this Section, Lessee may supply Lessor with a letter that agrees to insure the Vehicle(s) for risk of loss or damage with funds available from the Lessee's appropriations. Notwithstanding the foregoing, in the event Lessee is a State agency, Lessee's obligations in this Section are subject to and superseded by any constitutional or statutory restrictions or limitations imposed upon Lessee and its ability to procure insurance.

16. **Titling; Registration.** Lessor shall retain title to all Vehicles leased pursuant to this Master Lease, and no right, title or interest in any Vehicles leased hereunder shall pass to Lessee except as expressly set forth in the Master Lease. Except as Lessor may effect titling or registration, in which event Lessee will reimburse Lessor its related expenses, the Vehicle will at

all times be titled and/or registered by Lessee, at its own expense and as Lessor's agent and attorney-in-fact with full power and authority to register (but without power to affect title to) the Vehicle, in such manner and in such jurisdiction or jurisdictions as Lessor directs. Lessee will promptly notify Lessor of any necessary or advisable re-titling and/or re-registration of the Vehicle in a jurisdiction other than one in which the Vehicle is then titled and/or registered. Lessee will use reasonable efforts to cause any and all documents of title to be furnished Lessor within sixty (60) days of the date of filing any application for titling or for re-titling of the Vehicle by or at the direction of Lessee. Absent Lessee's purchase of the Vehicle, Lessee understands and agrees that the Vehicle shall never be titled in Lessee's name; rather, title for any Vehicle shall reflect Lessor, Lessor's assignee, if any, or any other person as Lessor may determine in its sole discretion as the title owner of the Vehicle.

17. **Taxes; Fines.** Lessee will pay as directed by Lessor or reimburse Lessor for all taxes, including but not limited to property, excise and sales and use taxes (exclusive of federal and state taxes based on Lessor's net income, unless such net income taxes are in substitution for or relieve Lessee from any taxes which Lessee would otherwise be obligated to pay under the terms of this section 17), registration and other fees, charges and assessments whatsoever, however designated, whether based on the rent or levied, assessed or imposed upon the Vehicle or upon, or in respect of, the manufacture, purchase, delivery, ownership, leasing, use, return or other disposition of the Vehicle, now or hereafter levied, assessed or imposed under the authority of a federal, state or local taxing jurisdiction, regardless of when and by whom payable. Returns required in connection with the obligations which Lessee has assumed under this Section 17 will, at Lessor's option, be prepared and filed by Lessor or by Lessee in such manner as Lessor may direct. Each party will upon request furnish the other a copy of any such filing made or any governmental invoice received by such party covering such obligations.

a. **Tax Exemption.** If Lessee holds an exemption which would exempt Lessor and Lessee from any assessment contemplated hereby, Lessee agrees to provide a tax-exempt certificate (or other satisfactory evidence of the exemption) to Lessor within five (5) business days of the Effective Date of this Master Lease. Upon receipt of the tax-exempt certificate, Lessor will not attempt to pay taxes on Lessee's behalf, and Lessee will not be obligated to reimburse Lessor for any such taxes paid. Until presentation of a tax-exempt certificate, Lessor will proceed on the assumption that any applicable tax assessment is due. Once Lessee has provided a tax-exempt certificate, Lessor will adjust its procedures prospectively, but not retroactively. Lessor agrees to assign to Lessee, to the extent assignable, any claim for refund Lessor has with respect to prior payment of an assessment. If Lessee provides a tax-exempt certificate or otherwise claims to be tax exempt and it is subsequently determined that Lessee owes taxes and/or is not tax exempt, then Lessee shall be solely responsible and liable for any and all taxes.

b. **Tickets, Tolls and Fines.** Lessee is solely responsible for paying and shall be liable for all amounts incurred due to Lessee's possession, use and operation of the Vehicle, including but not limited to traffic tickets, parking tickets, toll charges, and all other charges, fines or fees incurred.

18. **Lessor's Payment.** If Lessee fails to procure or maintain insurance that is required to be carried by Lessee under the terms of this Lease, to pay any taxes or other assessments required to be paid by Lessee or to perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, to effect such insurance, pay said assessments or perform such other obligation. In that event, Lessee will reimburse Lessor's cost thereof and pay Lessor a service charge of \$25.

19. Intentionally Omitted.

20. **Default.** Any of the following will constitute an "Event of Default" hereunder:

a. Lessee's failure to pay any amounts due in accordance with Chapter 2251 of the Texas Government Code (provided that a Non-Appropriation Event shall not be considered an Event of Default hereunder);

b. Lessee's failure to perform any other covenant, obligation or condition of this Master Lease or any other agreement between Lessor and Lessee, provided that such default continues for more than twenty (20) days, except as provided in c. and d. below;

c. any writ or order of attachment or execution or legal process being levied on or charged against the Vehicle as a result of Lessee's conduct and such is not released or satisfied within ten (10) calendar days;

d. Lessee's failure to comply with its obligations under Section 15 or any attempted assignment of Lessee's interest in this Lease or to the Vehicle in violation of Section 24;

e. the filing by Lessee of a petition under the Bankruptcy Act, or any amendment thereto, or under any other insolvency law or law providing for the relief of debtors, or the commission by Lessee of an act of bankruptcy;

f. Lessee ceases to exist or function, in any respect; or;

g. any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Lessee that contain false statements or information or prove to be false in any material respect.

21. **Remedies.** Upon the occurrence of an Event of Default, Lessor may exercise any one or more of the following remedies:

a. for an Event of Default under 20.a above, Lessor may suspend performance in accordance with Chapter 2251 of the Texas Government Code, which can include the suspension of any obligation Lessor has to permit possession and use of a Vehicle(s);

b. if Lessee is a "unit of state government," then Lessor may pursue a claim and recover all amounts due hereunder in accordance with Chapter 2260 of the Texas Government Code;

c. to the extent permitted under Texas law, Lessor may declare all amounts under the Lease due in the current fiscal year of Lessee immediately due and payable, whereupon such amounts shall be immediately due and payable;

d. to the extent permitted by law, Lessee agrees to deliver and return the affected Vehicles to the location agreed upon by both parties;

e. to the extent permitted by law, as liquidated damages for the loss of the bargain and not as a penalty in the event a Vehicle is not returned, Lessor may declare due and payable, and Lessee shall pay a sum equal to, the Termination Value;

f. to the extent permitted by law, Lessor may retain the Vehicle and credit the reasonable value thereof, after deducting all disposition- or -retrieval-related costs incurred to the date of crediting, to the Termination Value, in which case the credit and deficiency rules set forth in this Master Lease shall apply;

g. to the extent permitted by law, Lessor may sell or otherwise dispose of the Vehicle(s), whether or not in Lessor's possession, at public or private sale with or without notice, and apply the net proceeds of such disposal, after deducting all costs thereof, including but not limited to costs of transportation, repossession, storage, refurbishing, advertising and broker's fees, to the Termination Value, in which case the credit and deficiency rules set forth in this Master Lease shall apply. If such a disposition is by a release, the proceeds of the disposition shall equal the present value of the rental stream, excluding taxes, under the new lease using as the discount rate the implicit rate in the new lease, or if none, the most recently published Wall Street Journal Prime Rate (or its equivalent) per annum; or;

h. all other remedies permitted by or available at law or in equity.

No right or remedy conferred herein is exclusive of any other right or remedy conferred herein or by law; but all such remedies are cumulative of every other right or remedy conferred hereunder or at law or in equity, by statute or otherwise, and may be exercised concurrently or separately from time to time, except to the extent a conflict exists by law.

22. **Dispute Resolution.** To the extent applicable, and in the event of a dispute regarding whether Lessee has breached the Lease, the parties shall comply with the dispute resolution process as provided in Chapter 2260 of the Texas Government Code. The procedures contained in Chapter 2260 are a prerequisite to suit.

23. **Lessor's Expenses.** Lessee will pay or reimburse Lessor for all costs and expenses, including repossession, Vehicle disposition and court costs and attorney's fees and other legal expenses (including a reasonable fee for services of salaried counsel employed by Lessor) as

provided or permitted by law (including but not limited to Texas Government Code § 2251.043), not offset against amounts recovered or credited as contemplated in Section 21, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof. This obligation includes the payment or reimbursement of all such amounts whether an action is ultimately filed and whether an action filed is ultimately dismissed.

24. **Assignment; Liens.** Without the prior written consent of Lessor, Lessee shall not: (a) assign or otherwise transfer any of Lessee's rights or obligations under this Lease, (b) lend the Vehicle to any party or transfer any other interest in the Vehicle to any party by sublease or otherwise or (c) permit the Vehicle or this Lease to be subject to any lien, charge or encumbrance of any nature not created by Lessor.

Consent to any of the foregoing prohibited acts applies only in the specific, given instance and is not a consent to any subsequent like act by Lessee or any other person. Lessee's rights hereunder are not assignable and shall not be assigned or transferred by operation of law.

All rights of Lessor hereunder and in and to the Vehicle may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to Lessee, but always, however, subject to the rights of Lessee under this Lease. If Lessee is given notice of any such assignment, Lessee will acknowledge receipt thereof in writing and will thereafter pay any amounts due hereunder specified in said notice as directed therein. In the event Lessor assigns this Lease or the rent due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor and Lessee will excuse performance by Lessee of any provision hereof, it being understood that in the event of default or breach by Lessor that Lessee will pursue any rights on account thereof solely against Lessor, that the rights of the assignee will be free of any claim or defense Lessee may have against Lessor and that Lessee will not assert against the assignee any claim or defense Lessee may have against Lessor. Without limiting the generality of the foregoing, the rights of an assignee will not be affected by any claim Lessee may have against Lessor resulting from Lessor's rejection of the Lease in a bankruptcy proceeding or Lessor's interference with Lessee's quiet enjoyment of the Vehicle. No such assignee will be obligated to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Lease, and Lessee agrees that no such assignment shall be deemed to increase or change Lessee's obligations hereunder.

Subject always to the foregoing, this Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

25. **Late Charge; Dishonored Check.** Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

26. **Markings.** If Lessor supplies Lessee with decals or other markings stating that the Vehicle is owned by Lessor, Lessee will affix and keep the same displayed on the Vehicle as directed by Lessor.

27. **Additional Documents.** If requested by a party, the other party shall procure and deliver to the requesting party such documents as the requesting party shall reasonably deem necessary or desirable in connection with this Lease. Without limiting the generality of the foregoing, Lessee further will furnish Lessor: (a) a fiscal year-end financial statement including balance sheet and profit and loss statement within one hundred twenty (120) days of the close of each fiscal year; (b) any other information normally provided by Lessee to the public; and (c) such other financial data or information relative to this Lease and the Vehicle as Lessor may from time to time request.

28. **Non Waiver.** No covenant or condition of this Lease can be waived except by the written consent of the party whose rights are affected. Forbearance or indulgence by a party in any regard whatever shall not constitute a waiver of the covenant or condition to be performed by the other party, and, until complete performance by said party of said covenant or condition, the party to which the performance is owed shall be entitled to invoke any remedy available to that party despite such forbearance or indulgence.

29. **Entire Agreement; Amendment and Modification.** This Master lease incorporates all terms and conditions of the Base Contract, as amended, and any other exhibits or addenda hereto, including but not limited to the Schedule(s), Texas Comptroller of Public Accounts Statewide Procurement Division Texas Multiple Award Schedule Terms and Conditions (attached hereto as Exhibit A, and herein referred to as "TXMAS Terms and Conditions"), the Addendum to Exhibit A, and TXMAS Offer Packet Application Checklist (attached hereto as Exhibit B) (collectively, the aforementioned documents, Schedule(s) and this Master Lease are referred to in this Section as the "Agreement"). The Agreement constitutes and contains the entire agreement between Lessee and Lessor regarding the leasing of Vehicles by Lessor to Lessee and any other matters set forth herein, and it supersedes any and all prior agreements and understandings of the parties, whether written or oral, that relate to the subject matter hereof. This Agreement cannot be amended or modified orally; rather, the parties may amend, alter or supplement only by a written agreement signed by both parties. In the event of a conflict between this Agreement and any of the exhibits and attachments referenced herein, the conflict shall be resolved in the following order of priority:

- a. Addendum to Exhibit A;
- b. TXMAS Terms and Conditions;
- c. TXMAS Offer Packet Application Checklist; and
- d. this Master Lease.

30. **Notices; Designation of Authorized Representative.** Notices under this Lease shall be sufficient if in writing and given personally, mailed, U.S. mail certified postage prepaid, or sent by electronic means (such as email) to the party involved at its respective address set forth below or at such address as such party may provide from time to time on notice given as provided

in this Section. Any such notice so mailed to such address shall be effective when deposited in the United States mail, duly addressed, with postage prepaid. Notices personally delivered will be effective upon delivery. Notice sent via electronic means is effective on the date the recipient receives the notice. For purposes of this Lease, Lessee shall designate its chief administrative officer or other officer or person as its Authorized Representative to receive any notices or other communications required under this Lease. Accordingly, Lessee hereby names and designates the following person as its Authorized Representative:

Authorized Representative Name: NAME  
 Title/Position: INSERT  
 Address: INSERT  
 Phone Number: INSERT  
 Email Address: INSERT

31. **Number; Joint and Several Liability.** Whenever the context of this Lease requires, the singular number includes the plural. If there is more than one Lessee named in this Lease, the liability of each shall be joint and several.

32. **Titles.** The titles to the sections of this Lease are solely for the convenience of the parties and are not an aid in the interpretation hereof.

33. **Time.** Time is of the essence of this Lease and each and all of its provisions.

34. **Governing Law; Venue.** This Lease will be governed by the laws of the State of Texas. This Lease is performable in whole or in part in Travis County, Texas. Venue for any action related hereto will be in an appropriate court in Travis County, Texas, to which all parties consents.

35. **Lessee's Representations and Warranties.** As of the Effective Date of this Master Lease, and the date on which Lessee signs the Schedule, Lessee represents and warrants to Lessor: (a) RESERVED; (b) Lessee is authorized under the constitution and laws of the State to enter into this Lease and the transaction contemplated hereby and to perform all of its obligations hereunder; (c) the execution and delivery of this Master Lease and any Schedule and the performance of Lessee's obligations hereunder and thereunder have been duly authorized by all necessary action on the part of Lessee; (d) no event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof; (e) as of the date of entering into this Master Lease and/or any Schedule, Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to pay the rent scheduled to come due during the current fiscal year and to meet its other obligations under this Lease during the current fiscal year, and such funds have not been expended for other purposes; (f) Lessee has complied with such public bidding requirements as may be applicable to this Lease and the acquisition by Lessee of the Vehicle(s) hereunder; (g) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Lease or any other document,

agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Lease or materially adversely affect the financial condition or properties of Lessee; (h) all authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Lease or in connection with the carrying out by Lessee of its obligations hereunder have been obtained; (i) the entering into and performance of this Lease or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Vehicle(s) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided; (j) each person executing this Master Lease, the Schedule or any other related document on behalf of Lessee has been duly authorized to do so (each person so signing, joins in and makes this representation and warranty along with Lessee); (k) any and all financial data and other information which Lessee has submitted, or will submit, to Lessor is, or shall be at the time of delivery, as appropriate, a true, correct and complete statement of the matters therein contained; (l) this Master Lease and the Schedule constitute a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally; (m) the Vehicle, if delivered in conjunction herewith by Lessor to a department or agency of Lessee or to any other entity or person designated by Lessee, whether at the request of Lessee, such department, agency, entity or person, is the Vehicle for all purposes of this Lease, and Lessee is primarily liable and shall remain primarily liable for its obligations under this Lease with respect to the Vehicle; (n) the Vehicle is essential to the governmental functions of Lessee, that Lessee has an immediate need for the Vehicle and will be used by Lessee solely for the purpose of performing one or more of Lessee's essential governmental functions consistent with the permissible scope of Lessee's governmental authority immediately after delivery and for the foreseeable future; and (o) the Vehicle will not be used in a non-governmental capacity such as by a business or for the personal use of a person or entity other than the Lessee.

36. **Waiver of Trial by Jury.** LESSOR AND LESSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT A RIGHT TO A JURY IS A CONSTITUTIONAL RIGHT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY THE PARTIES. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

37. **Prohibition Against Boycotting Israel & Doing Business with Foreign Terrorist Organization.** Pursuant to sections 2252.152 and 2270.002 of the Texas Government Code, Lessor represents and warrants that it does not boycott Israel and will not boycott Israel during the term of the Master Lease. Further, Lessor represents and warrants that it does not

engage in business with Iran, Sudan, or any foreign terrorist organization (as defined and/or determined by the Texas Comptroller).

38. **Severability.** If any provision in this Master Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect, as if this Master Lease had been executed without any such invalid provision having been included.

39. **Electronic Signatures.** The parties hereto agree that this Master Lease (and any Schedules or any other related or ancillary documents) may be signed by electronic means. Any electronic signature and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law including the Electronic Signatures in Global and National Commerce Act and/or any State law based on the Uniform Electronic Transactions Act. Each party agrees that any electronic signatures may used by the parties in lieu of an original, manual signature page(s) for any and all purposes, and each party agrees that they shall be entitled to rely on any such electronic signature purportedly given by or on behalf of the executing party without further verification. Notwithstanding anything contained herein to the contrary, Lessor is under no obligation to accept an electronic signature in any form or in any format unless expressly agreed to by Lessor pursuant to procedures approved by it. Lessee agrees that, if requested by Lessor, Lessee will provide an original manually executed counterpart.

Certification by Lessee under Section 7701(h)  
of the Internal Revenue Code

Lessee hereby certifies under penalty of perjury that Lessee intends that more than 50% of the use of each Vehicle will be in Lessee's trade or business. Lessee further states that Lessee has been advised that Lessee will not be treated as the owner of any of the Vehicles for federal income tax purposes.

**LESSEE:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Signature Page Follows**

IN WITNESS WHEREOF, the parties hereto have executed this Master Lease as of the Effective Date set out above.

**LESSOR:**

**LESSEE:**

COMMERCIAL VEHICLE LEASING,  
L.L.C., d/b/a D&M Leasing

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:  
17090 N Dallas Parkway,  
Dallas, Texas 75248

Address:  
\_\_\_\_\_  
\_\_\_\_\_



TEXAS GENERAL LAND OFFICE  
COMMISSIONER DAWN BUCKINGHAM, M.D.

November 7, 2024

Commercial Vehicle Leasing, L.L.C., d/b/a D&M Leasing  
17090 N. Dallas Parkway  
Dallas, Texas 75248

ATTN: Charles E. Cain

VIA EMAIL TRANSMISSION

Re: Letter of Self-Insurance for GLO Contract No. 25-033-001  
Master Open-End Vehicle Lease Agreement

Dear Mr. Cain,

The Texas General Land Office (the “GLO”) is an agency of the State of Texas created under Article 14, Section 1 of the Texas Constitution. Pursuant to Chapter 2259 of the Texas Government Code, entitled “Self-Insurance by Governmental Units,” the GLO is self-insured and, accordingly, is not required to purchase insurance under the terms of the above-referenced Master Open-End Vehicle Lease Agreement (the “Agreement”). A fund has been established to protect the GLO and its officers, employees, and agents from any insurable risk or hazard in an amount exceeding all requirements of the Agreement.

Please do not hesitate to contact Ginger Mills at [ginger.mills@glo.texas.gov](mailto:ginger.mills@glo.texas.gov) if you have any questions about this matter.

Sincerely,

DocuSigned by:  
  
3E1127E3B26541D...

Jeff Gordon  
General Counsel  
Texas General Land Office

cc: Nick Orman, Office of General Counsel  
Heather Lagrone, Deputy Director, Community Development and Revitalization (CDR)  
Crystal Dutton, Director, Intergovernmental Relations  
Karl Vogel, Manager, Staff Services