

**CONTRACT for  
RESEARCH SERVICES TO PROVIDE DOMESTIC VISITOR VOLUME AND  
PROFILE RESEARCH**

**Between  
D.K. SHIFFLET & ASSOCIATES, LTD.  
and the  
OFFICE OF THE GOVERNOR  
ECONOMIC DEVELOPMENT AND TOURISM DIVISION**

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**A.1 DESCRIPTION AND REQUIREMENTS**

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**A.1.1 Description of Services Required**

The Office of the Governor, Economic Development and Tourism Division, (OOG) and D.K. Shifflet & Associates, Ltd., (Contractor) hereby contract and agree that Contractor shall perform research services to conduct domestic visitor volume and profile research for the State of Texas. Visitor volume and profile estimates should incorporate a consistent methodology that communicates tourism trends to the State of Texas and that may be tracked over time at national, state, regional, county and city levels. Research estimates will be used to inform and direct strategic marketing efforts promoting Texas as a premier travel destination.

**A.1.2 Term of the Contract**

The Contract shall be for a period beginning September 1, 2014, through August 31, 2015, subject to the renewal and extension provisions below.

**A.1.3 Renewal and Extension Options**

- a. **Contract Renewals** – The Contract may be renewed for two (2) additional twelve (12) month periods, provided both parties agree in writing to do so, prior to the expiration date.
  1. Subject to the availability of funds, OOG and the Contractor may mutually agree to renew the performance period of the Contract by extending the expiration date for a maximum renewal of two (2) additional twelve (12) month periods. OOG will exercise its option to renew the performance period by providing the Contractor with a written advance notice of intent to renew the performance period of the Contract. In the written advance notice of intent, OOG will state the proposed total performance period of the Contract. OOG will follow the written advance notice of intent with a written contract amendment which, when agreed upon in writing by both parties, will extend the expiration date of the performance period. The written contract amendment will be executed no later than the last day of the current contract performance period.
  2. Optional performance period will be limited to that specified above, and shall include the same services, including any amendments, as required in the previous performance period. Unit prices for services provided during any optional performance period shall not exceed those quoted for the optional performance periods by the Contractor in their original proposal.

- b. **Contract Extensions** - Subject to availability of funds, OOG may exercise its right to extend the performance period of the Contract by means of a written notice of intent to the Contractor, followed by a contract amendment. An extension may be used: 1) after the expiration of all available contract renewal periods; 2) in the event that OOG and the Contractor have decided not to renew the Contract; or 3) in the event that circumstances require a temporary, short-term extension of performance under the Contract. OOG will provide the Contractor with a sixty (60) day written advance notice of intent to extend the performance period of the Contract. In this written notice to the Contractor, OOG will state the anticipated number of days or months in the extension period and the proposed total performance period of the Contract. The contract amendment will be issued no later than the last day of the current contract performance period. OOG reserves the right to extend the performance period of the Contract, on a month-to-month basis, for a maximum of twelve (12) additional months. All services provided during any extended performance period shall be subject to the same proposal prices, performance requirements and terms and conditions, including any amendments, as required in the previous performance period.

#### **A.1.4 Termination**

This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

- a. **Termination for Convenience.** OOG and Contractor reserve the right to terminate the contract at any time for convenience, in whole or in part, by providing sixty (60) calendar days advance written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OOG shall be liable for payments limited only to the portion of work authorized by OOG in writing and completed prior to the effective date of cancellation, provided that OOG shall not be liable for any work performed that is not acceptable to OOG and/or does not meet contract requirements. All work products produced by the Contractor and paid for by OOG shall become the property of OOG and shall be tendered upon request.
- b. **Termination for Default.** OOG may, by written notice of default to the Contractor, terminate this contract, in whole or in part, for cause if the Contractor fails to perform in full compliance with the contract requirements, through no fault of OOG. OOG will provide a thirty (30) day written notice of termination to the Contractor (delivered by certified mail, return receipt requested) of intent to terminate, and OOG will provide the Contractor with an opportunity for consultation with OOG prior to termination.
  - 1. Upon receipt of written notice to terminate, the Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to OOG, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Contract, whether completed or in process.
  - 2. Upon termination, OOG may take over the work and pursue the same to completion by contract with another party or otherwise.
  - 3. The Contractor will be required to reimburse OOG for any additional costs incurred as a result

of the default.

- c. **No Liability Upon Termination.** If the Contract is terminated for any reason, the OOG and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

#### **A.1.5 Amendments and Changes**

Any amendment or change to the contract performance requirements whether by modification or supplement, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the Contractor and OOG. Neither party to this Contract will be bound by any oral statements, contracts, or representations contrary to the written contract requirements and terms and conditions.

#### **A.1.6 Definitions**

- a. **Ad Hoc Services:** As required by OOG, the Contractor shall provide additional information and/or analytical services not specifically outlined or included in schedule of report prices (A.1.6(E)) but which fall within the scope of the contract services. *Ad hoc* services may include specific deliverables and hourly rates. Such services will be purchased at OOG's option, on an "as-needed" basis, in "as-needed" quantities, as determined by OOG in response to specific events or opportunities. OOG will request such services, in writing.
- b. **Gantt Chart:** Traditional project management tool that displays resources and deliverables on a time sequenced chart. No particular format is required by this agreement. A chart created using Excel or any other standard application is acceptable. The Gantt chart or flowchart, however, must display key events over time in a manner which will allow managers to track contracts and agreements at least on a monthly basis. More frequent tracking may be required for some projects.
- c. **Good Faith Effort:** Good faith efforts include, but are not limited to, documented policies relating to the use of HUBs, identification of HUBs, and HUB outreach efforts.
- d. **Historically Underutilized Businesses (HUBs):** A minority or women-owned business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161. <http://www.window.state.tx.us/procurement/prog/hub/>
- e. **Schedule of Report Prices:** Itemized fee for each report deliverable. Schedule of Report Prices does not include *Ad Hoc* Services (A.1.6(A)).
- f. **State of Texas Business Day:** Monday through Friday, 8:00 a.m. through 5:00 p.m., except for scheduled State of Texas and national holidays.
- g. **State of Texas Fiscal Year:** the period beginning September 1 and ending August 31.
- h. **Syndicated Data:** Proprietary research data, including but not limited to data contained in Contractor's research database, which Contractor has developed or, later develops, independently of its contract with OOG. Syndicated Data does not include any data that Contractor develops pursuant to a custom research project conducted under this Contract.
- i. **Texas Tourism Regions:** There are seven tourism regions comprised of groups of Texas counties

used to market destinations across the state. These regions include Big Bend Country, Gulf Coast, Hill Country, Panhandle Plains, Piney Woods, Prairies and Lakes, and South Texas Plains.

### A.1.7 Overview

- a. **Mission.** It is the mission of the Texas Tourism program to market Texas as a premier travel destination to domestic non-Texan and international travelers, thereby generating non-Texan travel to the state that increases revenues and creates jobs for Texas communities and travel industry businesses.
- b. **Program Organization.** Detailed information on OOG's Tourism marketing program (Texas Tourism) which is organized into three interrelated functional areas: Travel Research, Advertising and Public Relations can be obtained at [www.travel.state.tx.us](http://www.travel.state.tx.us).
- c. **Current Marketing Plan.** A copy of OOG's current tourism marketing plan can be obtained at [www.travel.state.tx.us](http://www.travel.state.tx.us). The plan includes briefings on each of the primary target markets and identifies key target audiences.
- d. **Travel Research Information.** OOG's travel research reports and information can also be obtained at [www.travel.state.tx.us](http://www.travel.state.tx.us).

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## A.2 STATEMENT OF WORK – SERVICE REQUIREMENTS

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### A.2.1 Objectives

OOG strives to use the most innovative and cost-effective advertising and marketing programs to raise awareness on a state, national and international level of Texas as a premier travel destination. With this in mind, the contractor shall have the following goals while providing Domestic Visitor Volume and Profile research services for OOG:

- a. Research should have well formulated procedures.
- b. Research approach should be well designed and well executed.
- c. Research data and assumptions should be sound.
- d. Research findings should be useful and advance knowledge.
- e. Research implications and recommendations should logically follow from the findings and be explained thoroughly.
- f. Research documentation should be accurate, cogent and understandable to non-technical readers.
- g. Research should be relevant to the client and other stakeholders.
- h. Research should be objective, independent, and balanced.
- i. Research should be verifiable and defensible to a peer review or audit.

## A.2.2 Domestic Visitor Volume and Profile Research Services

- a. Domestic Visitor Volume estimates must include: travel parties, average party size, average stay length, day trip or overnight, average party spending and average number of destinations visited.
- b. Domestic Visitor Profile information must include detailed demographic information and trip specific data like origin market, purpose of stay, trip timing, transportation mode, accommodation type, and top activities.

## A.2.3 Measurement

OOG holds the following expectations for execution of work and how it will be performed:

- a. **Deliverables.** The following deliverables shall address the Domestic Visitor Volume and Profile Research Services and must be delivered by the due dates provided. Contractor shall provide a bound copy of each report along with an electronic copy.

1. Signed Gantt Chart within 10 working days of Contract Receipt.
2. First Calendar Quarter Report (January through March) by last business day of second week of September.
3. Second Calendar Quarter Report (April through June) by last business day of second week of November.
4. Third Calendar Quarter Report (July through September) by last business day of second week of February.
5. Fourth Calendar Quarter Report (October through December) by last business day of second week of May.
6. Annual Calendar Year Reports (January through December) by last business day of July.
7. Annual Presentation if requested by OOG staff (scheduled by mutual agreement) before last business day of August unless extended by OOG for unusual circumstances.

- a. **Reports.** The Contractor, in coordination with OOG's designated representative, shall compile and maintain an ongoing project sheet or Gantt Chart, containing project information such as name and anticipated date of completion along with pertinent deadlines and contact information. Updates and status reports shall be provided to OOG on an as needed basis.

1. **Quarterly Reports:** Must include data providing the latest estimates for the services referenced in A.2.2.a and A.2.2.b for the State of Texas and the United States, accompanying data tables and interactive database. Quarterly reports may include additional analyses created by the Contractor.
2. **Report of Travel to Texas:** Must include data and analyses providing a final annual estimate for the services referenced in A.2.2.a. and A.2.2.b., for the United States and the State of Texas and accompanying data tables. May include additional analyses created by the Contractor.
3. **Destination Reports:** Must include data and analyses providing a final estimate for the

services referenced in A.2.2.a. and A.2.2.b., for the State of Texas, Texas Tourism regions and Texas metropolitan areas and accompanying data tables.

#### **A.2.4 Annual Presentation**

Following the completion of the annual report, and if requested by OOG, Contractor shall provide a professional quality, formal presentation of the study's findings at a Texas location to be determined by OOG. The date and time for presentation shall be determined by the OOG staff as mutually agreed to by both parties; however, if requested, the presentation shall be completed prior to the last day of August unless an extension is granted by OOG in writing. The presentation shall include use of handouts and audio/visual and/or projection equipment and materials, as appropriate. Contractor shall include additional time (approximately one hour) following the Contractor's presentation to allow for a question and answer session.

#### **A.2.5 Contracted Account Staff**

The Contractor shall dedicate qualified professional staffs that are results driven with a minimum of three years' experience in tourism research, analyses reporting, research design, and project management. The contractor must dedicate a primary contact(s) to oversee all aspects of conducting research and reporting and billing. The primary contact(s) will be OOG's primary day-to-day contact. Key account team members must be qualified and experienced research staff with experience on projects similar in nature. OOG reserves the right to approve and accept key personnel.

#### **A.2.6 Coordination of Efforts**

When appropriate, and as required by OOG, the Contractor shall coordinate activities with other OOG contracted firms (*e.g.*, advertising, research, *etc.*), other state agencies and local, regional, and state-wide tourism industry associations and organizations involved with or affected by services provided under this Contract.

#### **A.2.7 Subcontractors**

Subcontractors providing services under this Contract shall meet the same requirements and level of experience as required of Contractor. No subcontract under this Contract shall relieve Contractor of responsibility for ensuring the requested services are provided. The Contractor shall not assign its rights under this Contract or delegate the performance of its duties without prior written approval from the OOG.

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### **A.3 FINANCIAL MATTERS**

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#### **A.3.1 Contract Total**

The total annual payment during the first performance period of this Contract shall not exceed the sum of One Hundred Fifty-Nine Thousand One Hundred Sixty-Five Dollars (\$159,165). Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall require an amendment to the Contract pursuant to Section A.1.5, which will specify the new line item amount and new contract total..

#### **A.3.2 Continued Appropriations**

This Contract is contingent upon the continued availability of appropriated state funds. This Contract shall terminate, without liability or penalty to OOG, in the event that appropriations are not

available.

### **A.3.3 No Debt Against the State**

The award of this Contract does not guarantee that any level of services or funding will be authorized during the term of the Contract. This Contract shall not be construed as creating any debt by or on behalf of the State of Texas, and all obligations of the State of Texas, regarding this Contract, are subject to the continued availability of funds, per Section A.3.2.

### **A.3.4 Purchase of Services**

Excluding the Deliverables described in Section A.2.3, OOG cannot and does not guarantee the purchase of any services during the contract performance period. All quantities of services and work products, excluding the Deliverables described in Section A.2.3, shall be purchased upon OOG's request, in "as needed" quantities, on an "as needed" basis, as determined by OOG.

### **A.3.5 Contract**

The State of Texas shall issue written notice (e.g., contract, contract renewal or extension notice, etc.) authorizing the purchase of services specified in the contract performance requirements. No authorization for the purchase of any services is provided until the Contractor receives such written notice from the state.

Immediately upon receiving the Contract, the Contractor shall identify the person authorized to receive direction from OOG, to manage the work being performed, and to act on behalf of the Contractor ("Authorized Representative"). The Contractor shall ensure that its Authorized Representative, or his or her designee, is available at all times for consultation with OOG.

### **A.3.6 Delivery**

All deliveries shall be made in accordance with the contract requirements. If the Contractor foresees problems, delays or adverse conditions which may prevent the Contractor from meeting delivery requirements, the Contractor shall give written notice to OOG which explains the reason(s) for the delay and which provides an alternate delivery for OOG approval. OOG has the right to extend delivery date if reasons appear valid to OOG, at its sole discretion. The Contractor shall keep OOG advised at all times of delivery status. Default in promised delivery (without accepted reasons) authorizes OOG to purchase services elsewhere and charge full increase, if any, in costs and handling to the defaulting Contractor. No substitutions or cancellations shall be permitted without prior written approval of OOG. Default in delivery may result in termination of the Contract, for reason of default, in accordance with paragraph A.1.4(b).

### **A.3.7 Acceptance of Work Performed**

All work performed by the Contractor shall be accepted in writing by OOG (or designee) before payment will be approved. Acceptance shall be based upon Contractor's compliance with all contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the contract requirements. Should OOG determine the Contractor's work to be of poor quality and/or Contractor fails to perform services which comply with the contract requirements, OOG may require the Contractor to promptly re-perform the services in conformity with the contract requirements, at no cost to OOG, or OOG may refuse to pay for Contractor's work. OOG may further require new performance or a refund in the event that poor quality or unacceptable work is discovered after payment has been made. Failure to perform work in compliance with all contract

requirements may result in termination of the Contract for reason of default, in accordance with A.1.4(b).

### **A.3.8 Invoicing and Payment**

- a. The Contractor shall submit itemized invoices for all services completed, delivered to and accepted by OOG, per the contract requirements.
- b. Invoice amounts shall be in U.S. dollars. Each invoice shall reference the OOG RFP # 300-4-0892. All invoices shall be made payable to the Contractor at the address shown on the Contract.
- c. Invoices and payment inquiries shall be submitted to:  
Accounts.Payable@gov.texas.gov or by mail to:  
Office of the Governor  
Accounts Payable  
P.O. Box 12878  
Austin, Texas 78711-2878
- d. Each invoice is subject to review and approval by OOG before payment will be processed. Normal payment processing time for services which have been completed, delivered to, and approved by OOG is thirty (30) calendar days after receipt of a valid, uncontested invoice. OOG will incur no penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payments shall be made consistent with Chapter 2251, Texas Government Code.
- e. The Contractor shall bill and OOG will make payment to the Contractor for approved costs incurred in accordance with the following:
  1. Compensation Schedule: Attachment A – OOG will pay the schedule of report prices and, to the extent purchased at OOG's option, *ad hoc* service prices pertaining to the applicable performance period identified in Attachment A.
- f. Any invoice that does not comply with the minimum requirements stated above may not be considered valid and may be subject to rejection and/or return to the Contractor.
- g. Upon satisfactory completion by the Contractor of all the tasks identified in the Contract, acceptance of such tasks by OOG, and delivery of the release of claims, the Contractor will be paid the unpaid balance of any money due for such tasks in accordance with the payment terms outlined in the Contract. The Contractor agrees that determination of satisfactory completion will be based entirely on the judgment of the staff of OOG. The Contractor further agrees to exempt OOG and its staff from damages or claims arising from the enforcement of this provision.
- h. If OOG determines that it has overpaid Contractor under the Contract, Contractor shall refund that amount to OOG. OOG may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to Contractor. Contractor shall refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

### **A.3.9 Accounting Systems**

The Contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles and is compatible with the State of Texas Uniform Statewide

Accounting System. The Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

### **A.3.10 Inspections**

Throughout the contract period, all services, including all work products, shall be subject to inspection and test by authorized OOG representatives. OOG reserves the right, at all reasonable times, to have access to and inspect all goods and services being provided by the Contractor and its subcontractors, including but not limited to, all facilities, equipment, supplies, and pertinent records or written material relating to the contract requirements. Failure of the Contractor and its subcontractors to provide reasonable access to authorized OOG representatives who desire to perform such inspections or tests, or failure of services to comply with the Contract terms shall be deemed unacceptable. In the event inspected or tested services are deemed unacceptable by OOG for failure to meet or exceed all contract requirements, the cost of the sample used and the cost of testing shall be borne by the Contractor.

### **A.3.11 Audit, Access to Records**

- a. The Contractor shall maintain and make available for review, inspection and/or audit books, records, documents, and any other evidence pertinent to performance on all work under this Contract, including negotiated changes or amendments thereto, in accordance with accepted professional practices. The Contractor shall also maintain and make available the financial information and data used by it in the preparation or support of any cost submission or cost, price or profit analysis required by the State of Texas under this Contract or any negotiated subcontract or change order and a copy of the cost summary submitted to OOG. The State of Texas, through any of its duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of review, inspection, copying, and/or audit. All such information shall be handled by the parties in accordance with good business ethics. The Contractor shall provide proper facilities within the State of Texas for such access and inspection. The Contractor shall also follow procedures developed by OOG's audit staff.
- b. The Contractor agrees to include A.3.11 in all its contracts and all subcontracts thereunder and all change orders directly related to project performance.
- c. The Contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to A.3.11 above to the State of Texas. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- d. Records under A.3.11 above shall be maintained and made available during the entire performance period of this Contract and until four (4) years from date of final OOG payment for the services provided under this Contract. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned four (4) year period, whichever is later.
- e. Access to records is not limited to the required retention periods. The authorized representatives designated in A.3.11 shall have access to records at any reasonable time for as long as the records are maintained.

- f. The right of access applies to financial records pertaining to all subcontracts and all subcontract change orders and amendments. In addition, this right of access to all records pertains to all subcontracts, subcontract change orders and subcontract amendments, to the extent the records reasonably relate to subcontractor performance, if there is any indication that fraud, gross abuse, or corrupt practices may be involved; or if the subcontract is terminated for default or for convenience.
- g. OOG reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records kept by the Contractor on work performed under this Contract. Reimbursement must be made within thirty (30) business days after receipt of an itemized written request from OOG.
- h. The Contractor shall allow such access to the work product it has created for OOG hereunder as may be necessary to enable any new OOG Contractor of Domestic Visitor Volume and Profile Research to accomplish a smooth transition to the new Contractor.

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## **A.4 ADDITIONAL GENERAL TERMS AND CONDITIONS**

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### **A.4.1 Governing Law, Remedies, Venue**

The Contract shall be governed, construed, and interpreted under the laws of the State of Texas. Notwithstanding any other terms in this Contract, or any exhibits or addenda hereto, or any other documents included in this Contract, all claims, counterclaims, disputes, and other matters in question between OOG and the Contractor arising out of or relating to the Contract or the breach thereof, will be decided in a court of competent jurisdiction in the City of Austin, Travis County, Texas. The parties may agree to submit such claims, counterclaims, disputes, and other matters in question to arbitration or mediation, but only by mutual written contract.

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

### **A.4.2 Licenses, Permits and Laws**

The Contractor warrants and covenants that it has obtained all permits, approvals, and licenses, necessary for its lawful performance of its obligations under this Contract, without costs to OOG. The Contractor shall maintain such licenses during the term of this Contract without additional expense to OOG. The Contractor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with the work required by this Contract.

### **A.4.3 Political Activity**

None of the activities or performances rendered hereunder by the Contractor shall involve lobbying or political activity, including but not limited to, any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

#### **A.4.4 Sectarian Activity**

None of the activities or performances rendered hereunder by the Contractor shall involve any sectarian or religious activity.

#### **A.4.5 Americans with Disabilities Act**

Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.

#### **A.4.6 Proprietary Right/Copyright**

Contractor shall not assert rights at common law or in equity or establish any claim to statutory copyright in any material or information developed in performance of the Contract. OOG shall have the right to use, copyright, reproduce, publish, or distribute any or all of such information and other materials without the necessity of obtaining any permission from Contractor and without expense or charge.

#### **A.4.7 Patent, Trademark, Copyright and Other Infringement Claims**

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

#### **A.4.8 Ownership of Documents**

All work performed under this Contract shall become the property of OOG. However, OOG retains no rights in the Syndicated Data used in the performance of this Contract except for OOG's normal internal business uses. Contractor will provide OOG with a public release version of its Syndicated Data for OOG's public relations and distribution needs. All property rights, including publication rights, to all products developed under this Contract shall be retained by OOG. Contractor shall ensure duplication and duplication rights are secured to OOG from all contracts and subcontractors, prior to delivery of products to OOG. OOG reserves the right to authorize others to use, publish, or reproduce products developed hereunder. Contractor agrees to hold OOG harmless for claims that may arise for infringement related to work under this Contract. As this Contract is terminating, the Contractor shall work cooperatively with OOG and any new contractor to which OOG may award its Domestic Visitor Volume and Profile Research contract in the future so that there is a smooth transition to the new contractor. Contractor's failure to secure all required duplication and duplication rights to OOG for all contracts and subcontracts, prior to delivery of products shall be grounds for termination of the Contract, for reason of default, in accordance with Section A.1.4(b).

#### **A.4.9 Intellectual Property**

- a. Intellectual property includes any discovery or invention for which patent rights may be acquired, any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and any other materials in which intellectual property rights may be obtained.
- b. OOG shall be the sole owner of intellectual property developed under this Contract. OOG hereby reserves the exclusive right to use, publish, or reproduce the intellectual property for sales or otherwise, and to authorize others to do so. However, OOG retains no rights in the Syndicated Data used in the performance of this Contract except for OOG's normal internal business uses. Contractor will provide OOG with a public release version of its Syndicated Data for OOG's public relations and distribution needs.
- c. OOG shall be the sole owner of intellectual property developed under this Contract. OOG hereby reserves the exclusive right to use, publish, or reproduce the intellectual property for sales or otherwise, and to authorize others to do so.
- d. Contractor shall take such steps as are necessary to perfect and to protect OOG's intellectual property rights and all products developed hereunder by the Contractor and its subcontractors. If the Contractor conceives of, puts into practice, discovers, invents, or produces any intellectual property during the course of its work under this Contract, it shall report that fact to OOG.
- e. In performing work under this Contract, the Contractor shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. Contractor shall indemnify and hold OOG harmless for and against any claims for infringement related to its work under this Contract.
- f. The Contractor shall include provisions adequate to effectuate the purposes of this Article in all subcontracts under this Contract in the course of which intellectual property may be produced or acquired. Such provisions shall make it clear that any intellectual property created under such subcontracts belongs solely to OOG.

#### **A.4.10 Data, Publicity, Public Information**

- a. Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any parties other than OOG and the State of Texas through its authorized agents except as otherwise provided by this Contract or after obtaining the prior written approval of OOG.
- b. The Contractor agrees to notify and obtain the written approval of OOG prior to releasing any information to the news media regarding the activities being conducted under this Contract.
- c. The OOG, the Texas Legislature, and any other State agency may, at the OOG's discretion, distribute any report prepared by the Contractor or post any report to an agency website or website of a standing committee of the legislature.
- d. Notwithstanding any provisions of this Contract to the contrary, Contractor understands OOG will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. OOG agrees to notify Contractor in writing within a reasonable time from receipt of a request for

information related to Contractor's work under this Contract. Contractor will cooperate with OOG in the production of documents responsive to the request. OOG will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. The Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

- e. Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the OOG or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Unless otherwise agreed, the information provided shall be in Microsoft Office Word 2007 or other format readable by Microsoft Office Word 2007.

#### **A.4.11 Change of Name**

Contractor shall promptly notify OOG of any change of name in which it holds this Contract. An Addendum to this Contract shall be required upon a change of name which shall specifically state that no other terms or conditions of this Contract are thereby changed. Contractor shall not assign this Contract pursuant to this Article.

#### **A.4.12 Bankruptcy**

Should the Contractor become insolvent, or if the proceedings in bankruptcy should be instituted by or against the Contractor, the remaining or unexpired portion of this Contract shall, at the election of OOG, be terminated.

#### **A.4.13 Contractor Affirmations**

Signing this Contract with a false statement is a material breach of Contract and shall void the Contract, and the Contractor shall be removed from all bid lists. By agreeing to and signing this Contract, the Contractor hereby makes the following certifications and warranties required by statute:

- a. **Delinquent Child Support Obligations:** Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- b. **Prohibited Bids and Contracts:** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and contracts), the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- c. **Previous Employment with the Agency:** The Contractor acknowledges and understands that Section 2252.901 (as amended) of the Texas Government Code prohibits the Office of the

Governor from using state appropriated funds to enter into any employment or consulting contract with any individual who has been previously employed, as an employee, by the Agency within the past twelve (12) months. If the Contractor is an individual, the Contractor certifies that Section 2252.901 (as amended) of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- d. **Buy Texas:** With respect to all services, if any, purchased pursuant to this Contract, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.
- e. **Gift to Public Servant:** The Contractor warrants that it has not given, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Contract. Violation of this requirement may result in the termination of the Contract at the discretion of the OOG.
- f. **Corporate Franchise Tax:** The Contractor certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.
- g. **Debt to State:** The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt or delinquent taxes to the State of Texas, any payments the Contractor is owed under this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.
- h. **Antitrust:** Pursuant to 15 U.S.C. Section 1, et seq., and Chapter 15 of the Texas Business and Commerce Code, neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- i. **Compensation:** Neither the Contractor nor any person or entity which will participate financially in this Contract received compensation for participation in the preparation of the specifications, preparation, or production of the RFP leading to this Contract.
- j. **Conflicts of Interest:** Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to the OOG under this Contract, and that Contractor's provision of the requested items under this Contract will not reasonably create an appearance of impropriety.
- k. **Independent Contractor:** The Contractor agrees and acknowledges that during the existence of this Contract it acts in the capacity of an independent contractor and that the Contractor and its agents, if any, are not an employee of the OOG.
- l. **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:** OOG is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with

the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

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 and the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

- m. **Environmental Protection:** The Contractor shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act and the Federal Water Pollution Control Act, as amended.
- n. **Hurricane Relief:** Texas law prohibits the OOG from awarding a contract to any 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, the Contractor certifies that it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld or rescinded if this certification is inaccurate or false.
- o. **Executive Head:** The OOG may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. Contractor certifies that it does not employ any person who was the Executive Head of a state agency in the past four years, and that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency.
- p. **Terminated Contracts:** By submitting a Proposal, the 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 (5) years nor is it currently prohibited from contracting with a governmental agency. If the Contractor does have such a terminated contract, the Contractor shall identify the contract and provide an explanation for the termination.
- q. **Deceptive Trade Practices; Unfair Business Practices:** The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices 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 the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
- r. **Immigration:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Acts of 1986 and 1990 ("IRCA") regarding employment verification and retention of verification forms for any individuals hired on or after November 6,

1986, who will perform any labor or services under this Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996).

- s. **Change of Management:** The Contractor agrees that the key personnel assigned to work under this Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Contractor unless the OOG agrees to a change in the key personnel.
- t. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised OOG as to the facts and circumstances surrounding the conviction.

#### **A.4.14 Force Majeure**

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

#### **A.4.15 Civil Rights**

The Contractor agrees that no person shall, on the grounds of race, color, religion, sex, National origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

#### **A.4.16 Indemnification**

##### **Acts or Omissions**

**CONTRACTOR shall indemnify and hold harmless the State of Texas and OOG, 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 OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**Infringements**

- a) **CONTRACTOR shall indemnify and hold harmless the State of Texas and OOG, 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 OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
- b) **Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to OOG's specific instructions, (iv) any intellectual property right owned by or licensed to OOG, or (v) any use of the product or service by OOG that is not in conformity with the terms of any applicable license agreement.**
- c) **If Contractor becomes aware of an actual or potential claim, or OOG provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against OOG, shall), at Contractor's sole option and expense; (i) procure for the OOG 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 OOG's use is non-infringing.**

**Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- a) **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 OOG AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF OOG.**

**b) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS 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 OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### **A.4.17 Liability for Damage to Government Property**

The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, selected and engaged by Contractor, in connection with any performance pursuant to this Contract. The Contractor shall notify the OOG Contract Manager in writing of any such damage within one (1) calendar day.

#### **A.4.18 Non-Waiver of Rights**

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or successive breach.

#### **A.4.19 No Waiver of Sovereign Immunity**

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by the OOG or the State of Texas of any immunities from suit or from liability that the OOG or the State may have by operation of law.

#### **A.4.20 Severability**

If any provision of this 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 existing language as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

#### **A.4.21 Compliance with Laws; Dealing with Public Servants**

The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code section 36.02, which prohibits bribery; (ii) Texas Penal Code section 36.09, which prohibits the offering or conferring of benefits to public servants; and (iii) Texas Government Code section 2155.003, which prohibits the chief clerk or any other employee of the Comptroller of Public Accounts from having an interest in, or in any manner being connected with, a contract or bid for a purchase of goods or services by an agency of the state, or accept from any

person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of this Contract. Except where otherwise expressly required by applicable laws and regulations, OOG shall not be responsible for monitoring Contractor's compliance. If Contractor performs any work knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all claims, costs, losses, and damages caused by, arising out of, or resulting there from.

#### **A.4.22 Federal, State, and Local Requirements**

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and state tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or state withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

#### **A.4.23 Drug Free Workplace**

Contractor shall comply with and implement the applicable provisions of the Drug-Free Work Place Act of 1988 and any amendments that may hereafter be issued.

#### **A.4.24 Insurance and Other Security**

a. Contractor will be required to obtain insurance coverage limits not less than the following insurance and bonding coverage outlined below in connection with the Contract:

1. **Commercial General Liability Insurance**

|   |             |
|---|-------------|
| Bodily Injury and Property Damage               |             |
| Each occurrence limit:                          | \$1,000,000 |
| Aggregate limit:                                | \$2,000,000 |
| Medical Expense each person:                    | \$5,000     |
| Personal Injury and Advertising Liability:      | \$1,000,000 |
| Products /Completed Operations Aggregate Limit: | \$2,000,000 |
| Damage to Premises Rented to You:               | \$50,000    |

2. **Worker's Compensation Statutory and Employer Liability**

**Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.**

|   |                    |
|---|--------------------|
| <b>Employers Liability: Each Accident</b> | <b>\$1,000,000</b> |
| <b>Disease- Each Employee</b>             | <b>\$1,000,000</b> |
| <b>Disease-Policy Limit</b>               | <b>\$1,000,000</b> |

- b. All employees furnished by the Contractor shall be considered employees of the Contractor and the Contractor shall be responsible for payments of all Worker's Compensation claims, unemployment compensation claims, unemployment disability claims or claims under similar laws. The Contractor is not required to cover the employees of subcontractors. However, the Contractor must require its subcontractors to maintain the required coverage.
- c. Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to OOG. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide OOG with an executed copy of the policies immediately upon request.

#### **A.4.25 Assignment**

Contractor shall not assign or transfer any interest in the Contract without the prior written consent of OOG.

#### **A.4.26 Dispute Resolution**

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by OOG and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by Contractor under the Contract. If Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the OOG if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the OOG nor any other conduct of any representative of the OOG relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the OOG and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the OOG and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the OOG in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the OOG and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the OOG and Contractor shall, in good faith, utilize

mediation or another non-binding dispute resolution process before pursuing litigation. The OOG participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the OOG of (1) any rights, privileges, defenses, remedies or immunities available to the OOG as an agency of the State of Texas or otherwise available to the OOG; (2) OOG termination rights; or (3) other termination provisions or expiration dates of the Contract.

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

#### **A.4.27 Notice**

Any written notices required under this Contract will be by either hand delivery or by U.S. Mail, certified, return receipt requested, to the following addresses:

*If to the OOG to:*

Office of the Governor  
Attn: Financial Services Division  
P. O. Box 12428  
Austin, Texas 78711-2428

*If to the Contractor to:*

D.K. Shifflet & Associates, Ltd.  
1750 Old Meadow Road, Suite 620  
McLean, Virginia 22102

#### **A.4.28 Public Disclosure**

No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of OOG.

#### **A.4.29 Contract Documentation and Order of Precedence**

- a. The following documents are hereby attached to and incorporated as terms and conditions of performance under this Contract:

Attachment A, Compensation Schedule  
Attachment B, Request for Proposals No. 300-4-0892 and  
Attachment C, Contractor's Proposal.

- b. The terms of this Contract and any amendments shall prevail over any other document that governs the performance of the Parties. In the event of a conflict regarding the interpretation of terms related to the performance of OOG or Contractor, the order of precedence shall be the following:

the Contract and any amendments; the Request for Proposals; and Contractor's proposal and any subsequent clarification.

*[Rest of the page left intentionally blank. Signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed this Contract as of the effective date stated above.

THE STATE OF TEXAS

D.K. SHIFFLET & ASSOCIATES, LTD.

Kathy Walt 11/4/14

KATHY WALT

CHIEF OF STAFF

OFFICE OF THE GOVERNOR

Cheryl Schutz 10/14/14

CHERYL SCHUTZ

VICE PRESIDENT – DESTINATION INTELLIGENCE

**EXHIBIT A**  
**COMPENSATION SCHEDULE**

**RFP No. 300-4-0892**  
**Attachment D**  
**Compensation Schedule**

**Respondent Name:** D.K. Shifflet & Associates Ltd

**Authorized Respondent Signature:**  **DATE:** 8/11/14

**Schedule of Report Prices**

| <b>RENEWAL PERIOD:<br/>9/1/2014 - 8/31/2015</b>                    | <b>Qty</b> | <b>UNIT PRICE</b> | <b>EXT. PRICE</b> |
|--|------------|-------------------|-------------------|
| Quarterly Reports<br>(includes quarterly <i>DIRECTABS</i> updates) | 4          | \$15,115          | \$60,460          |
| Report of Travel to Texas  | 1          | \$53,780          | \$53,780          |
| Destination Report   | 1          | \$44,925          | \$44,925          |

**"AD HOC SERVICES"**

| <b>RENEWAL PERIOD:<br/>9/1/2014 - 8/31/2015</b> | <b>QTY</b> | <b>UNIT PRICE</b> | <b>EXTENSION</b> |
|---|------------|-------------------|------------------|
| Repeat Visitor                                  | 1          | \$ 70,000         | \$ 70,000        |
| Image Follow-Up                                 | 1          | \$ 75,000         | \$ 75,000        |
| International Visitor to Texas                  | 1          | \$70,000          | \$70,000         |
| Hourly Rate (As Needed Basis)                   | 50         | \$150/Hour        | \$7,500          |

**RFP No. 300-4-0892**  
**Attachment D**  
**Compensation Schedule**

**Respondent Name:** D.K. Shifflet & Associates Ltd

**Authorized Respondent Signature:** Cheryl Schuff **DATE:** 8/11/14

Schedule of Report Prices

| <b>RENEWAL PERIOD:<br/>9/1/2015 - 8/31/2016</b>                    | <b>Qty</b> | <b>UNIT PRICE</b> | <b>EXT. PRICE</b> |
|--|------------|-------------------|-------------------|
| Quarterly Reports<br>(includes quarterly <i>DIRECTABS</i> updates) | 4          | \$15,565          | \$62,260          |
| Report of Travel to Texas  | 1          | \$55,395          | \$55,395          |
| Destination Report   | 1          | \$46,275          | \$46,275          |

"AD HOC SERVICES"

| <b>RENEWAL PERIOD:<br/>9/1/2015 - 8/31/2016</b> | <b>QTY</b> | <b>UNIT PRICE</b> | <b>EXTENSION</b> |
|---|------------|-------------------|------------------|
| Repeat Visitor                                  | 1          | \$ 70,000         | \$ 70,000        |
| Image Follow-Up                                 | 1          | \$ 75,000         | \$ 75,000        |
| International Visitor to Texas                  | 1          | \$70,000          | \$70,000         |
| Hourly Rate (As Needed Basis)                   | 50         | \$150/Hour        | \$7,500          |

**RFP No. 300-4-0892**  
**Attachment D**  
**Compensation Schedule**

**Respondent Name:** D.K. Shifflet & Associates Ltd

**Authorized Respondent Signature:**  **DATE:** 8/11/14

Schedule of Report Prices

| <b>RENEWAL PERIOD:<br/>9/1/2016 - 8/31/2017</b>                    | <b>Qty</b> | <b>UNIT PRICE</b> | <b>EXT. PRICE</b> |
|--|------------|-------------------|-------------------|
| Quarterly Reports<br>(includes quarterly <i>DIRECTABS</i> updates) | 4          | \$16,035          | \$64,140          |
| Report of Travel to Texas  | 1          | \$57,055          | \$57,055          |
| Destination Report   | 1          | \$47,665          | \$49,095          |

"AD HOC SERVICES"

| <b>RENEWAL PERIOD:<br/>9/1/2016 - 8/31/2017</b> | <b>QTY</b> | <b>UNIT PRICE</b> | <b>EXTENSION</b> |
|---|------------|-------------------|------------------|
| Repeat Visitor                                  | 1          | \$ 70,000         | \$ 70,000        |
| Image Follow-Up                                 | 1          | \$ 75,000         | \$ 75,000        |
| International Visitor to Texas                  | 1          | \$70,000          | \$70,000         |
| Hourly Rate (As Needed Basis)                   | 50         | \$150/Hour        | \$7,500          |

**RFP No. 300-4-0892**  
**Attachment D**  
**Compensation Schedule**

**Respondent Name:** D.K. Shifflet & Associates Ltd

**Authorized Respondent Signature:**  **DATE:** 8/11/14

**Schedule of Report Prices**

| <b>RENEWAL PERIOD:<br/>9/1/2017 - 8/31/2018</b>                    | <b>Qty</b> | <b>UNIT PRICE</b> | <b>EXT. PRICE</b> |
|--|------------|-------------------|-------------------|
| Quarterly Reports<br>(includes quarterly <i>DIRECTABS</i> updates) | 4          | \$16,515          | \$66,060          |
| Report of Travel to Texas  | 1          | \$58,765          | \$58,765          |
| Destination Report   | 1          | \$49,095          | \$49,095          |

**"AD HOC SERVICES"**

| <b>RENEWAL PERIOD:<br/>9/1/2017 - 8/31/2018</b> | <b>QTY</b> | <b>UNIT PRICE</b> | <b>EXTENSION</b> |
|---|------------|-------------------|------------------|
| Repeat Visitor                                  | 1          | \$ 70,000         | \$ 70,000        |
| Image Follow-Up                                 | 1          | \$ 75,000         | \$ 75,000        |
| International Visitor to Texas                  | 1          | \$70,000          | \$70,000         |
| Hourly Rate (As Needed Basis)                   | 50         | \$150/Hour        | \$7,500          |

**EXHIBIT B**

**Request for Proposals No. 300-4-0892**

See attached.

**EXHIBIT C**

**Contractor's Proposal**

See attached.



**OFFICE OF THE GOVERNOR**

RICK PERRY  
GOVERNOR

November 5, 2014

Ms. Cheryl Schutz  
D.K. Shifflet & Associates, Ltd.  
1750 Old Meadow Road, Suite 620  
McLean, Virginia 22102

Dear Cheryl,

Enclosed please find one (1) fully executed original contract between the Office of the Governor, Economic Development and Tourism office and D.K. Shifflet & Associates, Ltd. For Domestic Visitation and Profile Research.

Please feel free to contact me if you have any questions. I can be reached at (512) 936-9503 or email to [liz.reid@gov.texas.gov](mailto:liz.reid@gov.texas.gov).

Sincerely,

A handwritten signature in cursive script that reads "Liz Reid".

Liz Reid  
Purchaser

Enclosure

AMENDMENT NUMBER ONE  
TO THE  
CONTRACT FOR RESEARCH SERVICES TO PROVIDE  
DOMESTIC VISITOR VOLUME AND PROFILE RESEARCH  
BETWEEN  
D.K. SHIFFLET & ASSOCIATES, LTD.  
AND THE  
OFFICE OF THE GOVERNOR  
ECONOMIC DEVELOPMENT AND TOURISM DIVISION

State of Texas

County of Travis

Dec. 29, 2014

**Section 1.**

The Office of the Governor, Economic Development and Tourism Division (OOG), and D.K. Shifflet & Associates, Ltd. (Contractor) agree to amend Contract Number 300-5-2640 (Contract) between OOG and Contractor as set forth below. The Effective Date of this Amendment Number One is the date written above.

**Section 2.**

Pursuant to Section A.5.1, Section A.3.1, **Contract Total**, is deleted in its entirety and replaced with the following:

Total annual payments under this Contract shall not exceed the sum of the amount of One Hundred Sixty-Nine Thousand and Sixty-Five Dollars (\$169,065). Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall be approved in advance and in writing by OOG.

**Section 3.**

All terms and conditions of the Contract and any prior amendments not in conflict with this Amendment Number Two shall remain in full force and effect.

*[Rest of the page left intentionally blank. Signature page follows.]*

The parties have caused this Amendment Number One to the Contract to be executed by their duly authorized representatives as of the date first specified above.

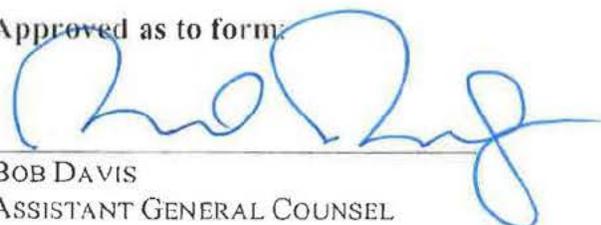
OFFICE OF THE GOVERNOR

D.K. SHIFFLET & ASSOCIATES

  
\_\_\_\_\_  
KATHY WALT  
CHIEF OF STAFF

  
\_\_\_\_\_  
NAME Cheryl Schutz  
TITLE VP DESTINATION INTELLIGENCE

Approved as to form:

  
\_\_\_\_\_  
BOB DAVIS  
ASSISTANT GENERAL COUNSEL

**SECOND AMENDMENT  
TO  
CONTRACT FOR RESEARCH SERVICES TO PROVIDE DOMESTIC  
VISITOR VOLUME AND PROFILE RESEARCH  
BETWEEN  
D.K. SHIFFLET & ASSOCIATES, LTD.  
AND THE  
OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM**

**THIS SECOND AMENDMENT** to the Contract for Research Services to Provide Domestic Visitor Volume and Profile Research (“Second Amendment”) is made and entered into by and between the Office of the Governor, Economic Development and Tourism Office, hereinafter referred to as “OOG,” and D.K. Shifflet & Associates, Ltd., hereinafter referred to as “Contractor.” OOG and Contractor are hereinafter referred to collectively as the “Parties.”

**INDUCEMENTS**

**WHEREAS**, the OOG and Contractor agreed to and executed a Contract for Research Services to Provide Domestic Visitor Volume and Profile Research, hereinafter referred to as the “Original Contract,” for the initial contract period of September 1, 2014 through August 31, 2015; and

**WHEREAS**, the Original Contract was previously been amended on December 29, 2014 to increase the contract total; and

**WHEREAS**, the OOG intends that the Original Contract be renewed for an additional 12 months in accordance with Section A.1.3 of the Original Contract to cover the period from September 1, 2015 through August 31, 2016 with a corresponding increase in the contract total; and

**WHEREAS**, the Parties intend to create a new contract consisting of the provisions of this Second Amendment to the Contract for Research Services to Provide Domestic Visitor Volume and Profile Research and the remaining unchanged provisions of the Original Contract as previously amended.

**NOW THEREFORE**, in consideration of the mutual inducements, mutual covenants and conditions herein, the Parties agree as follows:

**SECTION 1. CHANGE OF CONTRACT TERM**

**1.1 Contract Term.** The Parties agree to amend the Original Contract, Section A.1.2, Term of the Contract, to read as follows:

**Section A.1.2. Term of the Contract.**

The term of contract shall be September 1, 2014 through August 31, 2016, with the First Performance Period being September 1, 2014 through August 31, 2015, and the Second Performance Period being September 1, 2015 through August 31, 2016, subject to the renewal and extension periods below.

**SECTION 2. CHANGE OF CONTRACT TOTAL**

**2.1 Contract Total.** The Parties agree to amend the Original Contract, Section A.3.1, Contract Total, to read as follows:

**Section A.3.1. Contract Total.**

- a. The total payments during the First Period of Performance of this Contract (September 1, 2014 through August 31, 2015) shall not exceed the sum of the amount of One Hundred Sixty-Nine Thousand and Sixty-Five Dollars (\$169,065).
- b. The total payments during the Second Period of Performance of this Contract (September 1, 2015 through August 31, 2016) shall not exceed the sum of the amount of Two Hundred Thirty-Eight Thousand Nine Hundred and Thirty Dollars (\$238,930).
- c. Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall require an amendment to the Contract pursuant to Section A.1.5, which will specify the new line item amount and contract total.

**SECTION 3. ENTIRE AGREEMENT**

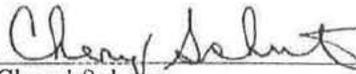
The entire agreement between the OOG and Contractor consists of the provisions of this Second Amendment and the remaining unchanged provisions of the Original Contract as previously amended. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this contract. To the extent of any conflict between this Second Amendment and the Original Contract or any prior amendment(s), the terms of this Second Amendment control and supersede over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written.

**OFFICE OF THE GOVERNOR**

**D.K. SHIFFLET & ASSOCIATES, LTD.**



Chief of Staff or Designee



Cheryl Schutz  
Vice President – Destination Intelligence

Date: 8-28-15

Date: 08/19/15