APPENDIX II - ESSENTIAL CLAUSES AND CERTIFICATIONS

The following forms requiring signatures, initials, and checkmarks must be completed, signed, and included with Proposer's RFP submission and Proposer must be in full agreement to comply with the essential clause and certification clauses. **Failure to return any pages requiring Proposer signature may cause proposal to be marked null and void.**

Davis-Bacon Act (when applicable)

The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

Funding Out

Funding is contingent upon the continued availability of funds as appropriated by state and/or federal sources. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, Contractor will not hold liable ETCOG for payment or damages other than payment owed to Contractor for service already provided at the time of said notice.

Equal Opportunity

ETCOG is an equal employment opportunity employer. All programs under the auspices of ETCOG are equal opportunity entities. Auxiliary aids and services are available upon request to individuals with disabilities. Equal Opportunity Employer/Program Deaf, hard of hearing or speech impaired customers may contact Relay Texas: 800-735-2989 (TD) and 711 (Voice).

The Contractor represents and warrants that it 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.

Restrictions on the use of Certain Public Subsidies

Pursuant to Texas Government Code § 2264.051, the Proposer certifies that the business does not and will not knowingly employ an undocumented worker as defined in Texas Government Code § 2264.001(4).

Prohibition on Certain Telecommunications and Video Surveillance Equipment or Services
As described in 2 CFR § 200.216, recipients and subrecipients are prohibited to obligate or spend grant funds (to include direct and indirect expenditures as well as cost share and program) to: (1) Procure or obtain, (2) Extend or renew a contract to procure or obtain, or (3) Enter into contract (or extend or renew contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Pub. L. 115-232, section 889, covered telecommunications equipment or services means any of the following: i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). iii. Telecommunications or video surveillance services provided by such entities or using such equipment. iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by

Conflict of Interest Questionnaire (Appendix I)
Chapter 176 of the Texas Local Government Code requires vendors and consultants contracting or seeking to contract with ETCOG to file a conflict-of-interest questionnaire (CIQ) if they have an employment or other business relationship with an officer of ETCOG or an ETCOG officer's close family member. The CIQ must be completed and filed with the proposal response if an employment or business relationship defined in the law exists.

Non-Collusion
The undersigned respondent hereby certifies that he/she has made this proposal independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to this proposal, with any other respondent or with any other competitor.

Non-Inducements
The undersigned respondent hereby certifies that neither he/she nor any employee, representative, or agent of the firm responding has offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any WSET Board member, official, or employee of ETCOG or with intent to secure favorable treatment in the awarding. amending. or making of any determination with respect to the performance of this contract.

Abandonment or Default
If the successful Proposer defaults on an agreement resulting from this RFP, ETCOG reserves the right to cancel the agreement without notice and either resolicit or re-reward the next best responsive and responsible respondent. The defaulting proposer will not be considered in the re-solicitation and may not be considered in future solicitations for the

same type of work unless the specifications or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

Proprietary or Confidential Information

Responses may include proprietary or confidential information. ETCOG will take reasonable precautions in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears.

Public Disclosure

No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of the Board.

Buy Texas

In accordance with Texas Government Code, Section 2155.4441, and the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

Build America, Buy America Act (BABAA)

In compliance with applicable Buy America/domestic preference requirements, the Proposer acknowledges, understands, and agrees to the greatest extent practicable under a federal award to the purchase, acquisition, or use of goods, products, or materials offered to be produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Change Management

The Proposer agrees that the key personnel assigned to 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 Proposer unless ETCOG agrees to a change in key personnel.

Antitrust

Neither Proposer nor firm, corporation, partnership, or institution represented by Proposer or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

Liability for Property Damage

Successful Proposer shall be liable for all damages to ETCOG owned, leased, or occupied property and equipment caused by Proposer and its employees, agents, subcontractors, and suppliers, including delivery or cartage company, in connection with any performance pursuant to a Contract as a result of this RFP. The Proposer shall notify ETCOG Contract Manager in writing of any such damage within one (1) calendar day.

Limitation on Authority; No Other Obligations

Successful Proposer shall have no authority to act for or on behalf of ETCOG except as expressly provided for in a contract or agreement resulting from this RFP; no other authority, power, or use is granted or implied. Successful Proposer may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of ETCOG.

Liability for Taxes

Successful Proposer represents and warrants that it shall pay all taxes or similar amounts from any contract or agreement resulting from this RFP, including, but not limited to, any federal, State, or local income, sales, or excise taxes of successful Proposer or its employees. ETCOG shall not be held liable for any taxes resulting from the Successful Proposer executing the performance of any contract or agreement.

Force Majeure

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

Drug-Free Workplace

This certification is required by the Federal Regulations, implementing the Drug-Free Workplace Act of 1988, Pub. L. 100-690, §§ 5150-5160 (41 U.S.C. § 8101 *et seq*.; as amended); for the Department of Agriculture (2 C.F.R. Part 421), Department of Labor (29 C.F.R. Part 94), Department of Education (34 C.F.R. Part 86), and Department of Health and Human Services (2 C.F.R. Part 382).

Proposer represents and warrants it shall comply with the above applicable drug free certification provisions and maintain a drug-free work environment.

Texas State Sales and Use Tax

Pursuant to § 2155.004, Government Code, a state agency may not accept a bid proposal or award a contract to any individual not residing in this state or business entity not incorporated in or whose principal domicile is not in this state unless: the individual or business entity holds a permit issued by the comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in this state or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

The undersigned (RFP, Affirmation & Signature page) **for the above individual or entity conditions, certifies they:**

☐ Hold a permit issued by the comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's, or entity's business in this state; or does not sell tangible personal property or services that are subject to the state and local sales and use tax.

☐ Do not sell tangible personal property or services that are subject to the state and local sales and use tax.

Texas Corporate Franchise Taxes
Pursuant to Article 2.45, Texas Business Corporation Act, State agencies may not award contracts to for-profit corporations that are delinquent in making state franchise tax payments.

The undersigned (RFP, Affirmation & Signature page **certifies the certification marked below applies to its business entity:**

☐ The entity is a non-profit corporation or is otherwise not subject to payment of franchise taxes to the State of Texas.

☐ The entity is a for-profit corporation and certifies that it is not delinquent in its franchise tax payments to the State of Texas.

Lobbying
This certification is required by the Federal Regulations, implementing Section 1352 of the Program Fraud and Civil Remedies Act, Title 31 U.S. Code, for the Department of Agriculture (7 CFR Part 3018), Department of Labor (29 CFR Part 93), Department of Education (34 CFR Part 82), Department of Health and Human Services (45 CFR Part 93).

The undersigned (RFP, Affirmation & Signature page) **certifies:**

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any federal grant award, grant, loan or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant award, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subgrant awards, subgrants, and grant awards under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

Debarment, Suspension, and Other Responsibility Matters
This certification is required by the Federal Regulations, implementing Executive Order 12549, Government- wide Debarment and Suspension, for the Department of Agriculture (7 CFR Part 3017), Department of Labor (29 CFR Part 98), Department of Education (34 CFR Part 85), Department of Health and Human Services (45 CFR Part 76).

The undersigned (RFP, Affirmation & Signature page) **certifies neither it nor its principals:**

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or Agency.

2. Have within a three-year period preceding Agreement, been convicted of or had a civil judgment rendered against them for (a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, (b) violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors and bid rigging, (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims or obstruction of justice, or (d) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility.

3. Are presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in Paragraph (2) of this certification; and have not within a three-year period preceding this grant award had one or more public transactions terminated for cause or default.

Acknowledgment by Proposer of all essential clauses and certifications:

_____

Proposer Signature (return with proposal)