

BoardDocs
End User Agreement
Part I: Order Form

Diligent Corporation ("Diligent"), with an address at 1111 19th Street NW, Washington DC, 20036 provides a proprietary, web-based service known as BoardDocs (the "Service"), that enables organizations to enhance aspects of the governance process and communications between the administration, the public and the board, all on and subject to the terms of this End User Agreement (the "Agreement"). By executing this Agreement, the below named customer ("Customer") agrees to use, and Diligent agrees to make available to Customer, the Service, all in accordance with and subject to the terms and conditions described in this Agreement.

1. General Information.

PROJECT INFORMATION		SALES INFORMATION	
Billing Agent: None / Diligent Corporation		Sales Rep Phone: 404-865-1278 ext. 3523	
Sales Rep Name: Merritt Brooks		Sales Rep E-Mail: mbrooks@diligent.com	
CUSTOMER INFORMATION			
Organization Name: Texas Board of Nursing			
Address: 333 Guadalupe #3-460			
City: Austin		State: TX	Zip: 78701

2. Charges. For each BoardDocs site (as defined by Diligent) ordered under this Agreement, Customer will pay the applicable Annual Recurring Charge ("ARC") and the Non-Recurring Charge ("NRC") set forth below. Once paid, the ARC and NRC are not refundable. The initial NRC and ARC will be invoiced promptly after execution of this Agreement.

Initial Service	Type of Service	Amount
<input type="checkbox"/>	NRC (Non-Recurring Charge)	
<input type="checkbox"/>	BoardDocs Pro Plus ARC (Annual Recurring Charge)	
<input checked="" type="checkbox"/>	BoardDocs Pro ARC (Annual Recurring Charge)	\$12,000
<input type="checkbox"/>	BoardDocs LT Plus ARC (Annual Recurring Charge)	
<input type="checkbox"/>	BoardDocs LT ARC (Annual Recurring Charge)	

3. Term. The "Initial Term" of this Agreement will commence on the Effective Date, as defined below, and continue for an Initial Term of one (1) year thereafter. On the expiration of the Initial Term, the Term of this Agreement will automatically renew and remain in effect for consecutive one- (1-) year periods (each a "Renewal Term") unless either party provides the other party at least thirty (30) days' advance written notice of non-renewal prior to the end of the then-current Term. Diligent may increase the ARC from time to time upon at least sixty (60) days' advance written notice to Customer and which increase shall take place at the commencement of the next Renewal Term. The "Effective Date" of this Agreement shall be September 1, 2019. Notwithstanding anything to the contrary in the Agreement, the Parties agree that Customer's term shall be for a 1-year period, commencing on September 1, 2019 and the Term of the Agreement shall automatically renew in accordance with this Section 3.

BY SIGNING BELOW, THE PERSON SIGNING FOR CUSTOMER PERSONALLY REPRESENTS AND WARRANTS TO DILIGENT THAT HE OR SHE HAS THE AUTHORITY TO SIGN FOR CUSTOMER AND BIND CUSTOMER TO THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES TO BE BOUND BY THE ATTACHED TERMS AND CONDITIONS.

CUSTOMER


 SIGNATURE _____ Date 11/21/19
 KATHERINE THOMAS
 EXECUTIVE DIRECTOR
 Name and Title of Authorized Representative

DILIGENT CORPORATION

DocuSigned by:

 November 22, 2019
 SIGNATURE _____ Date _____
 John Van Arsdale V.P. of Legal
 Name and Title of Authorized Representative

Part II: Additional Terms and Conditions

4. Provision of the Service. Subject to the terms and conditions of this Agreement, Diligent will make the Service available to Customer in accordance with this Agreement, the Service Level Agreement ("**SLA**") and the Diligent Acceptable Use Policy ("**AUP**"), which SLA and AUP are posted on Diligent's web site at <http://www.BoardDocs.com/Home.nsf/legal> and both of which are incorporated into and made a part of this Agreement. Diligent will provide Customer with at least sixty (60) days' advance notice of any change in the SLA or AUP. Diligent will use commercially reasonable efforts to make the Service available to Customer by an implementation date agreed to by the parties, including establishing the hosting of the Service and storage of data uploaded via the Service. Such Service will be co-branded with both parties' "Marks" (as defined in Section 10). Diligent may modify certain components of the Service as required by changes in laws, regulations or technology, requests of customers or to make improvements or correct problems or issues.

5. Payment. Customer agrees to pay Diligent (or its designated billing agent) all charges or fees described in this Agreement within thirty (30) days of Customer's receipt of the applicable invoice. Any amount not paid within such thirty (30) day period will bear interest, until paid, at the lesser of: (a) one and one-half percent (1½%) per month, or (b) the highest rate permitted by applicable law. The ARC will be invoiced annually in advance. In addition to such rates and charges, Customer will be responsible for all taxes and fees assessed or due with regard to its use of the Service and, if applicable, Customer will provide Diligent with any certificate or other evidence of tax-exemption. The continued provision of the Service is conditioned on Customer's creditworthiness and may be subject to a mutually agreeable reasonable assurance of payment or deposit. All charges or fees paid or payable are non-refundable. All amounts payable to Diligent are payable in full in United States dollars unless specifically indicated to the contrary in this Agreement.

6. Termination. This Agreement is effective for the Term described in Section 3. Diligent may terminate this Agreement and/or cease or suspend the provision of all or any part of the Service upon: (a) Customer's failure to pay any amount when due under this Agreement (after ten (10) days' prior written notice of such failure to pay); (b) the filing of a petition in bankruptcy by or against Customer; (c) any illegal, slanderous, infringing or inappropriate "Content" (as defined in Section 8) being loaded on any website or otherwise transmitted or used in connection with the Service which is not immediately ceased and removed after request by Diligent; or (d) any material breach of this Agreement by Customer, including but not limited to any violation of the AUP (all of the foregoing being defined as a "**Customer Caused Termination or Suspension**"). In the case of any such Customer Caused Termination or Suspension, Customer will pay for all accrued and unpaid charges for the Service provided through the date of such Customer Caused Termination or Suspension. Customer may terminate this Agreement upon: (a) the filing of a petition in bankruptcy by or against Diligent; or (b) any material breach of this Agreement by Diligent. Upon any termination of this Agreement, Customer agrees its right to use the Service or Diligent "**Intellectual Property**" and/or "**Marks**" (as defined in Section 10) shall immediately cease and Customer shall cause all of its affiliates to cease using the Service and all of Diligent's Intellectual Property or Marks.

7. Use of the Service. Subject to the terms and conditions of this Agreement, Diligent hereby grants to Customer, and Customer hereby accepts, a limited, non-exclusive, non-sublicenseable, non-transferable, annual license to access the Service for Customer's purposes solely during the Term. Customer will be responsible for all hardware, software (including browser software) and Internet communication links and connectivity necessary to access the Service from their respective facilities, including, without limitation, maintaining sufficient bandwidth to meet Customer's utilization demands. Customer shall be solely responsible for ensuring that each of the persons or entities that accesses the Service through Customer or its systems or with Customer's consent (collectively, "**Users**") complies with all of the terms and conditions of this Agreement, including the AUP and all applicable laws, rules, regulations and ordinances. Customer will not copy, modify, adapt, translate, hypothecate, lease, disclose, loan, sublicense, resell, distribute or create derivative works based on all or any part of the Service or Diligent Intellectual Property or Marks, unless expressly permitted in writing by Diligent. Customer will not attempt to decompile, reverse engineer or disassemble the Service and Customer will be liable to Diligent for any unauthorized copying, reverse engineering or use of the Service by Users. Unless otherwise agreed in writing by Diligent, Customer will not, and will cause each of the Users to not, remove or modify, or attempt to remove or modify, any proprietary notices contained in or associated with the Service. Customer agrees that it is solely responsible for maintaining and ensuring that its Users maintain the confidentiality of any User passwords or access codes entrusted to Customer or its Users, and for all activities resulting from their authorized or unauthorized use.

8. Customer Content and Data. Subject to the terms of this Agreement, Customer is exclusively responsible and liable for all content it posts or transmits using the Service (the "**Content**"), and Diligent has no responsibility or liability therefore, nor will Diligent be responsible for reviewing or determining the accuracy or appropriateness of any such Content. Content does not include data or information regarding other customers of Diligent or any information provided by Diligent. Customer will not use any information accessible from the Service in conjunction with any enterprise unrelated to its governmental duties or not authorized or contemplated by this Agreement. Customer reserves exclusive rights to all of its information stored in fields and as attachments in the Service database. At Customer's request, Diligent will export the data from the Service database in its native format at no charge to Customer. If Customer desires Diligent to convert the data into any other format other than its native format, Customer shall pay Diligent two-hundred and fifty dollars (\$250) per hour for such conversion services. Customer hereby grants to Diligent, and Diligent hereby accepts, a non-exclusive, royalty-free license to use such Content, information and data for purposes of providing the Service to Customer and performing any other obligations under this Agreement, for their business purposes relating to the Service, and for the maintenance or use of business records and information associated with any of the foregoing. Customer is solely responsible for such Content, information and data (including, without limitation the accuracy of such Content, information and data) and for ensuring that Customer has the necessary rights to use such Content, information and data, and Customer will defend, and satisfy any claims, judgments or expenses of or against Diligent, arising out of any third-party claims relating to such Content, information or data. Customer has only the limited rights granted by this Agreement.

9. Acceptable Use. All use of the Service will comply with the Diligent's AUP. Customer will not: (a) post or transmit on or through any website or network through which the Service is provided any libelous, slanderous, obscene or otherwise unlawful information or materials of any kind or any information that invades the privacy or rights of a third party; (b) interfere with or disable the Service or

Diligent's systems or operations in any way; (c) engage in any conduct involving the Service that would constitute a criminal offense or give rise to civil liability under any local, state, federal or other law or regulation; or (d) post, transmit, upload, reproduce or distribute to or through the Service any material or Content protected by copyright, patent, confidentiality, trade secret, trademark, privacy or other intellectual property or proprietary rights without first obtaining sufficient legal consent or written permission from the owner thereof. Unless the law that governs Customer's existence or operation prohibits this, Customer agrees to defend, indemnify and hold harmless Diligent from any and all liabilities, costs and expenses, including reasonable attorneys' fees, arising from or related to a failure of Customer or its Users to comply with all applicable laws, this Agreement or the AUP or Customer's actions or omissions with respect thereto.

10. Ownership and Intellectual Property. "Intellectual Property" means (a) copyrights, trademarks (and all goodwill associated therewith), service marks (and all goodwill associated therewith) and any other rights to any form or medium of expression and all applications for registration of any of the foregoing; (b) trade secrets and confidential information (as defined by applicable law), privacy rights and any other protection for confidential or proprietary information or ideas; (c) patents and patent applications; (d) inventions and any other items, information or theories which are protectable or registrable under any of the copyright, patent, trade secret, confidentiality or other intellectual property laws; and (e) any other similar proprietary rights or interests recognized by applicable law. Customer acknowledges and agrees that Diligent owns (as between Diligent and Customer) and will retain all ownership in the Intellectual Property and all other property rights and interests associated with the Service, the Marks and all derivative works and components of any of the foregoing. Customer specifically disclaims, and acknowledges it will never acquire, claim or seek to register, any Intellectual Property or other property rights or interests in the Service or Diligent Intellectual Property, or any derivative work of any of the foregoing, by operation of law or otherwise. Customer will execute and deliver confirmations or other written instruments as reasonably requested by Diligent to confirm Diligent's exclusive ownership of Diligent's Intellectual Property and the Service. As between Customer and Diligent, Customer will own all Intellectual Property or other property rights or interests in and to Customer's own data and Content. Subject to the terms this Agreement, each party hereby grants to the other during the Term of this Agreement a royalty-free, non-exclusive, non-transferable license to use such party's trademarks and service marks (and the good will associated therewith) provided to the other by such party (the "Marks") solely in connection with the other's performance of this Agreement and in connection with their use of the Service. Each party agrees that any use of the other party's Marks will be in strict accordance with the other party's reasonable trademark and service mark guidelines as provided and revised by the other party from time to time. Diligent reserves all rights not expressly granted to Customer in this Agreement.

11. Disclaimer. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE, CONTENT AND THE INTERNET AND ACCESSES THE SAME AT ITS OWN RISK. DILIGENT EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT ACCESSIBLE OR ACTIONS TAKEN ON THE INTERNET OR PROVIDED BY CUSTOMER OR ITS AFFILIATES, AND DILIGENT EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT OR ACTIONS. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICE AND ANY RELATED SOFTWARE PROVIDED BY DILIGENT ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY DILIGENT, ITS AFFILIATES OR CONTRACTORS WILL CREATE A WARRANTY AND DILIGENT DOES NOT WARRANT THAT THE SERVICE AND ANY RELATED SOFTWARE PROVIDED BY DILIGENT WILL BE UNINTERRUPTED OR ERROR-FREE.

12. Limitations of Liability. NO PARTY OR SUCH PARTY'S AFFILIATES OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE, EXCEPT WITH RESPECT TO ANY INDEMNITY PROVIDED BY CUSTOMER UNDER THIS AGREEMENT. DILIGENT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED BY DILIGENT FROM CUSTOMER IN THE TWELVE (12) MONTHS PRIOR TO THE TIME AT WHICH THE LOSS, COST, CLAIM OR DAMAGES AROSE.

13. Confidentiality. A party's "Confidential Information" means information or data (in oral, written, electronic or other form), excluding any "Trade Secrets" (as defined under applicable law), related to or owned or controlled by such party, valuable to such party and not generally known or readily available through legal means (other than its disclosure in reliance on this Agreement) to the receiving party. Customer acknowledges that the Service contains Confidential Information and Trade Secrets of Diligent. Subject to applicable law, a receiving party may use the disclosing party's Confidential Information or Trade Secrets to perform its obligations and exercise its rights under this Agreement, and may not communicate, disclose, transfer or use the disclosing party's Confidential Information or Trade Secrets for any other purpose without the prior written consent of the disclosing party. The foregoing restrictions shall not apply to any Confidential Information or Trade Secrets of the disclosing party that: (a) are in the public domain, other than due to the actions or omissions of the receiving party; (b) can be proven to have been already known by the receiving party before their disclosure by the disclosing party; (c) were independently developed by the receiving party without access to or use of any Confidential Information or Trade Secrets of the disclosing party. In addition, the receiving party may disclose the disclosing party's Confidential Information or Trade Secrets only to its officers, directors and employees on a need-to-know basis after informing any such discloses that it is confidential and subject to the terms of this Agreement, and provided that such disclosing party remains liable to ensure that such individuals comply with the requirements of this Agreement. Notwithstanding the foregoing, after giving reasonable notice to the disclosing party (which notice affords the disclosing party an opportunity to seek a protective order or other remedy), the receiving party may disclose the disclosing party's Confidential Information or Trade Secrets to the extent required by law or a court of competent jurisdiction. On request, each receiving party will return or destroy all copies or records that contain or reflect the disclosing party's Confidential Information or Trade Secrets. A party may seek injunctive relief to redress or prevent violations of this Section 13, in addition to, and not in lieu of, any other rights and remedies available to such party. Trade Secrets will be protected as required by this Agreement and applicable law for so long as they remain a Trade Secret under applicable law.

14. Miscellaneous

- (a) Unless the law that governs Customer's existence or operation prohibits this, any claim or dispute relating to this Agreement will be governed by Delaware law. The parties agree that the finder of fact must adhere to the terms and conditions in this Agreement.
- (b) If any portion of this Agreement is held to be unenforceable, the unenforceable portion will be construed as nearly as possible to reflect the original intent of the parties and the remainder of the provisions will remain in full force and effect. Except with regard to the SLA, neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights under this Agreement. The terms and conditions of this Agreement will not be more strictly construed against either party since both parties negotiated this mutually acceptable Agreement.
- (c) Notices under this Agreement will be sent to:
 - (i) the Customer at the address set forth above, and
 - (ii) Diligent at the following:

Diligent Corporation
Attn: Legal Counsel
111 West 33rd Street, 16th Floor
New York, NY 10120 USA
Phone: 212-741-8181
Email: legal@diligent.com
- (d) All terms and provisions of this Agreement which should by their nature survive the termination of this Agreement will so survive, including, but not limited to, the relevant provisions of Sections 3, 4, 5, 6, 7 (except any licenses, which are restricted to the Term), 9, 10, 11, 12, 13, and 14.
- (e) Customer understands that the Service is accessed through the Internet and data may travel over the unsecured networks of several third-party Internet service providers and thus may not be secure or confidential. Diligent is not responsible for Internet connectivity to Customer's location or anything that happens by or through Internet or other transmission or access. Diligent will not be liable to Customer, or any User, for any delay or failure to perform any provision of this Agreement to the extent such delay or failure to perform is caused by an event beyond the reasonable control of Diligent, including, without limitation, an act of God; flood; riot; fire; explosion; judicial or governmental act; terrorism; military act; strike or lockout; third-party act or omission; failure of utility or telecommunications facilities; virus, worm, trojan horse or other code, command, file or program designed to interrupt, destroy or limit the functionality of any content, information, software, hardware or equipment; Internet slow-down or failure; lightning or other weather condition or event; or any other act, omission or event outside the control of Diligent (all of which are "Events of Force Majeure").
- (f) This Agreement, the SLA and AUP and other documents or items referenced herein or therein, constitute one and the same legally binding instrument and the entire agreement between Customer and Diligent with respect to the subject matter hereof and expressly supersede any contrary prior written or oral agreements or understandings between the parties. Customer may not assign this Agreement or any of its rights or obligations without the prior written consent of Diligent, which consent will not be unreasonably withheld or delayed. The terms and conditions of this Agreement may not be amended except in a writing signed by both parties.

This Agreement in particular supersedes any previous agreement between Client and Diligent or any Diligent Affiliate for the "BoardDocs" software-as-a-service offering (collectively the "Preceding Contract"), which Preceding Contract is hereby superseded, replaced and terminated by the Parties as of the Effective Date (with Diligent acting on behalf of its Affiliates, as applicable) and provided that nothing under this Agreement relieves Client of any liability for fees due under the Preceding Contract that are attributable prior to the Effective Date. To the extent that the Client owes fees under the Preceding Contract that are attributable from the Effective Date of this Agreement onward, such fees shall be treated as waived, and only those fees due for the Term of this Agreement shall be applicable during such period of time. Any fees that have been prepaid under the Preceding Contract that are attributable from the Effective Date onward shall be applied to the fees due from the Client to Diligent under this Agreement. For the avoidance of doubt, this Section does not relieve Client of any liability for the fees due pursuant to this Agreement.

15. State Purchasing. To the extent permitted by law and approved by the Parties, the terms of this Agreement may be extended for use by other similarly situated state and/or governmental entities ("Related Entities") upon execution by Diligent and the Related Entity of an addendum or order document referencing this Agreement and setting forth all terms and conditions for such use. Applicable fees for any such Related Entity will be quoted by Diligent to the Client and/or any Related Entity upon written request, and shall be incorporated into the addendum or order document.

Addendum A to the Agreement

1 General

1.1 Disaster Recovery Plan.

In accordance with 13 Texas Administrative Code § 6.94(a)(9), relating to third-party custodians of records, upon Customer's written request, Diligent shall provide to Customer a description of its business continuity and disaster recovery plans.

1.2 Dispute Resolution.

Except with respect to a claim for injunctive relief as permitted by applicable law, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code will be used by the parties to attempt to resolve any claim for breach of contract made by Diligent that cannot be resolved in the ordinary course of business. If Diligent's claim for breach of contract cannot be resolved informally with Customer, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Diligent shall submit written notice to the Customer, as required by Chapter 2260. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under Section 2260.051 of the Texas Government Code. Compliance by the Customer with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

Notwithstanding any other provision of this Agreement to the contrary, unless otherwise requested or approved in writing by the Customer, Diligent shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, Diligent may suspend performance during the pendency of such claim or dispute if the Diligent has complied with all provisions of Section 2251.051 of the Texas Government Code.

1.3 Excess Obligations Prohibited; Non-Appropriation of Funds; Legislative Action.

Diligent acknowledges that the ability of the Customer to make payments for any Renewal Term is contingent upon the continued availability of funds. Diligent further acknowledges that funds may not be specifically appropriated for a Renewal Term and the Customer's continual ability enter into Renewal Terms is contingent upon the funding levels appropriated to the Customer by the appropriate legislature or agency. The Customer will use all reasonable efforts to ensure that such funds are available for future Renewal Terms. In the event funds are not appropriated or otherwise available for the Service for any Renewal Term, Customer shall provide notice to Diligent thirty (30) days prior to the commencement of such Renewal Term, and the Agreement shall terminate without penalty upon the expiration of the then-current Initial Term or Renewal Term. Notwithstanding the foregoing, should Customer fail to provide notice to Diligent of non-appropriation, such failure shall not create an obligation on Customer to enter into a Renewal Term with non-appropriated funds. Non-appropriation or non-funding shall not be considered an event of default. Funds already paid pursuant to Section 5 of the Agreement shall not be refunded. Failure to appropriate funds for any subsequent Renewal Term shall not relieve Customer from its obligation to pay any outstanding fees due or owing to Diligent prior to such Renewal Term.

1.4 Governing Law and Venue.

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

1.5 Omitted.

1.6 Texas Public Information Act.

Diligent understands that the Customer will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Diligent shall make any information created or exchanged with the Customer pursuant to the Agreement, 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 Customer.

1.7 State Auditor's Right to Audit.

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds directly under this Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must, to the extent required by law, provide the state auditor with access to any information the state auditor reasonably considers relevant to the investigation or audit. To the extent required by law, Diligent agrees to reasonably cooperate with the State Auditor's Office in the conduct of the audit or investigation, including providing all records reasonably requested in regard to such audit or investigation.

1.8 Technology Access Clause.

Diligent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Upon Customer's written request, Diligent will provide a copy of its most current Voluntary Product Accessible template ("VPAT"), and Diligent warrants that the VPAT will be accurate to the best of Diligent's knowledge as of the date it is provided.

2 **Certifications**

2.1 Antitrust Affirmation.

Diligent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, that, as of the Effective Date, Diligent has not (1) violated any provision of the

Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Response to any competitor or any other person engaged in the same line of business as Diligent.

2.2 Buy Texas Affirmation.

In accordance with Section 2155.4441 of the Texas Government Code, Diligent agrees that during the performance of this Agreement for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this State. Notwithstanding anything to the contrary, the Parties agree that this Section 2.2 is not applicable and Diligent will not have such obligation.

2.3 Child Support Obligation Affirmation.

Under Section 231.006 of the Family Code, Diligent certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

2.4 Computer Equipment Recycling Program.

Diligent certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 Texas Administrative Code Chapter 328.

2.5 Dealings with Public Servants Affirmation.

Pursuant to Section 2155.003 of the Texas Government Code, Diligent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any unlawful: economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Agreement.

2.6 Debts and Delinquencies Affirmation.

Diligent agrees that any payments due under the Agreement shall be applied towards any debt or delinquency that is owed to the State of Texas. In accordance with Section 403.0551 Texas Government Code, Diligent acknowledges that any payments due to Diligent under this Agreement will be first applied toward any debt and/or back taxes Diligent owes the State of Texas. Payments will be so applied until such debts and taxes are paid in full. This Section does not apply if federal law requires payment to be made to Diligent for the services and may not apply if federal law conditions the receipt of the money for this service to the State or the basis of payment being made to Diligent.

2.7 Disclosure of Prior State Employment.

Omitted.

2.8 Entities that Boycott Israel.

In accordance with Section 2270.002 of the Texas Government Code, Diligent hereby represents and warrants that it does not, and shall not for the duration of this Agreement, boycott Israel as the term is defined by Section 808.001(1) of the Texas Government Code.

2.9 E-Verify Program.

Diligent certifies that for contracts for services, Diligent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Agreement to determine the eligibility of:

- All persons employed by Diligent to perform duties within Texas; and
- All persons, including subcontractors, assigned by Diligent to perform work pursuant to the Agreement within the United States of America.

2.10 Excluded Parties.

Diligent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

2.11 Executive Head of a State Agency Affirmation.

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Diligent certifies that, to the best of its knowledge, that it is not (1) the executive head of the Customer, (2) a person who at any time during the four years before the date of the Agreement was the executive head of the Customer, or (3) a person who employs a current or former executive head of the Customer.

2.12 False Statements.

Diligent represents and warrants that, to the best of its knowledge, all statements and information prepared and submitted in connection with this Agreement are accurate. Submitting a false statement or making material misrepresentations to the Customer during the performance of this Agreement constitute a material breach of the Agreement and may void the Agreement.

2.13 Financial Participation Prohibited Affirmation.

Under Section 2155.004(b) of the Texas Government Code, Diligent certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

2.14 Foreign Terrorist Organizations.

Section 2252.152 of the Texas Government Code prohibits the Customer from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Diligent certifies that it not ineligible to receive the Agreement.

2.15 Former Agency Employees.

Diligent represents and warrants that, to the best of its knowledge, none of its employees who will fulfill Diligent's obligations under this Agreement were former employees of the Board during the twelve (12) month period immediately prior to the date of execution of the Agreement.

2.16 No Conflicts of Interest.

Diligent represents and warrants that the provision of the Services will not constitute an actual conflict of interest.

2.17 Prior Disaster Relief Contract Violation.

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Diligent certifies that the individual or business entity named in this Agreement is not ineligible to receive the Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

2.18 Signature Authority.

The undersigned certifies that he or she is authorized to execute a contract as an authorized representative of Diligent.

2.19 Suspension and Debarment.

Diligent certifies that, as of the Effective Date neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Agreement by any state or federal agency.

2.20 Television Equipment Recycling Program.

Omitted.

2.21 Texas Bidder Affirmation.

Diligent certifies that if a Texas address is shown as the address of the Diligent on its Response, Diligent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.