

# NON-STANDARD Microsoft Master Services Agreement – State and Local

Microsoft Master Services Agreement Number  
 Microsoft affiliate to complete

This Microsoft Master Services Agreement is entered into between the following entities as of the effective date identified below (the “master agreement”). This master agreement is comprised of this cover page and the attached terms and conditions, the terms of which are incorporated herein by this reference.

This master agreement contains terms of the relationship between you and us. If you contract for services from us under this master agreement, the specific terms of those transactions will be contained in this master agreement and any statement of services incorporating this master agreement.

If the first statement of services entered into under this master agreement is given an effective date that is earlier than the effective date of this master agreement, the effective date of this master agreement will be that earlier date for the purposes of that statement of services.

By signing below, each party acknowledges that it has read and understood the terms of this master agreement and agrees to be bound by these terms.

<i><b>Customer</b></i>	<i><b>Microsoft Affiliate</b></i>
Name of Customer (please print) <b>State of Texas, acting by and through the Department of Information Resources</b>	Name <b>Microsoft Corporation</b>
Signature on file	Signature on file
Name of person signing (please print) <b>Carl D. Marsh</b>	Name of person signing (please print) <b>David T. Gallagher</b>
Title of person signing (please print) <b>Chief Operating Officer</b>	Title of person signing (please print) <b>Director of Contracts</b>
Signature date <b>10-16-2012</b>	Signature date (may be different than Effective Date) 10-16-2012
DIR Legal 10-12-2012	Effective Date (may be different than Signature Date) 10-16-2012

**Contact information.** Each party will notify the other in writing if any of the information in the following table changes. The \* indicates required fields. By providing contact information, you consent to its use for purposes of administering this master agreement by us, our affiliates, and other parties that help us administer this master agreement.

<b>Customer</b>		
Name of Customer * <b>State of Texas, acting by and through the Department of Information Resources</b>		Contact Name *(This person receives notices under this master agreement pursuant to Section 13 (Notices)).  Joanne.severn@dir.texas.gov
Street Address * <b>300 W. 15th Street, Suite 1300</b>		Contact Email Address *  512-475-0517
City * <b>Austin</b>	State/Province * <b>TX</b>	Phone  512-475-4759
Country * <b>USA</b>	Postal Code * <b>78701</b>	Fax
<b>Microsoft</b>		
Notices to Microsoft should be sent to ( <i>Microsoft affiliate to complete</i> ): Kevin Hartley Senior Attorney Microsoft Corporation 5404 Wisconsin Avenue Chevy Chase, MD 20815		<b>Copies should be sent to:</b> Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052      USA Services Attorney (425) 936-7329 fax

## **Terms and Conditions**

In this master agreement, a “party” or “parties” means you and/or us as the context requires. “You” and “DIR” means the entity that has entered into this master agreement and may also refer, as the context requires, to your affiliates who enter into a statement of services under the master agreement. “We”, “us”, or “our” means the Microsoft entity that has entered into this master agreement and may also refer, as the context requires, to our affiliates. “Affiliate” means (i) with regard to you, any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- a) *A non-profit organization that provides educational, health or human services or assistance to homeless individuals;*
- b) *A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;*
- c) *Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;*
- d) *A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency’s clients;*
- e) *A local workforce development board created under Section 2308.253;*
- f) *A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;*
- g) *The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation’s successor entity under Section 74.1011, Texas Agriculture Code;*
- h) *A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and*
- i) *A nonprofit organization that provides affordable housing.*

Provided, however, that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, any legal entity that we own, which owns us, or which is under common ownership with us. “Ownership” means more than 50% ownership.

1. **Services.** All Premier Support Services and Technical Services (referred to collectively and individually herein, as the context requires, as “services”) are provided to you under the terms and conditions of this master agreement. This master agreement is the result of compliance with the procurement laws of the State of Texas. You issued a posting on the Comptroller of Public Account’s Electronic State Business Daily, posting number DIR-SDD-TMP-179, on July 30, 2012, for Microsoft Master Services Agreement. The precise scope of the services will be specified in the Statements of Services but only effective if within the scope of the DIR-SDD-TMP-179 posting. You or any of your affiliates may enter into statements of services, samples of which are attached hereto as Appendix C, Microsoft Technical Services Work Order and Appendix D, Microsoft Premier Support Services Description, under this master agreement with our local affiliates. Each individual affiliate will be responsible for its compliance with the terms and conditions of this master agreement. You will be

responsible for compliance with the terms in this master agreement applicable to you, but not for the compliance of any affiliates with the terms applicable to affiliates. Our ability to deliver the services depends upon Your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This master agreement does not obligate either party or its affiliates to enter into any statements of services.

## **2. Ownership and license of service deliverables.**

### **a. Definitions**

**“compliance check”** an audit of our compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

**“developments”** means any computer code or materials (other than products, fixes or pre-existing work) developed by us or in collaboration with you which is provided to you in the course of performance of a statement of services;

**“fixes”** means product fixes, modifications or enhancements or their derivatives that we either release generally, (such as commercial product service packs) or that we provide to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds);

**“joint ownership”** means each party has the right to independently exercise any and all rights of ownership now known or here after created or recognized, including without limitation the rights to use, reproduce, modify and distribute the developments for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties;

**“open source license terms”** means license terms that require computer code to be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge;

**“pre-existing work”** means computer code or materials (other than products and fixes) developed or otherwise obtained independently of the efforts of a party under a statement of services;

**“product”** means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing we make available to you for license which is published by us, our affiliates, or a third party;

**“service deliverables”** means any computer code or materials, other than products or fixes, that we leave with you at the conclusion of our performance of services;

**“services”** means all support, consulting and other services or advice, including any resulting deliverables provided to you under the terms and conditions of this agreement;

**b. Products and Fixes.** All products, related solutions and fixes provided under a statement of services will be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. You are responsible for paying any licensing fees associated with products.

**c. Pre-existing work.** All Pre-existing work will remain the sole property of the party providing the pre-existing work. During the performance of services, each party grants to the other (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services.

Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, we grant you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) our pre-existing work in the form delivered to you as part of the service deliverables only for your internal business operations.

The perpetual license to our pre-existing work that we leave to you at the conclusion of our performance of the services is conditioned upon your compliance with the terms of this master agreement and the applicable statement of services.

- d. *Developments.*** Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full we grant you joint ownership in the developments. You agree to exercise your rights for your internal business operations only and you will not resell or distribute the developments to any third party. Each party shall be the sole owner of any modifications that it makes based upon the developments.
- e. *Affiliates rights and sublicensing to affiliates.*** Except as may be otherwise explicitly agreed to in a statement of services, you may sublicense the rights to the service deliverables granted hereunder to your affiliates, but you or your affiliates may not further sublicense these rights.

Any sublicensing of the service deliverables to your affiliates, if permitted, must be consistent with the license terms in this agreement or in any statement of services.

- f. *Open source license restrictions.*** Because certain third party software is subject to open source license terms, the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other's computer code to open source license terms. Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by open source license terms.
- g. *Reservation of Rights.*** All rights not expressly granted in this section are reserved. The use restrictions in this Section 2 shall survive termination or expiration of this master agreement or a statement of services.

**3. *Restrictions on use.*** You may not:

- a) Rent, lease, lend, host or otherwise distribute service deliverables or fixes, except as otherwise provided in a statement of services;
- b) Reverse engineer, de-compile, or disassemble fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation; or
- c) Transfer licenses to, or sublicense fixes or service deliverables to the U.S. Government.

Fixes and service deliverables licensed under this master agreement are subject to U.S. export jurisdiction. You must comply with all domestic and international export laws and regulations that apply to the products, fixes and service deliverables. Such laws include restrictions on destinations, end-users, and end-use. For additional information, see <http://microsoft.com/exporting>.

**4. *Supportability.*** We may add support for new products or discontinue support for existing products from time-to-time. If we discontinue support for a product, we will inform you six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If we sell a product to another company, we will give you notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support ourselves for 90 days to give you time to make alternative arrangements. *For additional information regarding a product's lifecycle see:* <http://www.microsoft.com/industry/government/texasdir.mspx>

There may be cases where your implementation of our products cannot be effectively supported. As part of providing the support services, we will notify you if we reach that conclusion. If you do not modify the implementation to make it effectively supportable within 30 calendar days after the notice, we will not be obligated to provide additional support services for that implementation, however we will

continue to provide support for your other supportable implementations covered by the statement of services.

For statements of services for support, we will use commercially reasonable efforts to provide the support services for those products covered in the statement of services, provided they are validly licensed by you.

5. **Fees.** After the services have been accepted by your affiliate, your affiliate (agrees to pay us the correctly invoiced fees for services described in each approved statement of services at the rates specified in this master agreement. The fees do not include fees for products. You will reimburse us for reasonable travel expenses in accordance with the State of Texas Reimbursement Guidelines as found in Article IX of the Appropriations Act, Senate Bill 1 (81st Legislature), and provided such travel expenses are specified in the statement of services. Travel time may not be included as part of this amounts payable by Affiliate for any services rendered under this master agreement. Anticipated travel expenses must be pre-approved in writing by Affiliate. Unless otherwise stated in a statement of services, (i) you agree to pay within 30 calendar days of the date of our invoice in accordance with the Texas Prompt Payment Act; and (ii) we will not change our hourly rates identified in a statement of services during its term. Microsoft may adjust our hourly rates for new or amended statements of services based upon the master agreement rates in effect at the time of execution or amendment. Payment under the master agreement shall not foreclose the right to recover wrongful payments. You and each of your affiliates are tax-exempt and shall not pay, or be liable for the reimbursement of, any sales, use, value added, excise or other tax, duties, tariffs or other governmental charges or expenses on payments made under this agreement. We are responsible for taxes based upon our personal property ownership and net income. We will have no obligation to continue to provide services if you fail to make timely payment.

The fee to your affiliates for services is based on rates specified in Appendix B to this master agreement and shall include the DIR Administrative Fee of *one half of one percent (0.50%)*. The DIR Administrative Fee shall not be broken out as a separate line item when fees are provided to your affiliates. *Other than Premier Support Services rates identified in Appendix B*, rates included in Appendix B shall not increase for the original two (2) year term of this master agreement.

Our published price lists are not negotiable. If the Public Sector published price list changes during the initial term or any renewal term of this master agreement, the rates in this master agreement will be amended within ten days to reflect the current Microsoft U.S. Public Sector Services Pricelist Published rates, if any, as applicable.

6. **Purchase Orders and Invoices.** Your affiliate's Purchase Orders; will be placed directly with us. Invoices shall be submitted by us directly to your affiliate and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the master agreement and any provision of acceptance of such services shall be made by your Affiliate to us. Invoices must be timely and accurate. Each invoice must match Affiliate's Purchase Order or statement of services, as applicable, and include any written changes that may apply, as it relates to services, prices and quantities. Invoices must include your Affiliate's Purchase Order number or other pertinent information for verification of receipt of the services by your Affiliate.

Your affiliates shall not have the authority to modify the terms of the master agreement; however, additional affiliate terms and conditions that do not conflict with the master agreement and are acceptable to us may be added in a statement of services and given effect. In the event of a conflict between an affiliate's statement of services and the master agreement, the master agreement term shall control. *Payment under the terms of the master agreement shall not foreclose the right to recover wrongful payments.*

7. **Confidentiality.** Subject to the requirements of your public records and trade secret laws (if any):

- a. **Confidential information.** *To the extent consistent with the Texas Public Information Act, confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of this agreement and any statement of services.*

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality; or (iv) is disclosed pursuant to the Texas Public Information Act.

- b. **Use of confidential information.** *To the extent permitted by Texas Law, for a period of five years after initial disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or as expressly permitted by this agreement or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.*

To the extent permitted by Texas Law, each party will take reasonable precautions to safeguard the other's confidential information. Such precautions will be at least as great as those each party takes to protect its own confidential information. Each party will disclose the other's confidential information to its employees, consultants or contractors only on a need-to-know basis, provided that such employees, consultants or contractors are subject to confidentiality obligations no less restrictive than those contained herein. To the extent permitted by Texas Law, when confidential information is no longer necessary to perform any obligation under any statement of services, the receiving party will return it to the other party or destroy it at the other's request.

Specifically, we acknowledge that this agreement is subject to Texas's Public Information Act and that this agreement may nevertheless be deemed as a matter of law to be public information under the Texas Public Information Act

We acknowledge that you are a government agency subject to the Texas Public Information Act. We also acknowledge that you will comply with the Public Information Act, and with all obligations of the Texas Attorney General's office concerning this Act.

Either party may provide suggestions, comments or other feedback to the other with respect to the other's products and services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

- c. **Cooperation in the event of disclosure.** Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use or disclosure.
- d. **Knowledge base.** We may use any technical information we derive from providing services related to our products for problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

8. **Warranties.** We warrant that all services will be performed with professional care and skill.

9. **No other warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS MASTER AGREEMENT (INCLUDING ANY STATEMENT OF SERVICES THAT INCORPORATES THESE TERMS), INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR OTHER MATERIALS OR INFORMATION. WE WILL NOT BE LIABLE FOR ANY SERVICE(S) OR PRODUCT(S) PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER OUR WRITTEN STATEMENT OF SERVICES, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS MASTER AGREEMENT.
10. **Defense of infringement and misappropriation claim.** We will defend you and any affiliate against any claims made by an unaffiliated third party that any service deliverable infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent).

You must notify us promptly in writing of the claim and give us sole control over its defense or settlement, subject to the written approval of our sole control of the defense and settlement of the claim by the Texas Attorney General which will not be unreasonably withheld or delayed and, in any event, such approval shall be required only to the extent required by the constitution or a statute of the State of Texas. Our defense obligations under this Section 10 shall be null and void if the Texas Attorney General does not grant us the approval specified above in a timely manner. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms “**misappropriation**” and “**trade secret**” are used as defined in the Uniform Trade Secrets Act.

Our obligations will not apply to the extent that any claim or adverse final judgment is based on (i) computer code or materials (e.g. specifications) you or your affiliate provide; (ii) yours or your affiliate’s use of a fix or service deliverables after we notify you to discontinue use due to such a claim; (iii) yours or your affiliate’s combining a fix or service deliverables with a non-Microsoft product, data or business process; (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process; (v) an alteration of fixes or service deliverables by someone other than us or our contractors; (vi) use of, or access to, fixes or services deliverables by any person or entity other than you or your affiliates as permitted by the applicable statement of services; (vii) yours or your affiliate’s use of our trademark(s) without express written consent to do so; or (viii) any trade secret claim that is a result of your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You or your affiliate will reimburse us for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a fix or service deliverables, we may, at our expense and without obligation to do so, either (i) procure for you or your affiliate the right to continue to use the allegedly infringing fix or service deliverables as permitted by the applicable statement of services; or (ii) modify the fix or service deliverables to make it non-infringing; or (iii) replace it with a non-infringing functional equivalent, to make it non-infringing, in which case you or your affiliate will stop using the allegedly infringing fix or service deliverables immediately. If as a result of an infringement claim, yours or your affiliate’s use of a fix or service deliverables is enjoined by a court of competent jurisdiction, we will, at our option, either i) procure the right to continue its use; ii) modify it to make it non-infringing; iii) replace it with a non-infringing functional equivalent; or iv) refund the amount paid for the infringing fix or service deliverables and terminate the license for (or as applicable, your ownership rights in) the infringing fix or service deliverable.

If any other type of third party claim is brought against you or your affiliate regarding our intellectual property, you or your affiliate must notify us promptly in writing. We may, at our option, choose to treat

these claims as being covered by this Section 10 (Defense of infringement and misappropriation claim). This Section 10 (Defense of infringement and misappropriation claim) provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

**11. Limitations of liability.**

**a. Limitation on Direct Damages.** There may be situations in which you and your affiliates have a right to claim damages or payment. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our total liability (and that of our contractors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you and/or your affiliates have paid under the applicable statement of services, in the aggregate, for the services giving rise to the claims. In the event services or any service deliverables are provided to you or your affiliate on a gratuitous or no-charge basis, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to the following:

- (i) our obligations under Section 10 (Defense of infringement and misappropriation claim);
- (ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our contractors and awarded by a court of final adjudication; and
- (iii) our obligations under Section 7 (Confidentiality).

**b. Exclusion for liability for damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES, SUPPLIERS OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), ARISING IN CONNECTION WITH THIS MASTER AGREEMENT, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION, REDISTRIBUTION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**c. Application.** Except as specified expressly in this Section 11, the limitations on and exclusions of liability for damages in this master agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

**12. Term and termination.** The term of this master agreement shall be two (2) years commencing on the last date of approval. Prior to expiration of the original term, the parties may extend this master agreement upon mutual agreement, for up to two (2) optional one-year terms. The parties signing the cover page of this master agreement may terminate it at any time by giving the other party at least 60 calendar days prior written notice. Either party signing the cover page may terminate this master agreement if the other party is in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach.

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation then the statement of services shall immediately terminate on the last date in which the sufficient funds are available.

The sole effect of terminating this master agreement will be to terminate the ability of either party to enter into subsequent statements of services that incorporate the terms of this master agreement.

Termination of this master agreement will not, by itself, result in the termination of any statements of services previously entered into (or extensions of the same) that incorporate the terms of this master agreement, and the terms of this master agreement will continue in effect for purposes of such statements of services unless and until the statement of services itself is terminated or expires.

The term of any statement of services will be set forth in an applicable statement of services. In addition, unless otherwise provided in a statement of services, your affiliate that signed the statement of services may terminate it for any reason by giving our affiliate that signed the statement of services 30 calendar days prior written notice. An Affiliate may terminate a Purchase Order if it is determined by the Affiliate that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Affiliate. Either party signing a statement of services may terminate it if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. You agree to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in a statement of services.

- 13. Notices.** All notices, authorizations, and requests given or made in connection with this master agreement must be sent by post, express courier, facsimile or email to the addresses indicated on the cover page of this master agreement or such other addresses as may be provided in an applicable statement of services, if different. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

In addition to the notices being sent to the parties indicated on the cover page, all notices under this *master agreement* shall also be sent to a party at the respective address indicated below.

If sent to the State:  
Mary Cheryl Dorwart,  
Director of Technology Sourcing Office  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701

If sent to the Microsoft:  
David T. Gallagher, Director of Contracts  
U.S. Public Sector Services Desk  
Microsoft Corporation  
12012 Sunset Hills Road  
Reston, VA 20190

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile.

- 14. Insurance.** We will procure and maintain the following insurance coverage, at all times when performing services on your premises under this master agreement, via either commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:

- a) Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$2,000,000 each occurrence;
- b) Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by our employees;
- c) Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;
- d) Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by us or our employees in the performance of services, with a limit of liability of not less than U.S. \$2,000,000 per claim; and

- e) Automobile Liability (if vehicles are brought on your premises or used in the performance of the services) with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, non-owned and hired vehicles.

We will provide you with evidence of coverage on request.

**15. Miscellaneous.**

- a. **Assignment and right to subcontract.** Neither party may assign this master agreement or any statement of services without the written consent of the other except as stated below. We may use contractors to perform services and we will be responsible for their performance subject to the terms of this master agreement. "Contractor(s)" mean any third party supplier or other provider of computer technology or related services.

We or you may assign the master agreement without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the master agreement under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the master agreement as necessary to maintain an accurate record of the contracting parties.

If we use any contractor's in the performance of this master agreement, we must make a good faith effort in the submission of a Subcontracting Plan in accordance with the DIR Policy on utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before we can engage any contractors in the performance of this master agreement. Our Subcontracting Plan is attached hereto as Appendix A. We shall remain solely responsible for the performance of our obligations under the master agreement.

- b. **Independent contractor.** We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of our employees. As such, each party is free to develop their respective products independently without the use of the other's confidential information. Additionally, neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. Furthermore, you, we and these people are free to use the information that these people retain in their unaided memories related to information technology, including ideas, concepts, know-how or techniques, so long as such use does not disclose confidential information of the other party in violation of Section 7 (Confidentiality). This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.
- c. **Applicable law; dispute resolution.** This master agreement together with the applicable statement of services will be governed by the laws of the State of Texas, without giving effect to its conflict of law provisions. Disputes relating to this master agreement will be subject to applicable mandatory dispute resolution statutes and regulations of your state. Disputes arising between us and your affiliate shall be resolved in accordance with the dispute resolution process of your affiliate that is not inconsistent with applicable mandatory dispute resolution statutes and regulations of your state. You shall not be a party to any such dispute unless you, your affiliate and we agree in writing. Nothing herein shall be construed to waive the State of Texas' sovereign immunity.
- d. **Entire agreement.** This master agreement, Appendix A, Vendor's Historically Underutilized Business Subcontracting Plan; Appendix B, Technical Services and Rates; Appendix C, Sample Microsoft Technical Services Work Order; Appendix D, Microsoft Premier Support Services Description; Appendix E, Microsoft Premier Support Services Description Schedule; Fee and Named Contacts; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-179, including all addenda; Exhibit 2, RFO DIR-SDD-TMP-179, including all addenda; and the

statements of services constitute the parties' entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. Any terms and conditions maintained by you or your affiliates or contained in any purchase order, other than those mandatory terms required by law, will not apply. The parties signing the cover page of this master agreement may amend this master agreement only in writing when signed by both parties. The parties signing a statement of services may amend the statement of services only in writing when signed by both parties. The terms of these documents will control in the following order: (i) this master agreement; and (ii) any statement of services.

- e. *Survival.*** The sections regarding ownership and license, restrictions on use, fees, confidentiality, no other warranties, defense of infringement and misappropriation claims, limitations of liability, term and termination, notices, and miscellaneous of this master agreement will survive any termination or expiration of this master agreement or any statement of services. Additionally, as provided in Section 12 (Term and termination) above, if this master agreement is terminated all its terms shall survive termination for purposes of any remaining statement of services in existence at the time this master agreement is terminated.
- f. *Severability.*** If a court holds any provision of this master agreement or a statement of services to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the master agreement or statement of services to give effect to the stricken clause to the maximum extent possible.
- g. *Waiver.*** No waiver of any breach of this master agreement or statement of services will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- h. *Force majeure.*** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- i. *Counterparts.*** This master agreement and any statements of services may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the parties will follow such delivery by prompt delivery of originals of such pages).
- j. *Cost or pricing data.*** We will not, under any circumstances, accept any statement of services that would require the submission of cost or pricing data.
- k. *Modification of Contract Terms and/or Amendments.*** The terms and conditions of this master agreement shall govern all transactions by affiliates under this master agreement. The master agreement may only be modified or amended upon mutual written agreement of us and you.
- l. *Affiliates shall not have the authority to modify the terms of the master agreement;*** however additional Affiliate terms and conditions that do not conflict with the master agreement and are acceptable to Vendor may be added in a Purchase Order and given affect. No additional terms and conditions added in a Purchase Order issued by Affiliate can weaken a term or condition of the master agreement. Pre-printed terms and conditions on any Purchase Order issued by Affiliate hereunder will have no force and effect. In the event of a conflict between a Affiliate's Purchase Order and the master agreement, the master agreement term shall control.
- m. *No Quantity Guarantees.*** The master agreement is not exclusive to us. Affiliates may obtain services from other sources during the term of the master agreement. You make no express

or Implied warranties whatsoever that any particular quantity or dollar amount of services will be procured through the master agreement.

**n. *Purchase of Commodity Items. (applicable to State Agency purchases only).***

- i.** Texas Government Code, §2157.068 requires state agencies to buy commodity software in accordance with contracts developed by you, unless the state agency obtains an exemption from you.
- ii.** Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which you determine that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.
- iii.** We agree to coordinate all State agency commodity software sales through existing DIR contracts with Institutions of higher education are exempt from this Section.

**o. *Internet Access to Agreement and Pricing Information.***

- i.** We will maintain a website specific to the service offerings under the master agreement which is clearly distinguishable from other, non-DIR contract offerings at our website. The website must include: the services offered, service specifications, agreement pricing, contact information for us, instructions for obtaining quotes and instructions on executing a statement of services. Our website shall list the DIR contract number, reference the DIR Information and Communications Technology (ICT) program, display the DIR logo in accordance with the requirements in this master agreement, and contain a link to the DIR website for the master agreement.
- ii.** We agree that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. We, at its own expense, shall correct any non-conforming or inaccurate information posted at our website within ten (10) business days after written notification by you.
- iii.** Periodic compliance checks of the information posted for the master agreement on our website will be conducted by you. Upon request by you, we shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in the master agreement.
- iv.** We hereby consent to a link from your website to our website in order to facilitate access to master agreement information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. You reserve the right to terminate or remove a link at any time, in your sole discretion, without advance notice, or to deny a future request for a link. You will provide us with subsequent notice of link termination or removal. We shall provide you with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.
- v.** If we store, collect or maintain data electronically as a condition of accessing master agreement information, such data shall only be used internally by us for the purpose of implementing or marketing the master agreement, and shall not be disseminated to third

parties or used for other marketing purposes. The master agreement constitutes a public document under the laws of the State and we shall not restrict access to master agreement terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

*vi. We are solely responsible for administration, content, intellectual property rights, and all materials at our website. You reserves the right to require a change of listed content if, in your opinion, it does not adequately represent the master agreement.*

**p. Logo.**

*i. We may use the your logo in the promotion of the master agreement to your affiliates with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the your logo must be equal to or smaller than our logo, (iii) your logo is only used to communicate the availability of services under the master agreement to your affiliates, and (iv) any other use of your logo requires prior written permission from you.*

*ii. You may use our name and logo in the promotion of the master agreement to communicate the availability of services under the aster agreement to your affiliates. Use of the logos may be on your website or on printed materials. Any use of our logo by you must comply with and be solely related to the purposes of the master agreement and any usage guidelines communicated to you from time to time. Nothing contained in the master agreement will give you any right, title, or interest in or to our trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by us.*

**q. Trade Show Participation.** At your discretion, we may be required to participate in one or more of your sponsored trade shows each calendar year. We understand and agree that participation, at our expense, includes providing a manned booth display or similar presence. You will provide four months advance notice of any required participation. We must display your logo at all trade shows that potential affiliates will attend. You reserve the right to approve or disapprove of the location or the use of your logo in or on our booth.

**r. Performance Review Meetings.** You will require us to attend periodic meetings to review our performance under the master agreement. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to you and us. Meetings may also be conducted via conference call. You shall bear no cost for the time and travel of us for attendance at the meeting.

**s. DIR Cost Avoidance.** As part of the performance measures reported to state leadership, you must provide the cost avoidance the State has achieved through the master agreement. Upon request by you, we shall provide you with a detailed report of a representative sample of service sold under the master agreement. The report shall contain: labor description, hourly rate list price, hourly rate price to the affiliate under the agreement, and pricing from three (3) alternative sources under which your affiliates can procure the services.

**t. Contract Administration.** You and we will each provide a Contract Administrator to support the master agreement. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

**i. State Contract Administrator.**

- a) You shall provide a Contract Administrator whose duties shall include but not be limited to:
  - A. supporting the marketing and management of the Contract;
  - B. advising DIR of Vendor's performance under the terms and conditions of the Contract; and
  - C. periodic verification of pricing and monthly reports submitted by Vendor.

- b) Upon execution of the master agreement, you shall provide us with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

**ii. Vendor Contract Administrator.**

- a) We shall provide a dedicated Contract Administrator whose duties shall include but not be limited to:
  - A. supporting the marketing and management of the master agreement,
  - B. facilitating dispute resolution between us and your affiliates, and
  - C. advising you of our performance under the terms and conditions of the master agreement.

You reserve the right to require a change in our then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of you, adequately serving the needs of the State.

- b) Upon execution of the master agreement, we shall provide you with written notification of the following: i) Microsoft Contract Administrator name and contact information, ii) Microsoft sales representative name and contact information, and iii) name and contact information of our personnel responsible for submitting reports and payment of administrative fees.

**u. Reporting and Administrative Fees**

**i. Reporting Responsibility**

- a) We shall be responsible for reporting all services purchased under the master agreement. We shall file the quarterly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.
- b) You shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of our applicable agreement books at DIR's expense.

**ii. Detailed Quarterly Report.** We shall electronically provide you with a detailed quarterly report in the format required by you showing the dollar volume of any and all sales under the master agreement for the previous quarterly period. Reports shall be submitted to the DIR *ICT Cooperative Contracts* E-Mail Box at [GoDirect.Sales@dir.texas.gov](mailto:GoDirect.Sales@dir.texas.gov). Reports are due on the fifteenth (15th) calendar day after the close of the previous quarter period. It is our responsibility to collect and compile all invoices submitted to affiliates under the master agreement and submit one (1) quarterly report. The quarterly report shall include, per transaction: the invoices submitted for the period, affiliate name, invoice date, invoice number, description, quantity, unit price, extended price, affiliate's purchase order number, contact name, affiliate's complete billing address, and other information as required by you. Each report must contain all information listed above per transaction or the report will be rejected and returned to us for correction in accordance with this section.

**iii. Historically Underutilized Businesses Subcontract Reports.** We shall electronically provide each affiliate with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the master agreement, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR. Reports shall be due in accordance with the Comptroller of Public Accounts (CPA) rules.

**iv. DIR Administrative Fee**

- a) An administrative fee shall be paid by us to you to defray your costs of negotiating, executing, and administering the master agreement. The administrative fee is specified in Section 5 of the master agreement. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month

period. Vendor shall reference the DIR Contract number on any remittance instruments.

- b) All fees quoted to affiliates by us shall include the administrative fee. You reserve the right to change this fee upwards or downwards during the term of the agreement, upon written notice to us. Any change in the administrative fee shall be incorporated into the fees to your affiliate.

**v. Accurate and Timely Submission of Reports**

- a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. We shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by you. If we are unable to correct inaccurate reports or administrative fees within three (3) business days or administrative fee payments or deliver late reports and fee payments within three (3) business days, we must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to your approval.
- b) Should we fail to correct inaccurate reports within the corrective plan of action timeline, you reserve the right to require an independent third party audit of the Vendor's records as specified in Section 15.v., at our expense.

**v. Records and Audit**

- i. Acceptance of funds under the master agreement by us acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. We further agree to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. We will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through us and the requirement to cooperate is included in any subcontract we award pertaining to the master agreement. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- ii. We shall maintain adequate records to establish compliance with the master agreement until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the master agreement. Such records shall include per transaction: affiliate's name, invoice date, invoice number, description, quantity, unit price, extended price, affiliate's Purchase Order number, contact name, affiliate's complete billing address, the calculations supporting each administrative fee owed you under the master agreement, Historically Underutilized Businesses Subcontracting reports, and such other documentation as you may request ("Records").
- iii. We shall grant access to all paper, electronic Records, books, documents, accounting procedures, practices and any other items relevant to the performance of the master agreement to DIR, including the compliance checks designated by you, to the State Auditor's Office and of the United States, and such other persons or entities designated by you for the purposes of inspecting, compliance checking and/or copying such books and Records. We shall provide copies and printouts requested by you without charge. You shall provide us ten (10) business days' notice prior to inspecting, compliance checking, and/or copying Vendor's records. Our records, whether paper or electronic, shall be made available during regular office hours. Our personnel familiar with our Records shall be available to your staff and designees as needed. We shall provide adequate office space to your staff during the performance of compliance check.
- iv. For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to you through the Texas Comptroller

of Public Accounts and the administrative fee based thereon shall be presumed correct unless we can demonstrate to your satisfaction that our calculation of your administrative fee is correct.

**vi. *Gratuitous Services Report.*** We shall provide you with a detailed quarterly report documenting the dollar volume of any and all gratuitous services provided to Affiliates under the master agreement for the previous quarterly period. Reports shall be submitted to the State Contract Administrator. Reports are due on the fifteenth (15th) calendar day after the close of the previous quarter period. It is our responsibility to collect and compile all gratuitous services work orders submitted to affiliates under the master agreement and submit one (1) quarterly report. The quarterly report shall include, per word order: work submitted for the period, affiliate name, work order date, work order number, type of resource used, description, quantity, value of services provided gratuitously, affiliate contact name, and affiliate's phone number. Each report must contain all information listed above per transaction or the report will be rejected and returned to us for correction in accordance with this section. The Parties understand and agree that we are under no obligation to provide Gratuitous Services to any Affiliates, but will report provision of such services when and if we, at our discretion, provide such services.

**w. *Certifications.*** We certify that we: (i) have not given, offered to give, and do not 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 our performance on the master agreement; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the master agreement, and or any contract made pursuant thereto, may be terminated and payment withheld if this certification is inaccurate; (iii) neither we, nor anyone acting for us, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, we certify that the individual or business entity named in this bid or master agreement is not ineligible to receive the specified master agreement and acknowledge that this master agreement, and or any contract made pursuant thereto, may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of our knowledge and belief, there are no suits or proceedings pending or threatened against or affecting us, which if determined adversely to us will have a material adverse effect on the ability to fulfill our obligations under the master agreement; (vii) are not suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration; (viii) as of the effective date of the master agreement and/or any amendment thereto, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this master agreement, we hereby certify that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) we agree that any payments due under this master agreement will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) we certify that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) we certify for ourselves and our subcontractors that have identified all current or former, within the last five years,

employees of the State of Texas assigned to work on the master agreement 20% or more of their time and have disclosed them to DIR and have disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the master agreement, we certify we shall disclose for ourselves and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity; (xiii) we represent and warrant that the provision of goods and services or other performance under the master agreement will not constitute an actual or potential conflict of interest and certify that we will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, we certify we shall disclose for ourselves and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety; (xiv) we represent and warrant that the Customer's payment to us and our receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; (xv) under Section 2155.006, Government Code, we certify that the individual or business entity in this master agreement is not ineligible to receive the specified contract and acknowledges that this master agreement may be terminated and payment withheld if this certification is inaccurate; and (xvi) we certify that we have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, we acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the master agreement. During the term of the master agreement, we shall, for ourselves and on behalf of our subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. We covenant to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

- x. **Ability to Conduct Business in Texas.** We certify that we are an entity authorized and validly existing under the laws of our state of organization, and we are authorized to do business in the State of Texas.
- y. **Equal Opportunity Compliance.** We agree to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, we agree that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the master agreement. If we are found to be not in compliance with these requirements during the term of the master agreement, we agree to take appropriate steps to correct these deficiencies. Upon request, we will furnish information regarding our nondiscriminatory hiring and promotion policies, as well as specific information on the composition of our principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.
- z. **Security of Premises, Equipment, Data and Personnel.** We may, from time to time during the performance of the master agreement, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. We shall use our best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. We shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If we and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

- aa. Background and/or Criminal History Investigation.** Prior to commencement of any services, background and/or criminal history investigation of our employees and subcontractors who will be providing services to your affiliates under the master agreement may be performed by certain affiliates having legislative authority to require such investigations. Should any employee or subcontractor of us who will be providing services to the affiliate under the master agreement not pass the background and/or criminal history check, then your affiliate may immediately terminate its Purchase Order and related Service Agreement or can request us to immediately remove the employee or subcontractor from the project and request replacement of the employee or subcontractor in question.
- bb. Affiliate Site Preparation.** Affiliates shall prepare and maintain their site in accordance with written instructions furnished by us prior to the scheduled delivery date of any services and shall bear the costs associated in the site preparation.
- cc. Absolute Right.** You shall have the absolute right to terminate the master agreement without recourse in the event that: i) we become listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control, or ii) we become suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. We shall be provided written notice in accordance with Section 13, Notices, of intent to terminate.
- dd. Invalid Term or Condition**
- i.** To the extent any term or condition in the master agreement conflicts with the applicable Texas and/or United States law or regulation, such master agreement term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
  - ii.** If one or more term or condition in the master agreement, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the master agreement and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.
- ee. Use of Subcontractors.** If we use any subcontractors in the performance of this master agreement, we must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before we can engage additional subcontractors in the performance of this master agreement. We shall remain solely responsible for the performance of its obligations under the master agreement.
- ff. Responsibility for Actions.** We are solely responsible for our actions and those of our agents, employees, or subcontractors, and agree that neither we nor any of the foregoing have any authority to act or speak on behalf of DIR or the State.

We, for ourselves and on behalf of our subcontractors, shall report to DIR promptly when the disclosures under Section 15, Subsection (w), Vendor Certifications, of this master agreement change and covenants to fully cooperate with DIR to update and amend the master agreement to accurately disclose employment of current or former State employees and our relatives and/or the status of conflicts of interest.

- gg. Prohibited Conduct.** We represent and warrant that, to the best of our knowledge as of the date of this certification, we have not: (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 its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

- hh. Overcharges.** Subject to the other terms and conditions of this section, we hereby assign to you any and all of our claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq. Though we believe we do not have any such claims and do not believe such an assignment would be effective, if an assignment is triggered by this section, then such assignment shall be made and become effective at the time the State tenders final payment to the applicable reseller.
- ii. Captions.** The captions contained in the master agreement and its Appendices are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.
- jj. Immigration.** We shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this master agreement. Nothing herein is intended to exclude compliance by us with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.
- kk. Public Disclosure.** Other than as required or allowed by the various provisions of this master agreement, neither Party may make any public disclosures or news releases pertaining to this master agreement without prior written approval of the other party.
- ll. Products and/or Services Substitutions.** Substitutions are not permitted without the written permission of DIR or Customer.
- mm. Deceptive Trade Practices; Unfair Business Practices.**

  - a) *We represent and warrant that neither we nor any of our Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.*
  - b) *We certify that we have no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.*