

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR DELIVERABLES-BASED INFORMATION TECHNOLOGY
SERVICES**

HP ENTERPRISE SERVICES, LLC

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and HP Enterprise Services, LLC (hereinafter "Vendor"), with its principal place of business at 5400 Legacy Drive, Plano, Texas 75024.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-197, on August 27, 2012, for Deliverables-Based Information Technology Services (DBITS). Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-197 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Deliverables-Based Information Technology Services Contract Terms and Conditions; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Sample Statement of Work ; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-197, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-197, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then the negotiated and agreed upon Statement of Work, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. **Service Offerings**

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

Application Maintenance and Support

- 1) Definition: Application Maintenance and Support includes the skills and requirements for supporting application systems, including troubleshooting, modifying, maintaining and enhancing legacy systems. Application Maintenance and Support also applies to applications running in a production environment.
- 2) Examples of included services: research, analysis, design, programming, testing, documenting and implementing maintenance changes; correcting software errors; modifying reports and ensuring accurate report runs; making modifications to the applications and documentation; writing ad hoc queries; loading and applying changes to the software language and/or database in which the application is written; providing corrections for production or any changes needed and participation in disaster recovery testing, planning and documentation. Services may need to be available 24/7 or on an on-call basis.

Project Management

- 1) Definition: Project Management service providers may perform any or all of the project management processes identified by the Project Management Institute as published in Table 3-45 of the PMBOK® Guide, Third Edition or most recent.
- 2) Examples of included services: utilizing the Customer's tools and processes, using off-the-shelf tools or using Vendor's own proprietary tools and processes to manage a project.

Technology Upgrade/Migration and Transformation

- 1) Definition: Technology Upgrade/Migration may be required to increase business functionality, reengineer a business function, keep current with vendor upgrades or when upgrading existing technology. Technology Transformation may be accomplished by converting/migrating legacy applications to new technology either with or without new business functionality or it may include introducing new technology into the enterprise. Technology Upgrade/Migration may also include providing website content accessibility compliance.

- 2) Examples of included services: assessments of the current application portfolio, evaluation of the technology assets before beginning technology transformation and Business Case development for justification of an initiative. Also included are: technology transformations, which may include, appropriate Return on Investment (ROI), benchmarks and milestones. The following activities may also be included: planning, analysis, requirements development, proof of concept, deployment, implementation, integration, remediation, data migration, documentation, application programming and support services; and training support.

4. Pricing

A. Customer Price

Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.

B. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

D. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

5. DIR Administrative Fee

- A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one-half of one percent (0.50%).

Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Grace Windbigler
Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Melinda Maczko
HP Enterprise Services
5400 Legacy Drive
Plano, Texas 75024
Phone: (972) 605-6337
Email: melinda.maczko@hp.com

With a copy to:

HP Legal – State and Local
5400 Legacy Drive
Plano, TX 75024

7. Statement of Work

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with this Contract.

8. Customer Satisfaction Metrics

DIR reserves the right to engage a third party to build and gauge customer satisfaction metrics. Should a Vendor go two straight quarters with a low customer satisfaction score, DIR reserves the right to suspend all new prospective business orders for up to two business quarters until customer satisfaction issues are resolved

9. Intellectual Property Matters

A. Definitions

1. "Work Product" and "Deliverables" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract.
2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables.
4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract.

B. Ownership.

This Section replaces Section 8.X. of Appendix A in its entirety:

State License.

- (a) The Deliverable(s) and all Intellectual Property Rights associated with those Deliverable(s) will be owned by the Vendor at creation and will not be considered works made for hire. The Vendor grants to the Customer a non-exclusive, royalty-free, site-wide, irrevocable license to use, copy, and distribute the Deliverable(s) and related documentation according to the terms and conditions of this Contract and Supporting Materials. For the purposes of this license, "site-wide" includes any State of Texas office regardless of its physical location.
- (b) The State may modify the Deliverable(s) and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in the Deliverable(s) other than those granted in this Contract.
- (c) The State may copy the Deliverable(s) to multiple hard drives or networks.
- (d) The State may copy the Deliverable(s) in the course of routine backups for the purpose of recovery.
- (e) In the event that the Vendor ceases to conduct business, or ceases to support the Deliverable(s), the State's license will not cease. The license may be terminated if

used in a manner that would violate the terms of this Contract and Supporting Material.

- (f) Notwithstanding the license grants, any Third Party IP incorporated into any licensed Deliverable(s) will be subject to the license terms applicable to such Third Party IP.
- (g) The State and the Vendor will continue to own their respective Intellectual Property Rights developed before entering into the Contract or developed outside the scope of this Contract, and all modifications or derivative works thereof. Any software licensed through the Vendor and sold to the State will be licensed directly to the State.

C. Confidentiality.

1) Definitions

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Texas Public Information Act;
- (b) now available or becomes available to the public without breach of this Contract;
- (c) released in writing by the disclosing party;
- (d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
- (e) publicly disclosed pursuant to federal or state law; or
- (f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

(2) Protection and Destruction of Confidential Information

- (a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Vendor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.
- (b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Vendor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence.
- (c) Upon termination of the Contract, Vendor must promptly return the State's Confidential Information or certify to the State that Vendor has destroyed all of the State's Confidential Information.

(3) Exclusions

The provisions of this Section will not apply where the receiving party is required by law to disclose or retain the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request to the extent legally permissible; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

(4) No Obligation to Disclose

Nothing contained in this Section will be construed as obligating a party to disclose any particular Confidential Information to the other party.

D. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

E. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

F. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

G. Third-Party Underlying and Derivative Works.

In response to a request, the Vendor will disclose the use or incorporation of any Third Party IP into the Work Product or Deliverables and a description of the ownership and use rights that will be provided to the Customer. At the time of delivery, the Vendor will provide in writing the name and use of any Third Party IP, including information regarding the Vendor's authorization to include and utilize such Third Party IP. The notice shall include a copy of any ownership agreement or license that authorizes the Vendor to use the Third Party IP. If Vendor procures any Third Party IP for the State, then Vendor must assign or otherwise transfer to the State, or afford the State the benefits of, any license rights, including the manufacturer's warranty, for the Third Party IP.

H. Agreement with Subcontracts:

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request. Vendor may redact confidential information, but in any event must provide copies sufficient to ensure Vendor's compliance with this section.

I. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials.

10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts.

A. **Section 2. Definitions, I. Statement of Work**, is hereby replaced in its entirety:

Statement of Work Solicitation (SOW) – A document, hereinafter referred to as a SOW Solicitation, that may be posted on DIR's website outlining the description of Services to be performed for a specified DIR Customer. SOW Solicitations may include: background, description of deliverables, acceptance criteria for deliverables, service levels for deliverables, duration of engagement with the DIR Customer, additional Customer terms and conditions and other relevant information.

B. **Section 6, Purchase Orders, Invoices, and Payments, A. Purchase Orders**, is hereby replaced in its entirety:

All Customer Purchase Orders will be placed directly with the Vendor after negotiation and agreement of a finalized Statement of Work in accordance with this

Contract. All Purchase Orders shall be governed by the terms of DIR-SDD-2501. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

C. **Section 6, Purchase Orders, Invoices, and Payments, C. Payments,** is hereby replaced in its entirety:

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. Payment under the Contract shall not foreclose the right to recover wrongful payments. Any applicable payment schedule, as negotiated by the parties, will be set forth in the Statement of Work.

D. **Section 7. Contract Administration, C. Records and Audit,** is hereby replaced in its entirety:

1) Acceptance of funds under the Contract by Vendor 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. Vendor further agrees 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. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. 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.

2) Vendor shall maintain adequate records to establish compliance with the Contract 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 Contract. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying

Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. Subject to the Vendor's reasonable objection to the audit determination, if the difference between the Vendor's actual payment and the correct DIR Administrative Fee amount, as determined by an audit, is greater than 3%, then the Vendor must pay all reasonable audit costs within thirty (30) days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

E. **Section 8. Vendor Responsibilities, A. Indemnification**, is hereby replaced in its entirety:

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING OF PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing. If Vendor determines that none of these alternatives is reasonably available, then Vendor will issue Customer a refund equal to a pro-rata portion of the charges paid by Customer for the infringing Services or Deliverable upon discontinuance of the Services or return of the Deliverable to Vendor.

F. Section 8. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE Fees, is hereby replaced in its entirety:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY

SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

- 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

G. Section 8. Vendor Responsibilities, I. Security of Premises, Equipment, Data, and Personnel, is hereby replaced in its entirety:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, 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. Vendor shall use their 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. Vendor has the duty to ensure that all such equipment, property and Data are used only for official Customer business. Vendor shall cooperate and ensure that applicable non-disclosure agreements as may be required by Customers are executed. Subject to Vendor's review of approval of each Customer's non-disclosure agreements prior to execution.

H. Section 8. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for incidental, indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the

total amount paid to Vendor under the Purchase Order giving rise to the claim during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

I. Section 8. Vendor Responsibilities, O. Required Insurance Coverage, is hereby replaced in its entirety:

As a condition of this Contract with DIR, Vendor shall maintain the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use Vendor's vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A-VII financially rated by AM BEST and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be included as Additional Insureds under the required General Liability and Auto Liability coverages. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a limit of \$500,000 per occurrence for coverage including products/completed operations, where appropriate. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer shall be included as an additional insured; and
- d) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a combined single limit of \$500,000 per accident for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per accident and \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) State of Texas, DIR and Customer shall be included as an Additional Insured.

J. Section 8. Vendor Responsibilities, U. Substitution of Works, is hereby replaced in its entirety:

A. If Customer determines a Worker has not followed applicable safety standards or for other not unlawful reasons is deemed unacceptable, Customer will direct Vendor to resolve the complaint or, remove its Worker immediately. If Vendor is unable to resolve the complaint immediately or provide a satisfactory substitute Worker within ten (10) business days, the Purchase Order may be terminated for fault and Customer may select another Vendor to finish the remaining work.

B. If a Vendor must substitute a worker due to resignation, termination or other such event, Vendor shall have up to ten (10) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a higher level of experience and skill than those of the replaced Worker. If the Vendor is unable to provide a satisfactory substitute Worker within ten (10) business days, the appropriate Purchase Order may be terminated for fault and the Customer may select another Vendor to finish the remaining work.

K. Section 8. Vendor Responsibilities, W. No Solicitation of State Employees, is hereby replaced in its entirety:

- 1) Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the SOW, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.
- 2) DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order and for a period of twelve (12) months thereafter.
- 3) Neither party shall be prevented from hiring such employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such employees.

L. **Section 8. Vendor Responsibilities, X. State Ownership of Work Product**, is hereby deleted in its entirety.

M. **Section 8. Vendor Responsibilities, Y. Warranty**, is hereby replaced in its entirety:

1) The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor has made errors in completed deliverable. Customer will immediately inform the Vendor of the Customer's determination. The Vendor shall make such corrections and revisions as are necessary so that the deliverables complained of are acceptable to Customer and shall be corrected without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original deliverable.

2) Vendor warrants that the Services will be performed in a good and workmanlike manner. Vendor will re-perform any Services not performed in accordance with the warranty in this Section (Warranty) provided that Vendor receives written notice from the DIR Customer within thirty (30) calendar days after such Services were performed. This will be Customer's sole and exclusive remedy for a breach of the warranty in this Section (Warranty) but not of the Contract.

3) Services Warranties Exclusions:

Vendor will not be responsible for a breach of warranty that would not have occurred but for:

- a) changes to a Deliverable that were implemented by DIR Customer or a third party without Vendor's prior written authorization;
- b) changes to software or hardware with which the Work Product and Deliverable operates or interfaces, or on which the Deliverable or the Technical Services otherwise rely, made by DIR Customer or a third party, including the vendors of such software or hardware without Vendor's prior written authorization;
- c) errors or defects in software or hardware with which the Work Product and Deliverable operates or interfaces, or on which the Work Product and Deliverable or Services otherwise rely (excluding Vendor Branded hardware and software provided in connection with the Deliverable); or
- d) improper use or operation of a Deliverable or any portion thereof.

4) Work Products and Deliverables Warranty Disclaimer:

VENDOR DOES NOT WARRANT THAT WORK PRODUCTS AND DELIVERABLES WILL BE ERROR FREE OR THAT THEY WILL BE COMPATIBLE WITH PRESENT OR FUTURE PRODUCTS OF Vendor OR OTHER VENDOR.

5) General Warranty Exclusions:

Vendor is not obligated to provide warranty services or Support for any claims resulting from:

- (a) improper site preparation, or site or environmental conditions that do not conform to Vendor's site specifications;
- (b) DIR Customer's non-compliance with Specifications or Transaction Documents;
- (c) improper or inadequate maintenance or calibration;
- (d) DIR Customer or third-party media, software, interfacing, supplies, or other products;
- (e) modifications not performed or authorized by Vendor;
- (f) virus, infection, worm or similar malicious code not introduced by Vendor; or
- (g) abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by DIR Customer, or other causes beyond Vendor's control.

6) Non-Vendor Branded Products and Services. Vendor provides third-party products, software, and services that are not Vendor Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.

7) Disclaimer. VENDOR DOES NOT GRANT, AND HEREBY DISCLAIMS, ANY WARRANTY OR CONDITION THAT ANY SERVICE, SOFTWARE, HARDWARE, DELIVERABLES, OR OTHER MATERIALS PROVIDED UNDER THIS CONTRACT WILL BE UNINTERRUPTED OR ERROR FREE. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THIS CONTRACT ARE EXCLUSIVE. NO OTHER WARRANTY OR CONDITION, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY VENDOR OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW, VENDOR DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NOTHING HEREIN LIMITS OR PRECLUDES VENDOR'S OBLIGATION OTHERWISE UNDER THE CONTRACT, INCLUDING BUT NOT LIMITED TO INDEMNIFICATION OBLIGATIONS.

N. Section 9. Contract Enforcement, B. Termination, 6) Vendor or Order Fulfiler Rights Under Termination, is hereby replaced in its entirety:

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, 2) any applicable early termination fees agreed to in such Purchase Order, and 3) Customer will receive all work in progress for which the Customer has paid. The parties will attempt to reach agreement on the value to the Customer of any incomplete work in progress. If they reach an acceptable figure, Customer will pay it upon acceptance of the incomplete work.

This Contract is executed to be effective as of the date of last signature.

HP Enterprise Services, LLC

Authorized By: signature on file

Name: Mike Freese

Title: Senior Director

Date: 8/8/13

The State of Texas, acting by and through the Department of Information Resources

Authorized By: signature on file

Name: Martin Zelinsky on behalf of Karen Robinson

Title: Executive Director

Date: 8/9/13

Office of General Counsel: signature on file 8/9/13