

Vendor Contract No. _____

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
ORACLE AMERICA, INC.

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Oracle America, Inc. (“Vendor”), with its principal place of business at 500 Oracle Parkway, Redwood Shores, California 94065.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-210, on January 29, 2014, for Oracle Branded Hardware, Software and Related Products and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-210 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Software License Agreement; Appendix E-1, Sample Ordering Document Hardware and Software Products and First-Year Technical Support; Appendix E-2, Sample Ordering Document Technical Services; Appendix E-3, Sample Ordering Document Advanced Customer Support Services; Appendix E-4, Sample Ordering Document Oracle Linux and Oracle VM Support Services; Appendix E-5, Sample Ordering Document Renewal of Technical Support; Appendix E-6, Sample Ordering Document Oracle University Learning Credits; Appendix F, Delivery, Installation, Commencement Date and Acceptance; Appendix G, Public Sector General Terms; Appendix H, Public Sector Schedule P – Program; Appendix I, Public Sector Schedule S – Services; Appendix J, Public Sector Schedule LVM – Linux and Oracle VM Service Offerings; Appendix K, Public Sector Schedule H – Hardware Master Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-210 including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-210, 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 Appendix D, then Appendix E-1, then Appendix E-2, then Appendix E-3, then

Vendor Contract No. _____

Appendix E-4, then Appendix E-5, then Appendix E-6, then Appendix F, then Appendix G, then Appendix H, then Appendix I, then Appendix J, then Appendix K, 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 the Contract, by mutual agreement by amendment, for up to one (1) optional two-year term.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to hardware, operating systems, integrated software, integrated software options and programs (each as defined in Appendix D and collectively defined as “products” listed in Vendor’s then current price list for the named Product Hierarchies and programs as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering and/or Named Product Hierarchies; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer’s product line which was not included in the Vendor’s response to the solicitation described in Section 1.B above.

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of Oracle Branded Hardware, Software and Related Products and Services. Vendor may propose such products or services throughout the term of the Contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR’s sole discretion and any decision will be final.

B. Services

Services available under this Contract are limited to technical services, advanced customer support (ACS) services, installation, maintenance and support, technical and managed services (including Oracle Linux/Oracle VM Service Offerings, as defined in Appendix J), training/education, and packaged services for the products as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. The parties agree that JD Edwards (JDE) Applications products, Managed Cloud Services and SaaS/Cloud services will be further negotiated following execution of this Contract for inclusion by amendment upon agreement of terms and conditions of both parties.

Vendor Contract No. _____

C. Business Operations Transfer (Outsourcing)

Notwithstanding any other provision of the Contract, a Customer may contract with a facilities management firm (“Outsourcer”) to operate the licensed programs on behalf of the Customer provided such operation is either on the Customer’s hardware and operating system or the same or comparable hardware and operating system at Outsourcer’s site, and provided further (i) the Customer hereby assumes all responsibility for the confidentiality of all confidential information and protection of Oracle’s proprietary rights, and (ii) the Customer shall give Oracle written notice of all licensed programs to be managed by Outsourcer at the same time as entering into such a contract, and (iii) the Customer assumes all liability for shipping the licensed programs to Outsourcer’s site and return of the licensed programs to the Customer’s site, and (iv) in no event shall Outsourcer be allowed to copy the licensed programs or be granted general development use access to the licensed programs except as specified herein and (v) to the extent allowable under Texas Law, the Customer agrees to indemnify Oracle of (a) any claims or demands brought against Oracle or its directors, employees or agents arising from or in connection with any such services provided by Outsourcer, or (b) Outsourcer’s failure to abide by the terms and conditions of the Contract.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

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 three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

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 by Vendor 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:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300

Vendor Contract No. _____

Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:
Leslie Frederick
Contract Administrator
Oracle America, Inc.
500 Eldorado Blvd., Bldg. 4
Broomfield, CO 80021
Phone: (303) 272-4571
Facsimile: (303) 272-4571
Email: st-local-agreements_us@oracle.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring products, including software licenses under the Contract shall hold, use and operate such products, including hardware and software licenses, subject to compliance with the terms set forth in the Software License Agreement set forth in Appendix D, Appendix F, Appendix G, Appendix H and Appendix K of this Contract. No changes to these terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D, Appendix F, Appendix G, Appendix H or Appendix K, except for transaction specific terms, including usage limitations, as may be agreed to by the Customer and the Order Filler in an Order Form (defined in Appendix A). Vendor shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the terms and conditions contained in Appendix D, Appendix F, Appendix G, Appendix H and Appendix K is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the terms and conditions contained in Appendix D, Appendix F, Appendix G, Appendix H and Appendix K. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the terms and conditions contained in Appendix D, Appendix F, Appendix G, Appendix H and Appendix K.

B. Services Agreement

Services provided under this Contract shall be in accordance with the Contract, including any applicable Appendices and the relevant Order Form for such service, samples of such Order Forms for services are set forth in Appendix E 1-6 of this Contract.

Vendor Contract No. _____

C. Conflicting or Additional Terms

In the event of a conflict between the terms of the Vendor Software License Agreements, Service Agreements or linked or supplemental documents and the Contract which amend or diminish the rights of DIR Customers or the State provided for in the Contract, such conflicting terms shall not take precedence over the terms of this Contract. In no event will any linked document alter or override any term of the Contract, nor will it change fees, prices, or the method of computing any of the foregoing.

8. Authorized Exceptions to Contract or any Appendices.

A. Appendix A, Section 1, Contract Scope is hereby restated in its entirety as follows:

The Vendor shall provide the products and related services specified in Section 3 of the Contract for Products and Related Services for purchase by Customers. Terms used in Appendix A shall have the meanings set forth in Section 3 or elsewhere in Appendix A. The terms used but not defined herein shall have the meaning ascribed to them elsewhere in the Contract, as appropriate.

B. Appendix A, Section 2, No Quantity Guarantees is hereby restated in its entirety as follows:

Customers may obtain, under separate contract, Vendor's products and related services, or products and related services similar to Vendor's, from other sources during the term of this Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

C. Appendix A, Section 3, Definitions is hereby restated in its entirety as follows:

A. Customer - 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.

B. Compliance Check – an audit, at DIR's expense, of Vendor's 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.

C. Contract – the document executed between DIR and Vendor into which this Appendix A is incorporated.

D. CPA – refers to the Texas Comptroller of Public Accounts.

E. Day - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls

Vendor Contract No. _____

for performance on a day that is not a business day, then performance is intended to occur on the next business day.

- F. Order Form** – is Vendor’s standard ordering document forms used by Customer when placing an order; copies of the standard forms are attached as samples in Appendices E 1-6. The standard forms may be updated by Vendor from time to time. An Order Form requires the signature of the Customer and the Order Fulfiller.
- G. Order Fulfiller** – the party, either Vendor or a party that may be designated as a Reseller (as defined in Section 7.B) by Vendor who is fulfilling a Purchase Order pursuant to the Contract.
- H. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument) and when issued shall mean all funds have been appropriated for such order for the then-current fiscal period.
- I. State** – refers to the State of Texas.
- J. Subcontractor** – refers to subcontractors then performing and providing services to Customers pursuant to an Order Form under the Contract in furtherance of a subcontract agreement with Oracle. The defined term Subcontractor may be shown as capitalized or lower case in the Contract and shall have the meaning stated herein.

D. Appendix A, Section 4., General Provisions, A. Entire Agreement, is hereby restated in its entirety as follows:

The Contract, which includes the Appendices, Exhibits, and the information which is incorporated into the Contract by written reference (including reference to information contained in a URL or referenced policy) constitutes the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

The Contract together with the applicable Order Form is the complete agreement for the products and/or services ordered by the Customer and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such products and/or services.

E. Appendix A, Section 4.B, Modification of Contract Terms and/or Amendments, Paragraph 2, is restated in its entirety as follows:

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.

Vendor Contract No. _____

- 2) Customers shall not have the authority to modify the terms of the Contract, however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in an Order Form and given effect. No additional term or condition added in an Order Form issued by a Customer can conflict with or diminish a term or condition of the Contract. Terms and conditions on any Purchase Order issued by Customer hereunder will have no force or effect. In the event of a conflict between an Order Form or Customer's Purchase Order and the Contract, the Contract shall control unless otherwise agreed in writing by DIR and Vendor.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

F. Appendix A, Section 4.D, Assignment, is hereby restated in its entirety as follows:

DIR or Vendor may assign the Contract 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 in connection with a merger, consolidation, acquisition, internal restructuring or sale of all or substantially all of the assets of the Vendor, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract 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 and a mutually agreed written Contract amendment. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

G. Appendix A, Section 4.E, Survival, is hereby restated in its entirety as follows:

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract in accordance with their terms and subject to the provisions in the related Order Form. All Order Forms (and related Purchase Orders issued) accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract in accordance with their terms. Rights and obligations under this Contract which by their nature should survive, including, but not limited to any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

H. Appendix A, Section 4.F, Choice of Law, is restated in its entirety as follows:

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in the courts located in Texas. Nothing in the

Vendor Contract No. _____

Contract or its Appendices shall be construed to waive the sovereign immunity of the State.

I. Appendix A, Section 4.H, Proof of Financial Stability, is restated in its entirety as follows:

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

J. Appendix A, Section 5.B, Ownership, is restated in its entirety as follows:

The parties will mutually agree on one of the following provisions (either 5.B.i or 5.B.ii) below, as applicable, to allocate intellectual property rights in deliverables created within the scope of technical services identified in an exhibit under a particular Order Form, a sample of which is provided in Appendix E-2 to the Contract. If an Order Form does not refer to one of the provisions below or otherwise contain or reference terms allocating intellectual property rights in such deliverables, then the intellectual property rights in such deliverables shall be allocated between the parties pursuant to subsection 5.B.i below.

i. "Upon payment for the services under this order, you have the non-exclusive, non-assignable except as otherwise provided for in the Contract, royalty free perpetual, limited right to use for your internal business operations, anything developed by Oracle and delivered to you under this order. You may allow your agents and contractors (including, without limitation, outsourcers) to use the deliverables for this purpose and you are responsible for their compliance with this order in such use. Oracle retains all ownership and intellectual property rights to anything developed or delivered under this order. For anything developed or delivered under this order that is specifically designed to allow your customers and suppliers to interact with you in the furtherance of your internal business operations, such use is allowed under the agreement."

ii. "Joint Property" means those deliverables developed by Oracle solely for you under this order and those deliverables developed jointly by Oracle and you under this order; Joint Property does not include any Oracle Works (defined below). Upon payment of all fees due under this order, Oracle and you agree that we each jointly own the copyright interest in Joint Property and that we each do not have to account to one another for use of Joint Property. "Oracle Works" means: (a) anything provided by or on behalf of Oracle from a repository; (b) any software code generated by computer aided software engineering (CASE) tools; (c) any tools, interfaces, and utilities developed by or on behalf of Oracle; and (d) any derivative works of (a) through (c) above. Oracle retains all right, title and interest, including all copyrights, in any Oracle Works. Upon payment of all fees due under this order, you have the non-exclusive, non-assignable, royalty free, perpetual limited right to use, solely as a component of Joint Property, Oracle Works that

Vendor Contract No. _____

are incorporated into Joint Property. You may allow your agents and contractors (including, without limitation, outsourcers) to use, as set forth in the preceding sentence, Oracle Works that are incorporated into Joint Property and you are responsible for their compliance with this order in such use. This order does not grant, amend, or modify any license for any programs or documentation owned or distributed by Oracle.”

The technical services provided under the Contract may be related to the Customer’s license to use Programs owned or distributed by Vendor which the Customer may acquire under a separate order. The agreement referenced in that order shall govern the Customer’s use of such Programs.

- K. Appendix A, Section 5.C, Further Actions**, is deleted in its entirety.
- L. Appendix A, Section 5.D, Waiver of Moral Rights**, is deleted in its entirety.
- M. Appendix A, Section 5.E, Confidentiality**, is deleted in its entirety.
- N. Appendix A, Section 5.F, Injunctive Relief**, is deleted in its entirety.
- O. Appendix A, Section 5.G, Return of Materials Pertaining to Work Product**, is deleted in its entirety.
- P. Appendix A, Section 5.H, Vendor License to Use**, is deleted in its entirety.
- Q. Appendix A, Section 5.J, Agreement with Subcontracts**, is deleted in its entirety.
- R. Appendix A, Section 5.K, License to Customer**, is deleted in its entirety.
- S. Appendix A, Section 5.I, is renumbered to be Section 5.C, Third-Party Underlying and Derivative Works**, is restated in its entirety as follows:

Upon payment for the services under an Order Form, Customer shall have the non-exclusive, non-assignable except as otherwise provided for in the Contract, royalty free perpetual, limited right to use for the Customer’s internal business operations, anything developed by Vendor and delivered to the Customer under such Ordering Form. The Customer may allow its agents and contractors (including, without limitation, outsourcers) to use the deliverables for this purpose and the Customer is responsible for their compliance with the Order Form in such use. Unless otherwise provided for in the Order Form pursuant to Appendix A, Section 5.B of the Contract, Vendor retains all ownership and intellectual property rights to anything developed or delivered under an Order Form. For anything developed or delivered under an Order Form that is specifically designed to allow a Customer’s customers and suppliers to interact with the Customer in the furtherance of the Customer’s internal business operations, such use is allowed under the Contract.

Vendor Contract No. _____

Vendor agrees to notify Customer in the Order Form, or on delivery of the Work Product or Services if the deliverables include any Third Party IP. On request, Vendor shall provide Customer with documentation confirming a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product as provided for in the Contract.

T. Appendix A, Section 5.L, is renumbered to be Section 5.D, Vendor Development Rights, is restated in its entirety as follows:

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 Intellectual Property Rights of Customer therein are infringed by such competitive materials.

U. Appendix A, Section 6.A, Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases only), is hereby restated in its entirety as follows:

1) Effective September 1, 2006, to the extent required by law, state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) The extent to which a Vendor product (hardware or program) is, at the time of delivery, capable of providing comparable access to individuals with disabilities is indicated by the comments and exceptions (if any) specified on the applicable Voluntary Product Accessibility Template (VPAT) available at www.oracle.com/us/corporate/accessibility, provided that such Vendor product is used in accordance with the applicable Vendor program and hardware documentation and that any assistive technologies and any other products used with the Vendor product properly interoperate with the Vendor product. The VPAT indicates the degree of conformance with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as "Section 508"). In the event that Section 508 is revised over the life of this Contract, the VPAT will indicate the applicable version. The VPAT also lists the degree of conformance with the Web Content Accessibility Guidelines (WCAG) if applicable (said standards only apply to "web pages"). In the event that no VPAT is available for a particular product, please contact the Oracle Accessibility Program Office at accessible_ww@oracle.com. Vendor makes no representations regarding the accessibility status of any product identified as "third party."

Vendor Contract No. _____

V. Appendix A, Section 6.B, Purchase of Commodity Items (applicable to State Agency Purchases Only), is hereby restated in its entirety as follows:

1) In accordance with Texas Government Code, §2157.068, DIR may adopt rules requiring State agencies to buy commodity items (as defined in Texas Government Code, §2157.068 (a)), in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR, a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative), or an express prior approval from the Legislative Budget Board for the Expenditure necessary for the purchase of such commodity items.

2) As defined in Texas Government Code §2157.068(a), commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines 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, function 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.

3) Vendor agrees to use best efforts to ensure that all State agency purchasing commodity items from Vendor are aware of Vendor's existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

W. Appendix A, Section 7. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract, is hereby restated in its entirety as follows:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract.

X. Appendix A, Section 7.B, Use of Order Fulfillers, is hereby restated in its entirety as follows:

DIR agrees to permit Vendor to utilize designated third parties to provide sales support resources to Customers (such designated third parties are hereinafter referred to as "Resellers"). Such participation is subject to the following conditions:

Vendor Contract No. _____

1) Designation of Resellers

- a) Vendor may designate Resellers to act as the distributors for products and services available under the Contract. In designating Resellers, to the extent required by law, Vendor must be in compliance with the State’s Policy on Utilization of Historically Underutilized Businesses, a copy of which shall be provided to Vendor. In addition to any required Subcontracting Plan, Vendor shall provide DIR with the following Reseller information: Reseller name, Reseller business address, Reseller CPA Identification Number, Reseller contact person email address and phone number. Vendor may also note that certain Resellers may only sell limited products and services offered under the Contract.
- b) DIR reserves the right to require the Vendor to rescind any such Reseller participation and may request that Vendor name additional Resellers should DIR determine it is in the best interest of the State.
- c) Vendor shall be responsible for its Resellers’ performance under and compliance with the terms and conditions of the Contract to the extent provided in the Contract and subject to the limitations set forth in the Contract.
- d) Vendor shall not prohibit Resellers from participating in other procurement opportunities offered through DIR.

2) Changes in Reseller List

Vendor may add Resellers at any time throughout the term of the Contract upon written authorization by DIR. In addition, Vendor may delete Resellers at any time throughout the term of the Contract upon written notice to DIR. Prior to adding or deleting Resellers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State’s Policy on Utilization of Historically Underutilized Businesses, a copy of which shall be provided to Vendor. Vendor shall provide DIR with its updated Subcontracting Plan and the Reseller information listed in Section 7.B.1.a above.

3) Pricing to Customer

All pricing to the Customer for orders placed under this Contract shall comply with the Customer price as stated within Section 4 of the Contract, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative fee, provided that nothing shall preclude a Reseller from offering Customers prices lower than as stated in Section 4 and Appendix C.

Y. Appendix A, Section 7.C, Product Warranty and Return Policies, is hereby restated in its entirety as follows:

1) Product and Service Warranties

- a) Hardware. Vendor provides a limited warranty (the “Oracle Hardware Warranty) for the hardware purchased by the Customer pursuant to the Contract. Vendor warrants that the hardware will be free from, and using the operating system and integrated software and integrated software options will not cause in the hardware,

Vendor Contract No. _____

material defects in materials and workmanship for one year from the date the hardware is delivered to Customer. Customer must notify Vendor of any hardware warranty deficiency within one year after delivery. **VENDOR DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE HARDWARE.** You may access a more detailed description of the Oracle Hardware Warranty at <http://www.oracle.com/support/policies.html> (“the warranty web page”) incorporated herein by reference. Any changes to the Oracle Hardware Warranty details specified on the warranty web page will not apply to hardware ordered prior to such change. The Oracle Hardware Warranty applies only to hardware that has been (i) manufactured by Vendor and (ii) sold by Vendor (either directly or by a Reseller). The hardware may be new or like new. The Oracle Hardware Warranty applies to Hardware that is new and Hardware that is like-new which has been remanufactured and certified for warranty by Oracle. Replacement units for defective parts or hardware items replaced under the Oracle Hardware Warranty may be new or like new quality. Such replacement units assume the warranty status of the hardware into which they are installed and have not separate or independent warranty of any kind. Title in all defective parts or hardware items shall transfer back to Vendor upon removal from the hardware. The Oracle Hardware Warranty does not apply to normal wear of the hardware or media. The Oracle Hardware Warranty is extended only to the original purchaser of the hardware and may be void in the event that title to the hardware is transferred to a third party.

b) Programs. Vendor warrants that a program licensed to the Customer pursuant to the Contract will operate in all material respects as described in the applicable documentation for one year after delivery (i.e., via physical shipment or electronic download) to Customer. Customer must notify Vendor of any program warranty deficiency within one year after delivery. **VENDOR DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT VENDOR WILL CORRECT ALL PROGRAM ERRORS.**

c) Media. Vendor warrants that the media for programs, operating system and integrated software purchased by the Customer pursuant to the Contract will be free from material defects in materials and workmanship under normal use for a period of 90 calendar days from the date the media is shipped to Customer. Customer must notify Vendor of any media warranty deficiency within 90 calendar days after delivery. The operating system and integrated software is provided “AS IS”.

d) Services. Vendor warrants that services will be provided in a professional manner consistent with industry standards. Customer must notify Vendor of any services warranty deficiencies within 90 calendar days from performance of the deficient services.

Vendor Contract No. _____

2) Exclusive Remedies

a) Hardware. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE ABOVE HARDWARE WARRANTIES SHALL BE THE REPAIR OR, AT VENDOR'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE PRODUCT, OR, IF SUCH REPAIR OR REPLACEMENT IS NOT REASONABLY ACHIEVABLE, THE REFUND OF THE FEES PAID TO THE ORDER FULFILLER FOR THE DEFECTIVE PRODUCT AND ANY UNUSED, PREPAID FEES FOR TECHNICAL SUPPORT SERVICES RELATED TO SUCH DEFECTIVE PRODUCT.

b) Programs. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE ABOVE PROGRAM WARRANTIES SHALL BE THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF VENDOR CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, VENDOR MAY END THE RELATED PROGRAM LICENSE AND CUSTOMER MAY RECOVER THE FEES CUSTOMER PAID TO THE ORDER FULFILLER FOR SUCH PROGRAM LICENSE AND ALL UNUSED, PREPAID FEES FOR TECHNICAL SUPPORT SERVICES RELATED TO SUCH PROGRAM LICENSE.

c) Media. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LAIBILTY FOR BREACH OF THE ABOVE MEDIA WARRANTIES SHALL BE THE REPLACEMENT OF THE DEFECTIVE MEDIA, PROVIDED IT IS RETURNED TO VENDOR WITHIN THE APPLICABLE WARRANTY PERIOD, AND SUBJECT TO STANDARD SHIPPING AND HANDLING FEES.

d) Services. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE ABOVE SERVICES WARRANTIES, SHALL BE THE REPERFORMANCE OF THE DEFICIENT SERVICES OR, IF VENDOR CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO THE ORDER FULFILLER FOR THE DEFICIENT SERVICES.

e) General. **TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Vendor Contract No. _____

3) Invalidation of the Hardware or Media Warranties by Customer

No warranty will apply to hardware, operating system, integrated software, integrated software options or media which has been:

- a) modified, altered or adapted without Vendor's written consent (including modification by removal of the Vendor serial number tag on the hardware);
- b) maltreated or used in a manner other than in accordance with the relevant documentation;
- c) repaired by any third party in a manner which fails to meet Vendor's quality standards;
- d) improperly installed by any party other than Vendor or an authorized Vendor certified installation partner;
- e) used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use;
- f) relocated without Vendor's written consent, to the extent that problems are attributable to such relocation;
- g) used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h) used by parties appearing on the most current U.S. export exclusion list;
- i) relocated to countries subject to U.S. trade embargo or restrictions;
- j) used remotely to facilitate any activities in the countries referenced in (h) or (i) above; or
- k) purchased from any entity other than Vendor or a Reseller.

Z. Appendix A, Section 7.D, Customer Site Preparation, is hereby restated in its entirety as follows:

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation. Customer acknowledges that to operate certain hardware, its facility must meet a minimum set of site requirements. Such site requirements may change from time to time, as communicated by Order Fulfiller and the applicable documentation provided with the hardware.

AA. Appendix A, Section 7.E, Internet Access to Contract and Pricing Information is hereby restated in its entirety as follows:

1) Vendor Website

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services offered, product and service specifications, specific Contract pricing, designated Resellers, contact information for Vendor and designated Resellers, instructions for obtaining Order Forms and placing orders, and Vendor's warranty and order and delivery policies. The

Vendor Contract No. _____

Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor will use commercially reasonable efforts to ensure that the website information specified in the above paragraph will be accurately posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after receipt of written notification by DIR.

3) Website Compliance Reviews

Periodic compliance reviews of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties, other than Resellers or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

Vendor Contract No. _____

BB. Appendix A, Section 7.G, Vendor Name and Order Fulfiller Logo, is hereby restated in its entirety as follows:

DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. DIR shall not use Vendor's trademarks in a manner that misrepresents its relationship with Vendor or Vendor's products and services, is otherwise misleading or confusing, or reflects negatively on Vendor. If Vendor, in its sole discretion, determines that DIR's use of vendor's trademarks is not in compliance with the Contract, Vendor shall promptly notify DIR and DIR shall promptly modify or discontinue its use of the logo as directed by Vendor. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

CC. Appendix A, Section 7.H, Trade Show Participation, is hereby restated in its entirety as follows:

Vendor may participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all such requested trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

DD. Appendix A, Section 7.K, DIR Cost Avoidance, is hereby restated in its entirety as follows:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon reasonable request by DIR and no more than twice annually, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and, to the extent it exists, pricing from any other Vendor contracts with WSCA, GSA or TIPS.

EE. Appendix A, Section 8., Pricing, Purchase Orders, Invoices, and Payments, A. Manufacturer's Suggested Retail Price (MSRP) or List Price is hereby restated in its entirety as follows:

Vendor Contract No. _____

MSRP is defined as the product sales price list price published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

FF. Appendix A, Section 8.B, Customer Discount is hereby restated in its entirety as follows:

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

GG. Appendix A, Section 8.C, Customer Price is hereby restated in its entirety as follows:

1) The price to the Customer shall be calculated as follows:

Customer Price = MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index.

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided by Vendor or its Reseller at a greater discount than the applicable discount in this Contract to a DIR - eligible Texas Customer who is not purchasing those products or services under this Contract, then the applicable discount in this Contract shall be adjusted to that greater discount by written amendment as set forth herein. The foregoing requirement applies only to products or services provided by Vendor or its Resellers for a quantity of one (1) hardware product under like terms and conditions, and does not apply to volume or special pricing purchases. To the extent that either party provides written notice to the other party that a greater discount was provided by Vendor in accordance with this section, then both parties will utilize best efforts to amend this Contract within thirty (30) business days to reflect the greater discount. Any Contract changes finalized pursuant to this section within thirty (30) business days after the date of the notice of such greater discount shall be prospective and not retroactive to the date of that notice. Any Contract changes finalized pursuant to this section more than thirty (30) business days after the date of such notice shall be retroactive to the date of that notice.

HH. Appendix A, Section 8.D, Shipping and Handling Fees is hereby restated in its entirety as follows:

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board (Oracle's shipping terminology for same is DDP-Delivered Duty Paid) Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited

Vendor Contract No. _____

delivery, Customer will be responsible for any charges for expedited delivery. Orders can only be placed for shipment within the United States.

II. Appendix A, Section 8.E, Tax Exempt is hereby restated in its entirety as follows:

DIR represents as per Section 151.309, Texas Tax Code, governmental Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, DIR represents that Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). DIR makes no representations about the tax exempt status of “assistance organizations” as defined under Texas law. Vendor must independently request and receive any tax exemptions directly from assistance organization customers.

JJ. Appendix A, Section 8.F, Travel Expense Reimbursement is hereby restated in its entirety as follows:

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. 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 of the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer’s funding of travel expenses on a Purchase Order (defined below) is Vendor’s notice of Customer’s approval of travel expenses. Customer shall provide Vendor with a copy of all applicable travel reimbursement policies prior to requiring the Vendor to provide any services for which Vendor might incur travel expenses.

KK. Appendix A, Section 8.G, Changes to Prices is hereby restated in its entirety as follows:

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price lists shall be made available at a web site to be accessible by the Customers, as further described in Appendix C; and any updates to such price lists shall take effect automatically during the term of this Contract and shall be passed onto the Customer in all Order Forms (defined below) issued after any such price list updates are effective, published and posted on Vendor’s DIR website.

Vendor Contract No. _____

- 1) Updated price lists must be requested with a signed cover letter (which may be delivered to DIR via email) indicating the change in price and must be accompanied by a copy of the updated manufacturer or publisher's price list.
- 2) Requests for updated price lists will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Updated price lists that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted updated price list is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the Vendor's written request to remove the product or service and executed by both parties without undue delay. Existing pricing must be honored up to the date of execution of the Contract amendment. Vendor anticipates updates to price lists at least once annually; however, price lists may not be updated for at least ninety (90) days after the Contract effective date.
- 3) In the event that an updated price list that has been rejected under the process described in section 2 above includes a price decrease, such price decrease may be passed onto the Customer in Order Forms.

LL. Appendix A, Section 8.H, Purchase Orders is hereby restated in its entirety as follows:

All orders for products and service pursuant to this Contract will be placed directly by the Customer with the Order Fulfiller. Accurate Order Forms shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller; provided that (i) the Order Form is accompanied by a Purchase Order; (ii) the Order Form incorporates the Contract; (iii) the fees on the Purchase Order and Order Form are the same; and (iv) the Order Form is executed by the Customer and the Order Fulfiller. Once an order is accepted by the Order Fulfiller, the Customer's order is non-cancelable and the sums paid nonrefundable, except as provide elsewhere in the Contract. Written changes by Customer to the ordered hardware prior to Vendor's shipment are permitted only in accordance with the change order requirements in Vendor's Order and Delivery Policies, which may be updated from time to time and accessed at <http://oracle.com/contracts>. Notwithstanding the foregoing, if a change order results in a change order fee, Vendor may charge a fee equal to a minimum of 1% of the net charges for the hardware that is being modified, plus any incremental charges based on the modified part(s). For the avoidance of any doubt, only the terms specified in Vendor's Order and Delivery Policies that are relevant to order and delivery in the U.S. shall be applicable to this Contract. The Order Fulfiller is under no obligation to accept an order from a Customer who is in breach of the Contract.

In entering into a payment obligation under an Order Form, Customer agrees and acknowledges that Customer has not relied on the future availability of any hardware,

Vendor Contract No. _____

program or updates. However, (a) if Customer orders technical support for programs licensed under the order, the preceding sentence does not relieve Vendor of its obligation to provide such technical support services, if and when available, in accordance with Vendor's then current technical support policies, and (b) the preceding sentence does not change the rights granted to Customer for any program licensed under the order, per the terms of the Contract. Once paid, fees are nonrefundable, except as provided in the Contract.

MM. Appendix A, Section 8.I, Invoices is hereby restated in its entirety as follows:

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any applicable provision of acceptance of such products and/or services as set forth in the Contract or the applicable Order Form shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. To be accurate, invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer. Invoices may also include any written changes to the ordered hardware made by the Customer prior to shipment and agreed to by Vendor in accordance with Section 8.H above, as well as any changes made by Vendor in the form of a product substitution or modification to ordered hardware that does not cause a material adverse effect in overall hardware performance.

Additionally, the invoices will include any expedited shipping and handling charges (in accordance with Appendix A, Section 8.D), pre-approved travel expenses (in accordance with Appendix A, Section 8.F). The Order Fulfiller is permitted to issue multiple invoices for a single Order Form. Invoices for programs are issued as of the program commencement date. Invoices for hardware are issued as of the hardware commencement date. Technical support services are invoiced quarterly in arrears. Other services are invoiced monthly in arrears and as may be further specified on the relevant Order Form. Travel expenses are invoiced monthly as they are incurred. Customers may pay for Oracle University Learning Credits in advance.

3) The administrative fee as set forth in Section 5.A., DIR Administrative Fee, of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

Vendor Contract No. _____

NN. Appendix A, Section 9., Contract Administration, A. Contract Managers is hereby restated in its entirety as follows:

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall designate a contact person or persons as the Contract Administrator(s) to manage Vendor's administrative responsibilities under the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator(s) if the assigned Contract Administrator(s) is not or are not, in the reasonable opinion of DIR, adequately serving the needs of the State.

OO. Appendix A, Section 9.B, Reporting and Administrative Fees is hereby restated in its entirety as follows:

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR 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 Vendor's applicable records pertaining directly to Vendor's performance of services or delivery of products under the Contract at DIR's expense.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period, provided that if the fifteenth (15th) calendar day falls on a non-business day, then the reports shall be due on the next business day. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: detailed invoices for the reporting period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, if available, extended price, Customer Purchase Order number, contact name, Customer's complete billing

Vendor Contract No. _____

address, the administrative fee due for the reporting period, and other information as required by DIR for all similarly situated vendors, provided, however, that DIR shall provide Vendor adequate advance notice and time to review and include such information in the reports. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this Section. Notwithstanding the foregoing, should a Reseller be delinquent in providing information to Vendor for inclusion in the related month's report and such report has been submitted to DIR by Vendor, Vendor may include such information in the subsequent month's report rather than correcting or updating the corresponding month's report, and Vendor shall not be deemed to have delivered a late or inaccurate report.

3) Historically Underutilized Businesses Subcontract Reports

- a) Upon request by Customer or DIR, Vendor shall electronically provide each Customer Vendors' relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- b) Reports shall be due in accordance with the applicable provisions of the Texas Administrative Code, Title 34, Part 1, Chapter 20, Section 20.14.

4) DIR Administrative Fee

- a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the twentieth (20th) calendar day after the close of the previous month period, provided that if the twentieth (20th) calendar day falls on a non-business day, then the administrative fee shall be due on the next business day. DIR may change the amount of the administrative fee upon thirty (30) days written notice to Vendor without the need for a formal contract amendment.
- b) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) 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. Vendor shall correct any inaccurate reports or administrative fee payments within five (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within five (5) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within five (5) business days, Vendor 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 DIR approval.

Vendor Contract No. _____

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of a late fee penalty of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

PP. Appendix A, Section 9.C, Records and Audits is hereby restated in its entirety as follows:

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, 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 or designee 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 or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract 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 and Order Fulfillers 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: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, 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 provide all paper and electronic records, books, documents, accounting procedures, practices and any other items directly 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 (provided that such designee is not a competitor of Vendor), Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall

Vendor Contract No. _____

provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to 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. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay 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 Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's reasonable satisfaction that Vendor's calculation of DIR's administrative fee is correct.

QQ. Appendix A, Section 10., Vendor Responsibilities, A. Indemnification, 1) Independent Contractor, 2) Acts or Omissions and 3) Infringements, is hereby restated in their entirety as follows:

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING 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, AND/OR ASSIGNEES, FROM AND AGAINST 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 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.

Vendor Contract No. _____

3) Infringements

a) VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES, FROM ANY AND ALL THIRD PARTY CLAIMS, WHICH PERTAIN TO ORACLE-BRANDED PRODUCTS AND SERVICES, 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, VENDOR-NEGOTIATED SETTLEMENT AMOUNTS, AND COURT-AWARDED DAMAGES. THE DEFENSE SHALL BE COORDINATED BY VENDOR, WITH THE OFFICE OF THE ATTORNEY GENERAL FOR 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) 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;

c) Vendor shall have no liability if the alleged infringement is caused in whole or in part by: (i) use of the product or service in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer, (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement, or (vii) if the Customer uses a version of product or service which has been superseded via a patch, update, upgrade, fix or similar method or process and the Customer is not using such newer version of the product or service.

d) Vendor will transfer to Customer any third party intellectual property infringement indemnification for non-Oracle Branded Products, Software, and Services delivered under the Contract and transferable to Customer.

Vendor Contract No. _____

e) This section provides the parties' exclusive remedy for any infringement claims or damages.

RR. Appendix A, Section 10.C, Vendor Certifications, is hereby restated in their entirety as follows:

Vendor certifies that as of the effective date of the Contract,

- (i) it has 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 the Contract;
- (ii) it is not currently delinquent in the payment of any franchise tax owed to the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) to the best of its knowledge, it has not 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) it has 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, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to Vendor will have a material adverse effect on the ability to fulfill its obligations under the Contract;
- (vii) it is not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) it is 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 scope of this Contract, Vendor hereby certifies 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) Vendor agrees that any payments due under this contract 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) Vendor is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;

Vendor Contract No. _____

- (xii) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not knowingly 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 Contract, Vendor certifies it shall disclose for itself 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) to Vendor's knowledge the provision of products and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xiv) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xv) under Section 2155.006, Texas Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and
- (xvi) Vendor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.

The foregoing certifications, representations and warranties only apply as to Vendor, and with respect to any companies acquired by and merged with and into Vendor, only from the date of such acquisition. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. During the term of the Contract, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor will use commercially reasonable efforts to cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements). Any such additional terms and conditions or certifications shall be agreed to by the parties in writing.

Vendor Contract No. _____

SS. Appendix A, Section 10.D, Ability to Conduct Business in Texas, is hereby restated in its entirety as follows:

Vendor is authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

TT. Appendix A, Section 10.E, Equal Opportunity Compliance, is hereby restated in its entirety as follows:

Vendor agrees 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, Vendor agrees 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 Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon reasonable request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as necessary information on the composition of its principals and staff, including minorities and women in management or other positions with discretionary or decision-making authority.

UU. Appendix A, Section 10.G, Responsibility for Actions, is hereby restated in its entirety as follows:

1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

2) Vendor, shall report to DIR promptly when the disclosures under Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

VV. Appendix A, Section 10.H, Confidentiality, is hereby restated in its entirety as follows:

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act. DIR and Customers agree to provide Vendor reasonable notice

Vendor Contract No. _____

prior to disclosing any Vendor Confidential Information in response to a valid request made pursuant to the Texas Public Information Act.

2) By virtue of the Contract and orders submitted under the Contract, DIR, the Customer and Vendor may have access to information that is confidential to one another (“Confidential Information”). Each of the parties agrees to disclose only Confidential Information that is required for the performance of obligations under the Contract or any Order Form (and corresponding Purchase Order). Confidential Information shall be limited to all information clearly identified as confidential at the time of disclosure. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; (d) is independently developed by the other party or (e) is required to be disclosed pursuant to the Texas Public Information Act. The parties agree to hold each other’s Confidential Information in confidence for a period of three years from the date of disclosure. Also, each of the parties agrees to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent any party from disclosing the terms or pricing under the Contract or orders submitted under the Contract in any legal proceeding arising from or in connection with the Contract or disclosing the Confidential Information to a federal or state governmental entity as required by law.

WW. Appendix A, Section 10.I, Security of Premises, Equipment, Data and Personnel, is hereby restated in its entirety as follows:

When performing on-site installation services and/or packaged services for a Customer under an Order Form, 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 that Vendor did not create as a deliverable under an Order Form (collectively referred to as “Data”) belonging to the Customer. When performing on-site services, Vendor and/or Order Fulfiller shall use commercially reasonable 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 reasonable written instructions of the Customer which have been provided to Vendor in advance. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents (but excluding software, documentation, Data or data files) when such damage is caused by the negligent or intentionally wrongful actions or omissions of its employees or subcontractors if such actions or omissions were not proximately caused by the action or omission of the Customer or any third party. If a Vendor and/or Order Fulfiller fails to comply with Customer’s reasonable security requirements (provided that the Customer provides the security requirements to Vendor in advance and in writing), then Customer may immediately terminate its Purchase Order and related Service Agreement.

Vendor Contract No. _____

XX. Appendix A, Section 10.J, Background and/or Criminal History Investigation is hereby restated in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question. In the event Customer is required to conduct a background check on Vendor and/or Order Fulfiller personnel under the Contract, the terms of such background check will be outlined in the applicable Order Form.

YY. Appendix A, Section 10.K, Limitation of Liability, is hereby restated in its entirety as follows:

For any claim or cause of action arising under or related to the Contract or any Order Form and corresponding Purchase Order): i) to the extent not prohibited by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for any indirect, incidental, punitive, special, or consequential damages, even if it is advised of the possibility of such damages, or any loss of profits, revenue, data or data use; and ii) except with respect to the exclusive infringement indemnification provided for in Appendix A, Section 10.A.3, Vendor's maximum liability for damages of any kind arising out of or related to the Contract or any Order Form (and corresponding Purchase Order), whether in contract or in tort, or otherwise, to the Customer shall be limited to the total amount paid to the Order Fulfiller by such Customer under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action, and if such damages result from Customer's use of programs, hardware or services, such liability shall be limited to the fees paid by such Customer to Order Fulfiller for the deficient program, hardware or services giving rise to the liability

ZZ. Appendix A, Section 10.L, Overcharges, is hereby restated in its entirety as follows:

Vendor hereby assigns to DIR any and all of its 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.

Vendor Contract No. _____

AAA. Appendix A, Section 10.M, Prohibited Conduct, is hereby restated in its entirety as follows:

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, Vendor has not 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.

BBB. Appendix A, Section 10.N, Required Insurance Coverage, is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, upon request by a Customer, Vendor shall provide the listed insurance coverage within five (5) business days of execution of an Order Form if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer 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, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer, if requested, within five (5) business days following Vendor's acceptance of an Order Form. Vendor may not begin performance under the Order Form 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 rated by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$1,000,000. 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 listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

Vendor Contract No. _____

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability 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 minimum 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 minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$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;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

CCC. Appendix A, Section 10.O, Use of State Property, is hereby restated in its entirety as follows:

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under the Contract. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under the Contract must be fully reimbursed by Vendor to the Customer reasonably promptly upon written demand by the Customer. Such use shall constitute breach of Contract and may result in termination of the Contract and other remedies available to DIR and Customer under the Contract and applicable law.

DDD. Appendix A, Section 10.P, Immigration, is hereby restated in its entirety as follows:

Vendor shall comply with all applicable requirements related to federal immigration laws and regulations, including but not 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 in the United States on or after the effective date of the 1996 Act who will perform any labor or services pursuant to an Order Form under this Contract located in the United States. Nothing herein is intended to exclude compliance by Vendor with all other relevant and applicable federal immigration statutes and regulations promulgated pursuant thereto.

Vendor Contract No. _____

EEE. Appendix A, Section 10.Q, Public Disclosure, is hereby restated in its entirety as follows:

No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of DIR, except as may be required by law or this Contract.

FFF. Appendix A, Section 10.R, Product and/or Service Substitutions, is hereby restated in its entirety as follows:

Vendor may make product substitutions and modifications that do not cause a material adverse effect on overall product performance. Any changes to Vendor's services will not result in a material reduction in the level of services provided for supported programs or hardware during the period for which fees for such services have been paid.

GGG. Appendix A, Section 10.S, Secure Erasure of Hard Disk Products and/or Services, is deleted in its entirety.

HHH. Appendix A, Section 10.T, Deceptive Trade Practices; Unfair Business Practices, is hereby restated in its entirety as follows:

1) Vendor represents and warrants that as of the effective date of the Contract to its knowledge Vendor nor any of its 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.

2) Vendor certifies that as of the effective date of the Contract to its knowledge it has 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.

III. Appendix A, Section 10.U, Drug Free Workplace Policy is hereby restated in its entirety as follows:

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment.

JJJ. Appendix A, Section 10.V, Accessibility of Public Information, is hereby restated in its entirety as follows:

Vendor Contract No. _____

1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, upon reasonable written request to Vendor, Vendor shall to make any public information (as defined in Texas Government Code Section 552.002) in Vendor's possession which was created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in paper or electronic format that is accessible by the public at no additional charge to the State. Notwithstanding the foregoing, providing any such information under this Section shall not be deemed a violation of any confidentiality provision by Vendor under the Contract or any Order Form.

2) Each State government entity may supplement the provision set forth in Subsection 1, above, with any applicable additional terms agreed upon by the parties and set forth in the relevant Order Form regarding the specific format by which the Vendor is required to make the information accessible by the public.

KKK. Appendix A, Section 11., Contract Enforcement, A. Enforcement of Contract and Dispute Resolution is hereby restated in its entirety as follows:

1) Vendor and DIR agree that a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

2) To the extent required by law, or subsequently agreed to by Customer and Vendor, disputes arising between a Customer and the Vendor and not resolved in the normal course of business and not involving Vendor's intellectual property shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

3) State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

LLL. Appendix A, Section 11.B, Termination, is restated in its entirety as follows:

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Order Forms 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, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or

Vendor Contract No. _____

services, they are obligated to pay for the product or services. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR, in its capacity as the administrator of the Contract, may terminate Contract if funds sufficient to pay its obligations, in its capacity as the administrator of the Contract, under the Contract are not appropriated: by the i) Texas legislature or ii) 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, Vendor will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes 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; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) 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. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate an Order Form and corresponding Purchase Order for technical support services by giving Vendor thirty (30) calendar days written notice. If a Customer terminates an Order Form and corresponding Purchase Order for technical support services pursuant to this provision, the Customer shall pay for the amounts that have accrued for services received prior to the termination of such Order Form and corresponding Purchase Order.

Vendor Contract No. _____

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Order Form/Purchase Order

Customer or Order Fulfiller may terminate an Order Form and corresponding Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Order Form in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Order Form and the corresponding Purchase Order. If a Customer terminates an Order Form and corresponding Purchase Order pursuant to this provision, the Customer shall pay for the amounts that have accrued for the products and services received prior to the termination of such Order Form and corresponding Purchase Order.

5) Customer Rights Under Termination

Except as provided in Section 11.B.6 below, in the event the Contract expires or is terminated for any reason in accordance with Section 11.B, a Customer shall retain its rights under the Contract and the Order Form and corresponding Purchase Order accepted by Order Fulfiller prior to the termination or expiration of the Contract. The Order Form and corresponding Purchase Order shall survive the expiration or termination of the Contract for its then effective term.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a license is terminated by the Vendor under Section 7.C or Section 10.A above or an Order Form and corresponding Purchase Order expires or is terminated by Vendor or Order Fulfiller pursuant to Section 11.B.4.b above, a Customer 1) shall pay within thirty (30) calendar days of such termination all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for hardware and

Vendor Contract No. _____

programs ordered and/or services received under the Order Form and corresponding Purchase Order and 2) may not use the programs and/or services under Section 7.C or Section 10.A above or ordered under the terminated Order Form and corresponding Purchase Order.

MMM. Appendix A, Section 11.C, Force Majeure, is restated in its entirety as follows:

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, electrical, Internet or telecommunication outage not caused by the obligated party, government restrictions (including the denial or cancellation of any export or other license), or court order or other event outside the reasonable control of the obligated party, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take all reasonable steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. If such Force Majeure event continues for more than 90 calendar days, either party may cancel unperformed services upon written notice. This section does not excuse any party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the Customer's obligations to pay for programs and hardware delivered or services provided.

(Remainder of page intentionally left blank)

Vendor Contract No. _____

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

ORACLE AMERICA, INC.

Authorized By: Signature on File

Name: Elizabeth Hwang

Title: Senior Contract Manager

Date: 4/25/14

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

Authorized By: Signature on File

Name: Todd Kimbriel for Karen Robinson

Title: Executive Director

Date: 4/25/14

Office of General Counsel: DRB 4/25/14