

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**MITEL BUSINESS SYSTEMS, 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 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Mitel Business Systems, Inc. (hereinafter “Vendor”), with its principal place of business at 1146 North Alma School Road, Mesa, Arizona, 85201.

**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-209, on December 6, 2013, for Data Communications & Networking Equipment and Related Services. DIR subsequently issued a BAFO opportunity on June 5, 2014. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-209 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: 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, Master Operating Lease Agreement; Appendix E, Master Lease Agreement; Appendix F, Sales Order Acknowledgement; Appendix G, Support Agreement, Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-209, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-209, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix D, Master Operating Lease Agreement; Appendix E, Master Lease Agreement, as applicable depending on the type of lease; 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 F, Sales Order Acknowledgement; Appendix G, Support Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-209, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-209, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling

document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Appendix G, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix D or Appendix E, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix F, then Appendix G, 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, upon mutual agreement, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

**3. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to Data Communications & Networking Equipment as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; 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.

**B. Services**

Services available under this Contract are limited to Data Communications & Networking Services 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.

**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-quarter of one percent (0.75%). 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. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233  
Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Sue Anders  
Mitel Business Systems, Inc.  
1146 North Alma School Road  
Mesa, Arizona 85201  
Phone: (703) 736-3105  
Facsimile: (602) 629-3126  
Email: [sue\\_anders@mitel.com](mailto:sue_anders@mitel.com)

**7. Software License and Leasing Agreements**

**A. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**B. Service Agreement**

Services provided under this Contract shall be in accordance with the Sales Order Acknowledgement as set forth in Appendix F of this Contract and/or the Support Agreement as set forth in Appendix G. No changes to the Sales Order

Acknowledgement or to the Support Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

**C. Master Operating Lease Agreement**

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix D of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

**D. Master Lease Agreement**

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix E of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions.

**E. 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.**

No exceptions have been agreed to by DIR and Vendor.

**(Remainder of page intentionally left blank)**

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

**MITEL BUSINESS SYSTEMS, INC.**

**Authorized By:** Signature on File

**Name:** Joseph Vitalone

**Title:** EVP and President

**Date:** 09/30/14

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

**Authorized By:** Signature on File

**Name:** Karen Robinson

**Title:** Executive Director

**Date:** 10-16-14

**Office of General Counsel:** Mark Howard 10.15.14