



Department of Information Resources

**Request for Offer
DIR-TSO-TMP-223**

**Mobile Device Management Products and Related
Services**

Issued: February 9, 2015

Initial Responses Due: March 26, 2015

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Table of Contents

| | | |
|-----------|---|-----------|
| 1. | INTRODUCTION..... | 1 |
| 1.1. | Purpose..... | 1 |
| 1.2. | Background | 1 |
| 1.2.1 | Communications Technology Acquisition | 1 |
| 1.2.2 | Cost Avoidance Performance Measures | 2 |
| 1.2.3 | Cost Recovery Fee/Administrative Fee | 2 |
| 1.2.4 | Historical Sales | 3 |
| 2. | SCOPE..... | 4 |
| 2.1. | Products and Services | 4 |
| 2.2. | Related Services | 5 |
| 2.3. | Form of Contract | 5 |
| 3. | GENERAL INFORMATION..... | 6 |
| 3.1. | Point of Contact..... | 6 |
| 3.2. | Contact with DIR Staff..... | 6 |
| 3.3. | Anticipated Schedule..... | 7 |
| 3.3.1 | RFO Schedule..... | 7 |
| 3.3.2 | Vendor Conference | 7 |
| 3.3.3 | Written Questions and Official Answers..... | 8 |
| 3.4. | Historically Underutilized Businesses | 8 |
| 3.4.1 | Subcontracts with HUBs..... | 9 |
| 3.4.2 | HUB Continuing Performance | 9 |
| 3.4.3 | HUB Resources Available | 9 |
| 3.5. | Vendor Qualifications | 9 |
| 3.5.1 | Authorized Vendors..... | 9 |
| 3.5.2 | Federal Requirements | 9 |
| 3.5.3 | Vendor Performance and Debarment | 10 |
| 3.5.4 | Required Vendor and Subcontractor Current and Former State Employee Disclosures..... | 10 |
| 3.6. | Response Deadline and Submission Requirements..... | 11 |

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

| | | |
|--------------|---|-----------|
| 3.6.1 | Official Timepiece | 11 |
| 3.6.2 | Hand Delivery of Responses | 11 |
| 3.6.3 | United States Postal Service Delivery of Responses | 11 |
| 3.7. | Response Format and Contents | 11 |
| 3.7.1 | Submittal Address and External Packaging of Response..... | 11 |
| 3.7.2 | Number of Copies..... | 11 |
| 3.7.3 | Mandatory Response Contents..... | 12 |
| 3.8. | Rejection of Responses | 14 |
| 3.9. | Right to Amend or Withdraw RFO | 14 |
| 3.10. | Pre-agreement Costs | 14 |
| 3.11. | Ownership of Responses..... | 14 |
| 3.12. | Public Information | 14 |
| 4. | EVALUATION, NEGOTIATIONS, AND AWARD..... | 15 |
| 4.1. | Evaluation of Responses | 15 |
| 4.2. | Evaluation Criteria | 15 |
| 4.3. | Best and Final Offer..... | 15 |
| 4.4. | Negotiations | 15 |
| 4.5. | Award of Contract | 15 |
| 4.6. | Vendor Protest Procedures..... | 16 |

Appendix A - Vendor Information Form

Appendix B – Contract Support Plan

Appendix C – Historically Underutilized Business (HUB) Subcontracting Plan

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

1. Introduction

1.1. Purpose

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Mobile Device Management Products and related Services to the State of Texas, acting by and through the Department of Information Resources (DIR).

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 4 of this RFO contains more information regarding the response evaluation and Vendor selection process. As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall value to the state. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any business.

1.2. Background

1.2.1 Communications Technology Acquisition

DIR, through its Communications Technology Division, is conducting this procurement under Chapter 2170, Texas Government Code, by negotiating, managing, and administering telecommunications contracts with communications technology providers. Telecommunications Customers include any Texas state agency, including each house of the legislature and other legislative agencies, units of local government, institutions 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 Inter-local Cooperation Act, Chapter 791, Texas Government Code, certain private institutions of higher education meeting the qualifications of Section 2170.004 (5), Texas Government Code, and assistance organizations, as defined by Section 2175.001, Texas Government Code. Telecommunications Products and services to be acquired under this section include but are not limited to: Mobile Device Management Products and Related Services

DIR combines the buying power of eligible Customers to obtain volume-discounted pricing for selected technology products and services. For contracts awarded as a result of this procurement, the Telecommunications Customers, as defined above, will be able to have a direct sales relationship with the selected Communications Technology Vendors awarded telecommunications products and services. All Customers contact the vendor for product and/or services and pricing information and send their purchase orders (with the DIR contract number) and payments directly to the awarded Vendors, not to DIR.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

1.2.1.1 Texas Government Code, Section 2157.068

Texas Government Code, Section 2157.068, effective September 1, 2005, requires State agencies to buy commodity items, as detailed below, in accordance with contracts developed by DIR unless the agency obtains an exemption from DIR.

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 a commercially available program that operates 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 and may include Software provided as a service. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance, and subscription services. Seat management is a service 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.

Technology services do not include telecommunications services. Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

Institutions of higher education, K-12, and local governments are not required to purchase IT commodities from DIR, but may do so voluntarily. Information regarding Texas Government Code §2157.068, including processes and guidelines, is located on DIR's Web site at:

<http://www.dir.texas.gov/ict/resources/Pages/itcommoditypurchasingforstateagencies.aspx>

1.2.2 Cost Avoidance Performance Measures

As part of its performance measures reported to state leadership, DIR must show the cost avoidance realized by the State for the products and services obtained under DIR contracts. Cost avoidance is the difference between the negotiated DIR contract price and the prevailing market price.

1.2.3 Cost Recovery Fee/Administrative Fee

DIR's telecommunications program is a cost recovery program. DIR, in its discretion, formulates cost recovery fees (CRF) per Service designed to fulfill its program needs, as authorized in Chapter 2170, Texas Government Code. Such CRFs may change over time and DIR will provide Vendor with 30 days advance notice of a change in the CRFs. Vendor shall include the applicable CRF, as a

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

component of its Price, in its bills to the Customers and shall remit the direct sales transaction CRF to DIR on a monthly basis. For the purposes of responding to this RFO, DIR is requesting pricing inclusive of the both types of Cost Recovery fees as mandated by Texas Government Code 2170 (Telecommunications Statute), and Texas Government 2157.068(d) (Automated Information Systems Statute). Please complete the two tabs of Bid Package 2 – Pricing for all products and services offered for Mobile Device Management Products and Related Services. DIR will determine which CRF to assign to products and related services upon review. For the purpose of this RFO the CRF fees of 4% and 0.5% will be reviewed.

For CRF changes, Vendor shall implement, charge and remit to DIR on a going forward basis the new effective CRF in 2 billing periods from CRF Amendment Effective Date.

1.2.4 Historical Sales

DIR does not currently contract for Mobile Device Management Products and Related Services, however, DIR does contract with multiple Vendors to provide wireless voice and data services and pager services. Sales volumes of products sold through those contracts are as follows:

| Vendor | Fiscal Year 2012 | Fiscal Year 2013 | Fiscal Year 2014* | Grand Total |
|--|-------------------------|-------------------------|--------------------------|--------------------|
| AT&T | \$ 2,393,239.24 | \$ 36,586,202.88 | \$ 31,876,164.05 | \$ 70,855,606.17 |
| Sprint Solutions, Inc. | \$ 8,701,272.07 | \$ 18,297,521.47 | \$ 8,306,738.46 | \$ 35,305,532.00 |
| Verizon Wireless | \$ 2,187,229.47 | \$ 28,272,950.82 | \$ 25,034,851.21 | \$ 55,495,031.50 |
| T-Mobile USA, Inc. | \$ 128,323.11 | \$ 640,529.13 | \$ 490,064.99 | \$ 1,258,917.23 |
| GlobaFone, Inc. | \$ 23,122.89 | \$ 137,485.32 | \$ 85,668.67 | \$ 246,276.88 |
| USA Mobility Wireless, Inc. (Pagers) | \$ 214,145.51 | \$ 1,239,902.54 | \$ 796,932.82 | \$ 2,250,980.87 |
| American Messaging Service (Pagers) | \$ 35,144.85 | \$ 198,427.32 | \$ 132,194.89 | \$ 365,767.06 |
| Proactive Communications, Inc. | - | \$ 1,211.59 | \$ 348.24 | \$ 1,559.83 |
| *- As reported through April 2014 | | | | |

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

2. Scope

2.1. Products and Services

DIR intends to contract to provide Products and Related Services for Mobile Device Management (MDM). The purpose of these products and services are to provide DIR eligible customers an effective and efficient means to obtain a variety of MDM solutions. These will include but are not limited to Telecommunications Products and Services, such as MDM hardware, MDM software, and a comprehensive list of MDM Services. This RFO is **not** for wireless services previously procured under RFO DIR-SDD-TMP-169.

Mobile Device Management (MDM) – hardware and/or software that secures, monitors, manages, and supports mobile devices deployed across various mobile operators, service providers and enterprises.

Below is a reference list of some services that DIR has determined to be in scope for this RFO. This list should not be considered comprehensive and DIR encourages all vendors to respond with additional products and services they feel the products and services fall within the scope of this RFO. Item 19 of Appendix A contains a more detailed list of requirements DIR expects Vendors to respond to.

- MDM Strategy Services
- MDM Implementation Services
- MDM Features and Applications
- MDM Configuration and Management Services
- MDM Security Services
- MDM Expense Management Services
- BYOD Assessment and Solution Services
- MDM Policy Enforcement Services

Any Vendor responding to this RFO must submit pricing for the products and services requested herein. Vendor shall provide a representative sample of products and services offered for the purposes of obtaining pricing and evaluating the responses to this RFO. Pricing shall be contained in the Excel spreadsheet attached as “Bid Package 2” to the posting for this RFO, requisition number DIR-TSO-TMP-223, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. “Bid package 2” is a representative sample only and is not to be considered an exhaustive list of all available products and services provided by the Vendor. All products and services for Mobile Device Management may be made available through a Contract.

DIR requests that any and all activation and/or termination fees (including early termination fees) associated with vendor products or services be waived by Vendors as a part of their proposal. Further, based on current DIR contracts, DIR requests that all USF and Federal E911 fees be waived by Vendors as a part of their proposal. Any charges, including telecommunications taxes, fees and surcharges, not included in Bid Package 2, Pricing Index, shall not be billed by the Vendor to DIR or its Customers. DIR will verify whether any disclosed taxes, fees and/or surcharges are applicable to its Telecommunications Customers prior to including in any resulting Contract.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Vendor is required to respond to the requirements in Appendix A, Vendor Information Form.

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Vendor must provide electronic and information resources and associated product documentation and technical support that comply with these Accessibility Standards (in the form of a Voluntary Product Accessibility Template, or “VPAT”) in its response to this RFO. Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/public-policy/accessibility>. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

In addition to the VPAT requirement, Vendors will need to also complete the Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment (Bid Package 6).

Electronic Product Environment Assessment Tool (EPEAT).

Vendor must indicate whether Vendor’s products offered under this RFO are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If Vendor’s products are not EPEAT certified, Vendor must describe Vendor’s efforts to attain EPEAT certifications.

2.2. Related Services

Related services are any value-added service that Vendor may perform as related to the products proposed in Section 2.1. Related services include but are not limited to: complete management of MDM solution, MDM application development and deployment, policy and procedural assessments and assistance, product installation, maintenance and support, managed services and product system training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Excel spreadsheet attached as “Bid Package 2”.

This RFO is **not** a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.

2.3. Form of Contract

The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the sample *Contract for Products and Related Services* attached as “bid package 3” and the *Standard Terms and Conditions For Products and Related Services Contracts* attached as “bid package 4” to the posting for this RFO, requisition number DIR-TSO-TMP-223, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Item 16 of Appendix A contains the format for Vendor to note any exception to any provision, term, or condition specified in the *Contract for Products and Related Services and Standard Terms and Conditions for Products and Related Services Contracts*. Vendor should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 16 of Appendix A. **Vendors may request exceptions to standard contract terms and conditions; however (1) the number and significance of exceptions taken may negatively impact the Vendor's score at evaluation (See Section 4.2 for evaluation criteria) and (2) DIR in its discretion may or may not accept the Vendor's requested exceptions, and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid.** An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language **must** be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

DIR anticipates an initial contract term of one year with three, one-year optional extensions to be exercised by DIR at its discretion. In the event of prolonged contract negotiations due to the number and/or significance of exceptions taken, lack of Vendor responsiveness or other failure to close contract negotiations that are not due to a failure on the part of DIR, DIR may in its discretion offer Vendor a shorter contract term.

DIR reserves the right to make changes to the *Contract for Products and Related Services* or the *Standard Terms and Conditions For Products and Related Services Contracts* if it is in the best interest of the State to do so. Should this occur prior to the award of any contracts as a result of this RFO, any Vendors selected for negotiations will be notified.

3. General Information

3.1. Point of Contact

All communications regarding this RFO must be addressed in writing to:

Carrie Cooper
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Phone: 512-936-2353
Fax: 512-936-6896
Internet: carrie.cooper@dir.texas.gov

3.2. Contact with DIR Staff

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 3.1 will not discuss the contents of this RFO with any Vendor or their representatives. **Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response.** This restriction does not preclude discussions between affected parties for the purpose of conducting

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

business unrelated to this procurement.

3.3. Anticipated Schedule

3.3.1 RFO Schedule

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time, with appropriate notice to prospective Vendors.

| Date/Time | Activity |
|----------------------------------|---|
| February 9, 2015 | Publish RFO on Electronic State Business Daily |
| February 24, 2015 2:00 pm | Vendor Conference (optional) |
| February 27, 2015 2:00 pm | Deadline for submitting questions |
| March 10, 2015 5:00 pm | Deadline for answering questions |
| March 26, 2015 2:00 pm | Deadline for submitting Responses to RFO |
| March 26, 2015 2:00 pm | Deadline for Vendor References |
| March 26, 2015 - until completed | Evaluation of responses, negotiation and contract execution |

3.3.2 Vendor Conference

An optional Vendor Conference will be held on February 24, 2015 at 2:00 pm Central Time (CT) at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will not supply copies.

William P. Clements Building
300 West 15th
Room 103
Austin, Texas 78701

Webinar Information

A webinar will be held on the date and time specified in RFO Section 3.3.1 above.

To reserve a webinar seat, register at:
<https://attendeegotowebinar.com/register/1662659857599940353>. After registering you will receive a confirmation email containing information about joining the Webinar.

DIR will provide conference and webinar attendees with an opportunity to submit written questions at the conference. Although DIR may provide tentative verbal responses to the written questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

DIR will also provide Vendors the opportunity to submit written questions at the conference. All questions submitted at the conference must reference the

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

appropriate RFO page and section number. Although DIR may provide tentative responses to questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

3.3.3 Written Questions and Official Answers

Vendors shall submit all questions regarding this RFO by fax, e-mail, or in writing to the Point of Contact listed in Section 3.1. Questions regarding this RFO will be accepted until 2:00 pm Central Time (CT) on February 27, 2015. Questions will be answered by March 10, 2015, no later than 5:00 pm. (CT). Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-223, on the Electronic State Business Daily (ESBD), <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

Any addenda and/or amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

3.4. Historically Underutilized Businesses

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency shall make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.9% for heavy construction other than building contracts;
2. 26.1% for all building construction, including general contractors and operative builders' contracts;
3. 57.2% for all special trade construction contracts;
4. 20% for professional services contracts;
5. 33% for all other services contracts;
6. 12.6% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and CPA's HUB Rules, 34 TAC, Chapter 20.

Historically Underutilized Businesses (HUBs) are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Vendors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

3.4.1 Subcontracts with HUBs

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE A HSP AS INSTRUCTED SHALL RESULT IN ELIMINATION OF THE RESPONSE FROM CONSIDERATION.** The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are attached to this RFO as Appendix C. If Vendor does not plan to subcontract, Vendor must state that fact in their plan. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

3.4.2 HUB Continuing Performance

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan.

3.4.3 HUB Resources Available

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Web site at: <http://www2.cpa.state.tx.us/cmb1/hubonly.html>. For additional information, contact the CPA's HUB program office at cpa.hub@cpa.state.tx.us. If Vendors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

3.5. Vendor Qualifications

3.5.1 Authorized Vendors

Vendors who respond to this RFO must be one of the following:

- 1) Vendor who will sell directly to Customers through a DIR Communications Technology contract.
- 2) Vendor who will execute a Communications Technology or Cooperative contract with DIR and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. Vendor may also sell directly to Customers.
- 3) Dealer or reseller who will sell directly to Customers through an awarded Contract.
 - a) Vendors responding to this RFO must supply a signed letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal to state agencies, higher education, K-12 independent school districts, local governments and entities of other states that have entered into Interlocal agreements utilizing DIR's Cooperative Contracts). See DIR Web page for a complete list of Customers outside of Texas: <http://www.dir.texas.gov/ict/overview/Pages/customersoutsidetexas.aspx>.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Eligible Customers for contracts awarded under Texas Government Code 2170 differ slightly from that of the Cooperative Contracts.

3.5.2 Federal Requirements

- 1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor 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 (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO shall agree that should at any time during the term of the contract they become listed on the Terrorism List, they shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.
- 2) Should any Vendor awarded a Contract as a result of this RFO become 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, the vendor's contract will be terminated without recourse.
- 3) Vendor shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

3.5.3 Vendor Performance and Debarment

In accordance with 34 TAC, Chapter 20, Subchapter C, any Vendor that is debarred from doing business with the State of Texas will not be awarded a contract under this solicitation. The list of debarred Vendors is located on the CPA Web site at

http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.

3.5.4 Required Vendor and Subcontractor Current and Former State Employee Disclosures

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 18 of Appendix A to the RFO all of the following:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

3.6. Response Deadline and Submission Requirements

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **2:00 PM (CT) on March 26, 2015. No late responses will be reviewed.** Responses must be hand-delivered or mailed to the submittal address listed in Section 3.7.1. No facsimile or e-mail responses shall be accepted.

3.6.1 Official Timepiece

The clock in the DIR Purchasing Office at 300 W. 15th Street, 13th floor, Room 1335, is the official timepiece for determining compliance with the deadline. All responses will be date and time stamped when received by the Purchasing Office on the 13th floor.

3.6.2 Hand Delivery of Responses

All Vendors and courier delivery service personnel will be required to check-in at the security desk on the 1st floor at 300 W. 15th Street. Therefore, it is advised that Vendors allow extra time for building security check-in if hand delivering responses or using a courier delivery service. DIR will not be responsible for delays associated with building security compliance.

3.6.3 United States Postal Service Delivery of Responses

Delivery of responses via United States Postal Service is acceptable. However, due to the State's mail processing procedures, this method may cause a 3 to 4 day delay in delivery to the DIR Purchasing Office. DIR will not be responsible for any delays associated with this method of delivery.

3.7. Response Format and Contents

3.7.1 Submittal Address and External Packaging of Response

Responses should be addressed to:

Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attn: Carrie Cooper

The external packaging of the response must reference "RFO DIR-TSO-TMP-223" and must include the name and address of the Vendor submitting the response.

3.7.2 Number of Copies

Each Vendor must submit the complete response as follows:

1. One (1) signed original (clearly marked) of the complete response, including one (1) signed original of the HUB Subcontracting Plan;
2. One (1) signed original of the HUB Subcontracting Plan in a separate envelope;

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

3. Eight (5) thumb drives (clearly marked with Vendor name) containing copies of the complete response;
4. One (1) electronic copy of the complete response on CD-ROM;
5. One (1) CD-ROM containing any and all response materials, which Vendor asserts are confidential or proprietary*;
6. One (1) CD-ROM containing any and all copyrighted materials in the Vendor's response*; and
7. One (1) CD-ROM containing any and all non-proprietary/confidential and non-copyrighted materials in the Vendor's response.

* If Vendor's response does not contain such materials, then CD-ROMs for these items are not required.

Paper responses must be bound in a 3-ring binder and the cover of the binders must reference "DIR-TSO-TMP-223" and include the name and address of the responding Vendor.

Each CD-ROM must be clearly marked as to its contents. **The response materials on each CD-ROM and all thumb drives must be compatible with Microsoft Office.** All materials must be submitted in an editable format (e.g., Microsoft Word, Microsoft Excel). Do not submit electronic materials in PDF format. If there are any disparities between the contents of the printed response and any of the response materials on CD-ROM, the contents of the signed original printed response will take precedence.

NOTE: CD-ROM(s) must be securely fastened to the 3-ring binder.

3.7.3 Mandatory Response Contents

VENDOR MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.

1) Vendor Information – Appendix A

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.

2) Contract Support Plan - Appendix B

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

3) HUB Subcontracting Plan Forms – Appendix C

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION**, must submit a HUB Subcontracting Plan. HUB Subcontracting Plan Forms are provided in Appendix C. Refer to Section 3.4 for more information regarding HUB subcontracting. **Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors.**

4) Product Pricing – Bid Package 2

Brands and products should be listed on both pricing tabs in the Excel spreadsheet that is attached as "Bid Package 2" to the posting for this RFO, requisition number DIR-TSO-TMP-223 on the Electronic State Business Daily,

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

http://esbd.cpa.state.tx.us/. Vendor shall provide pricing for the brands and products applicable to their response. The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP). Vendor must provide a description of MSRP or method being utilized to derive the MSRP. If Vendor offers government and educational pricing, both pricing structures must be included in Vendor's response. Vendor shall disclose any applicable telecommunications taxes, fees and surcharges in Bid Package 2, Pricing Index. **Failure to disclose such taxes, fees and surcharges in Bid Package 2, Pricing Index, waives these taxes, fees and /or surcharges under the Contract.**

Services Description and Pricing – Bid Package 2

Vendor shall provide a detailed description and the pricing for any value-added, services that Vendor is proposing to offer in response to this RFO. Product-related services include but are not limited to: hardware or software installation, training and maintenance; and value-added services include but are not limited to: Software as a Service (SaaS), hosted services, and installation and training on solution offered. The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

5) Software License Agreement and/or Service Agreement

Vendor shall provide any Software License Agreement and/or Service Agreement that are applicable to the products and/or related services Vendor is proposing. These Agreements **may not** contain any language that is in conflict with or weakens the terms and conditions of the *Contract for Products and Related Services* and the *Standard Terms and Conditions For Products and Related Services Contracts*.

6) Manufacturer's Letter of Authorization

If applicable, letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products and services to DIR Customers as defined in Section 1.2.1 hereof, and may sell such products and services under the terms and conditions of the DIR Contract, in support of Vendor's proposal.

3.7.4 References

Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

3.8. Rejection of Responses

DIR has sole discretionary authority and reserves the right to reject any and all responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements shall be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any responses submitted, and to waive minor technicalities when in the best interest of the State.

3.9. Right to Amend or Withdraw RFO

DIR reserves the right to alter, amend or modify any provision of this RFO, or to withdraw this RFO at any time prior to the award of a contract if to do so is in the best interest of the State. DIR reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-223 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. It is the responsibility of Vendors to check periodically for addenda.

3.10. Pre-agreement Costs

DIR shall not be responsible or liable for any cost incurred by any Vendor in the preparation and submission of its response to this RFO, or for other costs incurred by participating in this procurement process.

3.11. Ownership of Responses

All responses become the property of DIR. DIR reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Vendor's response does not eliminate this right.

3.12. Public Information

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. If a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).

The determination of whether information is confidential and not subject to disclosure under the Public Information Act is the duty of the Office of Attorney General (OAG). DIR must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Vendor are not acceptable. DIR shall comply with the all opinions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Vendors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

4. Evaluation, Negotiations, and Award

4.1. Evaluation of Responses

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. DIR will establish an Evaluation Committee to review all responses that have not been rejected. DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. Clarifications shall take the form of written responses to questions. Once initial evaluation of responses has been completed, the Evaluation Committee shall turnover the tabulated scores to the DIR purchasing office and shall conclude their duties.

4.2. Evaluation Criteria

The criteria and weight to be used in determining the best value for the State are as follows:

- 40% - Pricing
- 30% - Vendor's plan for supporting the Contract and Vendor's history and experience in providing the products and services requested. (*Appendix A & B*)
- 15% - Vendor's Customer references
- 15% - Acceptance of terms and conditions

4.3. Best and Final Offer

DIR in its discretion shall make the determination whether to engage in the Best and Final Offer process. The Best and Final Offer process, if held, will also be scored.

DIR reserves the right to continue to evaluate responses until such point as the best value, as defined by §2157.003, Texas Government Code, is obtained for the State.

4.4. Negotiations

At the conclusion of the evaluation, as described within Sections 4.1, 4.2 and 4.3 above, DIR staff shall determine the number of Vendors with which it will start contract negotiations. In its discretion, DIR shall terminate contract negotiations when DIR determines that the best value for the State has been obtained. Then the staff will recommend award of one or more contracts to the Executive Management.

4.5. Award of Contract

The Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number DIR-TSO-TMP-223 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>, upon execution of a contract with one or more Vendors. All responses and working papers

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

pursuant to this RFO are not subject to disclosure under the Public Information Act until the contract has been executed.

4.6. Vendor Protest Procedures

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the vendor protest procedures posted on the DIR Web site at:

<http://www2.dir.state.tx.us/sitepolicies/pages/vendorprotest.aspx>

END OF RFO

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

**Appendix A
Vendor Information Form**

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.

1) Company Name: _____

2) Comptroller of Public Accounts Vendor Identification Number: _____

3) Principal place of business

Address:

City:

State:

Zip Code:

4) Facility responsible for servicing the contract

Address:

City:

State:

Zip Code:

5) Contact Person regarding Vendor's response to the RFO

Name:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

6) Contact Person responsible for contract negotiation

Name:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

7) Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.

_____Yes _____No

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

- 8) Provide the year in which your company was created/incorporated.
- 9) Provide a history of your company.
- 10) Provide the number of years your company has sold the products/services requested in this RFO.
- 11) Provide the number of years your company has sold the products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.

- 12) Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from your company within the last 12 months.
_____Yes _____No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

- 13) Indicate whether or not your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.
_____Yes _____No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

- 14) Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell said products and services to Texas state agencies, local governments, independent school districts, and institutions of higher education.
_____Yes _____No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

- 15) For each manufacturer vendor is proposing in the RFO, indicate whether or not the manufacturer has a program to recycle the manufacturer's computer equipment and if they recycle computers from other manufacturers. If you are a reseller, you must indicate whether your company has a recycling program or will use the manufacturer's recycling program for the products listed in this RFO.

Manufacturer Name _____
Recycles their own computers? _____Yes _____No
Recycles other manufacturer's computers? _____Yes _____No
If Reseller, check one that applies:

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

_____ Will use Manufacturer's program
_____ Will use Vendor's own program

Provide documentation or citation (url) where the recycling program resides to enable DIR to verify compliance with this requirement. _____

- 16) List below by subsection all exceptions to the *Contract for Products and Related Services and Standard Terms and Conditions For Products and Related Services Contracts*. You must include the basis of your exceptions and provide proposed alternate language. If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter.

| Section | Section Title | Exception | Proposed Language |
|---------|---------------|-----------|-------------------|
| | | | |
| | | | |
| | | | |
| | | | |

- 17) Vendor and Subcontractor Conflict of Interest Disclosure
List below all current or former employees of Vendor and/or proposed Vendor personnel with conflict of interests as follows:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

Vendor Personnel:

| <u>Current or Former Employees who are current or former State employees (see Note 1 above)</u> | <u>Vendor Personnel related to State of Texas Employees (see Note 2 above)</u> |
|---|--|
| | |
| | |
| | |

Subcontractor personnel:

| <u>Current or Former Employees of Subcontractor(s) who are current or former State employees (see Note 1 above)</u> | <u>Subcontractor Personnel related to State of Texas Employees (see Note 2 above)</u> |
|---|---|
| | |
| | |

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

| | |
|--|--|
| | |
| | |

18) Vendor shall describe their solution which satisfies the following requirements:

18.1 MDM Strategy / Vision: Overall corporate and solution strategy / vision including current solution and services maturity model.

1. Strategy / Vision: Describe your overall strategy / vision for supporting mobile devices including company provided and employee provided (BYOD) devices
2. Solution Maturity: Describe your current solution maturity. Classify your solution as one of the following: Fully Mature Solution, Early Stages of Release, Not Ready for Deployment, Other (please describe). Provide justification for your maturity assessment
3. Solution Roadmap: Provide details of your solution roadmap over the next 2 – 3 years. Describe key capabilities that will be introduced with future platform / service releases

18.2 MDM Feature / Functionality: An overall feature / functionality description detailing your solution and service capabilities. (Please verify your solution can support the following requirements)

1. Over-the-air (OTA) configuration: Dictate different security settings for different work segments, Dictate different applications for different work segments, Dictate different configuration policies for different work segments
2. Containerization: Ability to “containerize” professional and personal data and applications on corporate and employee owned devices
3. Intelligence, troubleshooting, and support: Scheduled or event based actions for troubleshooting and support, Real-time monitoring for troubleshooting and support, Logging for troubleshooting and support, Web based reports for troubleshooting and support
4. Real-time inventory: Real time info on system configuration, Real time info on installed applications, Real time info on security configuration, Perform automated real-time remediation
5. Reports: Devices that do not meet intended compliance (e.g., Jail broken / rooted, passwords, encryption), Report on bandwidth utilization by application per user/device
6. Remote control capabilities: describe your solution’s capability in this area
7. Employee Self-service portal: Backup and restore, Wipe, Remote wipe validation, Locate, Send "find me" sound/alert, Password reset
8. Advanced monitoring and actionable alerts: Send low battery warning alert to user, Jailbreak/root detection alert to MDM Admin, Removal of policy alert to MDM Admin, Malware detection and alert to MDM Admin and user, Alerts/notifications when devices are no longer compliant

Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223

9. Report templates: Report templates containing: new devices, applications, usage trends by application and user/device, Ability to customize reports via report templates
10. Other capabilities: Other solution features including:
 - a. Manage Wi-Fi only devices - E.G. IPOD, IPAD, Kindle
 - b. Safeguard to auto remove device from customer network if user removes policy. Also remove customer specific apps and data
 - c. Is Encryption FIPS 140-2 compliant?
 - d. Ability to disable standard mobile device apps as necessary
 - e. Ability to do policies by user, department, groups
 - f. Ability to restrict data access when device becomes noncompliant
 - g. Ability to send message to device - E.G. "We will be removing application X due to compliance issues"
 - h. Ability to auto-wipe (customer data) after x days of connectivity loss
 - i. Ability to alert users and MDM admin of low battery condition
11. List dependencies on other products/services that will need to be purchased or installed separately by customers to meet requirements: E.G. Apple Developer license to deploy customer developed applications to iOS devices, Touchdown for Android devices, etc.

18.3 MDM Configuration / Implementation: An overall configuration / implementation description detailing your solution and service capabilities.

1. Roles / Responsibilities: Listing of vendor responsibilities and customer responsibilities at the start, during, and at the conclusion of the implementation process.
2. Number / types of supported devices: Any restrictions on the number of mobile devices and / or types of devices the solution can manage?
3. Implementation Partners: List any mobile optimization companies you are partnered with activities such as:
 - a. Completing a System wide inventory of all wireless devices
 - b. Mobile device and carrier plan optimization
 - c. Review of state customer's wireless policies and provide recommendations for changes/enhancements

18.4 MDM Operations / Administration / Management (OAM): An overall OAM description detailing your solution and service capabilities.

1. Operations / Support Details: List hours of support, Service Level Agreements, Ticketing Process, Help Desk capabilities, on-site support if necessary, etc.
2. Operations Tools / Solutions integration: List any integration solutions with Asset Management, Log Management, Change Management, Problem Management / Ticketing, Security Incident and Event Management (SIEM), LDAP integration, other Service Management tools / solutions

Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223

3. Management Platform - Summary of MDM Management System capability including: On premises solution, Software as a Service (SaaS/Cloud), Can management system be virtualized, Estimated FTEs to manage, Deployment time, Containerization, Online tutorials, Online help, training that is Included, Hardware requirements, OS requirements
4. Delegated administration: Describe the levels/layers of possible administrative delegation.
5. Device Management capabilities: Describe your solution support for the following:
 - a. Wipe (entire device vs. only customer information), Wiping even if SIM card is pulled, Remote wipe validation, Locate a single phone, Send "find me" sound/alert, Password reset, Detection of Jailbreak or rooting, Device status, Advanced search capabilities. Search by any field, Backup and restore data, Support for all device types (Android, iOS, Windows Mobile, Blackberry, etc.)

18.5 MDM Information Security Management: An overall security management description detailing your solution and service capabilities. (Please verify your solution can support the following requirements)

1. PIN enforcement: Cannot be simple pattern wipe. E.G. Z, C, etc. Must be 4 digit minimum and not easy combos (1111, 2222, 1234, etc), Strong password capability
2. Selective data wipe: The ability to wipe only agency data from a device while leaving personal data intact, Ability to distinguish personal data from agency data and set different policy on either - containerization
3. Jailbreak/root detection: Remove access to customer network and assets (email, web sites, customer apps), Alert MDM Admin
4. Data encryption: Non OS dependent encryption, Encryption for all supported devices.
5. Virtual Private network (VPN): A secured connection is often a requirement when connecting a device to a specific application or asset. Integration with existing VPN solutions and the ability to manage certificates
6. Data Leak Prevention (DLP): Describe your product capabilities for data at rest, data in motion, data in use.
7. Whitelist and blacklist capabilities: Whitelist capability, Blacklist capability, Whitelist or blacklist specific devices by serial or customer DID
8. ActiveSync Device Restriction: Restrict access to any device not being managed by the MDM tool
9. Malware Capabilities: describe your support for malware detection and malware removal (real-time and scheduled scanning). Include web threats. Specify how often malware detection/removal software and virus source files updated. How quickly are malware detection/removal software and virus source files updated for Zero-Day malware?

Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223

10. Other Security Capabilities: A listing and a brief description of other services that your company may make available to the State in the area of Information Security.

18.5 MDM Device / Application Support: An overall MDM device/ application description detailing your solution and service capabilities. (Please verify your solution can support the following requirements)

1. Mobile device support: Blackberry, iOS (Apple), Android, Windows Phone (7 +), Windows Mobile, Symbian, Palm. List others as appropriate.
2. PC platform support: Dashboards and reporting capabilities that include combined information from mobile devices and Windows-, Mac-, and Linux-based devices.
3. Remote software distribution and updates: Distribute software (in-house or 3rd party), Maintain/Update in-house or 3rd party apps
4. App store restrictions: Restrict access to all consumer application stores, Restrict access to specific IT approved consumer applications
5. Enterprise-class app store: Summarize your capabilities in supporting customer enterprise solutions
6. Mobile Applications Support - What are the capabilities for delivering, deploying and managing mobile applications?

18.6 MDM End-user Support: An overall MDM end-user description detailing your solution capabilities.

1. Self-Service Portal Capabilities: Describe how your solution supports end-user self-service registration. Can end-users remotely wipe their devices via a portal
2. Acceptable Use: Does your solution support the ability to restrict access to customer/agency resources until the end-user agrees to an acceptable use clause? Is this capability automated (i.e., no operator intervention)? Please describe how this capability works for your solution.
3. User Self registration: Does your solution support user registration? Is this provided as a self-service capability?
4. Online help for self-service portal: Does your solution provide on-line help and FAQs?

18.7 Mobility Device Expense Management Services (MDEMS)

1. Mobile Device Plan Expense Assessment: Describe any mobile expense management services provided by your company, Include whether services are a part of solution, a manual process, and provide an overview of the methodology
2. Mobile Expense Management Analytics and Notifications: Describe the level of analytics your expense management service provides and include the level of control your solution or service provides for customer to alert users of overage

Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223

3. Shared Data Plan Management: Description of how your solution or services assign/reassign data limits where shared data plans are in use

18.8 MDM Value Services

1. Mobile Plan Assessment and Review – Provide details on your company's ability to provide customers with assessment services of mobile plans based on the State's current contracts
2. BYOD Services- Provide a description of services offered related to BYOD, should include assisting customers with policy services and assessment, and tools to containerize agency apps and data separate from personal apps and data and ensure personal apps and data

18.9 MDM Emerging Technology

1. MDM Evolution of New and Emerging Technology – Describe any solutions or services currently in the development phase of the life-cycle that may become available to customers during the term of the contract
2. Customization of Solutions/Services – Describe how your company produces customized solutions for MDM services to include customer participation, evaluation, and impact; any current canned customized solutions or services that can be easily duplicated or copied across customer base, etc.

18.10 Competitive Advantage

1. Solution Advantages: Describe all areas where you believe that your solution and service is superior to the competition.
2. State of Texas Advantages: Describe the major benefits that the State would receive by choosing your solution and services vs. your competitors.

19) Officer or Agent empowered to contractually bind the Vendor:

Name:

Title:

Address:

Phone Number:

Fax:

Email:

20) **Statement of Compliance**

A. Checklist for the RFO

The following checklist is provided for the convenience of Vendors in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Vendors must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original and each copy of the response.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

A completed checklist shall not be binding on DIR's administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 3.7.3. of the RFO and reject any response that does not comply.

All responses must be received by DIR on or before 2:00 pm (CT) on March 26, 2015. No late responses will be reviewed.

| Item | Check |
|--|-------|
| Response addressed to: Department of Information Resources 300 W. 15th Street, Suite 1300 Austin, Texas 78701 Attn: Carrie Cooper | |
| External packaging references "RFO DIR-TSO-TMP-223" | |
| Package contains one (1) signed original (clearly marked) of the complete response, including one (1) signed original of the HUB Subcontracting Plan | |
| Package contains one (1) signed original of the HUB Subcontracting Plan in separate envelope | |
| Package contains eight (8) thumb drives (clearly marked with Vendor name) containing copies of the complete response | |
| Package contains one (1) electronic copy of the complete response on CD-ROM | |
| Package contains one (1) CD-ROM containing any and all response materials, which Vendor asserts, are confidential or proprietary (if required) | |
| Package contains one (1) CD-ROM containing any and all copyrighted materials in the Vendor's response (if required) | |
| Package contains one (1) CD-ROM containing any and all non-proprietary/confidential and non-copyrighted materials in the Vendor's response | |
| Paper responses are bound and the cover of the binder(s) reference "DIR-TSO-TMP-223" and include the name and address of the responding Vendor | |
| Mandatory Response Contents | |
| Vendor Information - Appendix A | |
| Contract Support Plan – Appendix B | |
| HUB Subcontracting Plan Forms – Appendix C | |
| Product and Services Pricing – Bid Package 2 | |
| Software License Agreement and/or Service Agreement | |
| Manufacturer Letter of Authorization if applicable | |

B. Certification Statement

The undersigned hereby certifies on behalf of insert company name here that RFO DIR-TSO-TMP-223 has been read and understood. In submitting its response, insert company name here represents to DIR that: i) it is capable of providing the products and services as described in the RFO; ii) the pricing and discounts being offered by the Vendor for the products and services are true and correct; iii) agrees, if awarded a contract, to abide by the

Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223

terms and conditions of the resulting contract; iv) as of the date of signature below, 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; v) is not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; vi) under Section 2155.004 and 2155.006, 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; (vii) to the extent applicable to this scope of this RFO, 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; (viii) has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response; (ix) under Section 2155.004(a), Texas Government Code, the Vendor has not received compensation for participation in the preparation of specifications for this solicitation; (x) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (xi) is not currently delinquent in the payment of any franchise tax owed 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, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; (xii) 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; (xiii) under Section 2155.4441, Texas Government Code, Vendor agrees to comply relating to use of service contracts for products produced in the State of Texas; (xiv) Vendor certifies they are in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xv) 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 DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the 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; (xvi) Vendor represents and warrants that the provision of goods 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; (xvii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Appendix A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20; and (xviii) Vendor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Signature of Officer or Agent empowered to contractually bind the Vendor

Date

Appendix B

**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Contract Support Plan

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below.

- 1) Describe your company's strategy for marketing and selling the products/services listed in this RFO to eligible DIR Customers.
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.
- 3) Provide the projected total sales of the products and services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.
- 4) If your company is a manufacturer or publisher naming Order Fulfillers, provide the information listed below for each proposed Order Fulfiller. **Proposed Order Fulfillers listed below must also be included in Appendix C, Vendor's Historically Underutilized Plan (HSP).**
 - a) Order Fulfiller name, address, and contact
 - b) Comptroller of Public Accounts Vendor Identification number
 - c) CPA HUB ethnicity/gender, if applicable
 - d) Roles and responsibilities of Order Fulfiller.

Appendix C

Historically Underutilized Business (HUB) Subcontracting Plan



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

Section 1 - Respondent and Requisition Information

Section 2 a. - Yes, I will be subcontracting portions of the contract

Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors Section 2 c.

- Yes

Section 4 - Affirmation

GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements"; complete:

Section 1 - Respondent and Requisition Information

Section 2 a. - Yes, I will be subcontracting portions of the contract

Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors

Section 2 c. - No

Section 2 d. - YesII Section 4 -

AffirmationII

GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements"; complete:

Section 1 - Respondent and Requisition Information

Section 2 a. - Yes, I will be subcontracting portions of the contract

Section 2 b. - List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors Section 2

c. - No Section 2 d. - No Section 4

- Affirmation

GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:

Section 1 - Respondent and Requisition Information

Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources Section 3 - Self

Performing Justification

Section 4 - Affirmation

****Continuous Contract:*** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

Failure to complete and comply with the current HSP form may disqualify the respondents proposal pursuant to Texas Gov't Code §2161.252(b). The HSP form cannot be altered.

I. DIR's HUB Goal for this bidding opportunity is _____%

II. HSP Form:
 RFO HSPs- must utilize the HSP provided
 Amended HSPs- must utilize the HSP that is on the DIR website

III. The following documentation should be completed with the HSP:

- 1) HSP Section 2- identify subcontracting opportunities including "Order fulfiller" (reference Appendix A)
- 2) HSP Section 4 Affirmation- must be signed and dated;
- 3) HSP Method B (Attachment B) -must provide documentation under Section B-3 with response (if applicable);
- 4) Actual % and dollar amounts must be used on HSP form (if applicable); no TBDs

III. For assistance in completing the HSP, contact the HUB Coordinator, at dir.hub@dir.texas.gov or lisa.maldonado@dir.texas.gov 512-463-5662 or lynn.sanchez@dir.texas.gov 512-463-9813.

SECTION-1: RESPONDENT AND REQUISITION INFORM

a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____

Enter your company's name here: _____ Requisition #: _____

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|--------|---|---|---|--|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 1 | | % | % | % |
| 2 | | % | % | % |
| 3 | | % | % | % |
| 4 | | % | % | % |
| 5 | | % | % | % |
| 6 | | % | % | % |
| 7 | | % | % | % |
| 8 | | % | % | % |
| 9 | | % | % | % |
| 10 | | % | % | % |
| 11 | | % | % | % |
| 12 | | % | % | % |
| 13 | | % | % | % |
| 14 | | % | % | % |
| 15 | | % | % | % |
| | Aggregate percentages of the contract expected to be subcontracted: | % | % | % |

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified** HUBs with which you have a **continuous contract*** in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**".

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a.n This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|---|--|--|--|--|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less. | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years. | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 16 | | % | % | % |
| 17 | | % | % | % |
| 18 | | % | % | % |
| 19 | | % | % | % |
| 20 | | % | % | % |
| 21 | | % | % | % |
| 22 | | % | % | % |
| 23 | | % | % | % |
| 24 | | % | % | % |
| 25 | | % | % | % |
| 26 | | % | % | % |
| 27 | | % | % | % |
| 28 | | % | % | % |
| 29 | | % | % | % |
| 30 | | % | % | % |
| 31 | | % | % | % |
| 32 | | % | % | % |
| 33 | | % | % | % |
| 34 | | % | % | % |
| 35 | | % | % | % |
| 36 | | % | % | % |
| 37 | | % | % | % |
| 38 | | % | % | % |
| 39 | | % | % | % |
| 40 | | % | % | % |
| 41 | | % | % | % |
| 42 | | % | % | % |
| 43 | | % | % | % |
| Aggregate percentages of the contract expected to be subcontracted: | | % | % | % |

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION-3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- **Yes** (If *Yes*, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- **No** (If *No*, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION-4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

SignatureII Printed Name Title Date (mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.II

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here:nn _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If **Yes**, to continue to SECTION B-4.)
- No / Not Applicable (If **No** or **Not Applicable**, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

| Company Name | VID Number | Date Notice Sent (mm/dd/yyyy) | Did the HUB Respond? | |
|--------------|------------|----------------------------------|----------------------|------|
| | | | - Yes | - No |
| | | | - Yes | - No |
| | | | - Yes | - No |

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.
- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

| Trade Organizations or Development Centers | Date Notice Sent (mm/dd/yyyy) | Was the Notice Accepted? | |
|--|----------------------------------|--------------------------|------|
| | | - Yes | - No |
| | | - Yes | - No |

HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: Description:

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

| Company Name | Texas certified HUB | VID Number <small>(Required if Texas certified HUB)</small> | Approximate Dollar Amount | Expected Percentage of Contract |
|--------------|---------------------|--|---------------------------|---------------------------------|
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |
| | - Yes - No | | \$ | % |

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____

Point-of-Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ Phone #: _____

Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than Select _____ on _____, _____
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: - Not Applicable

4. Bonding/Insurance Requirements: - Not Applicable

5. Location to review plans/specifications: - Not Applicable

Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223
Bid Package 2

Instructions

1. Vendor shall provide the brands and pricing for products/services/training applicable to their response on both CRF tabs.
2. Where firm fixed pricing is requested, Vendor shall provide firm fixed pricing expressed in dollars and cents. Where a discount is requested, the discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP) or List Price and the specific final discount shall be stated.
3. Discounts can be listed by manufacturer, manufacturer product/service/training line, or product/service/training category.
4. For the purposes of this RFO, an administrative fee of 4% and 0.75% shall be used in calculating the Customer Discount as noted on the respective tab.
5. Vendors may not propose a range of discounts for a product (e.g., 0% - 99%).
6. If Vendor is proposing multiple discounts for the same product, the products must be listed separately with the associated discount or grouped with an associated discount. For example:
 - Product ABC
 - Product ABC Software or Hardware, Site Licenses - Customer Discount - 10%
 - Product ABC Software or Hardware, Volume Licenses - Customer Discount - 15%
 - Product ABC Software or Hardware, All other products - Customer Discount - 8%
7. Vendor shall provide a description of MSRP or the method utilized to derive MSRP.
8. Price to the Customer shall include all shipping and handling fees.

Proposed pricing shall be acceptable for at least 180 days from the date of the response submittal.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

Table of Contents

| | | |
|----|---|----|
| 1. | Contract Scope..... | 1 |
| 2. | No Quantity Guarantees..... | 1 |
| 3. | Definitions..... | 1 |
| 4. | General Provisions..... | 2 |
| | A. Entire Agreement..... | 2 |
| | B. Modification of Contract Terms and/or Amendments..... | 2 |
| | C. Invalid Term or Condition..... | 2 |
| | D. Assignment..... | 3 |
| | E. Survival..... | 3 |
| | F. Choice of Law..... | 3 |
| | G. Limitation of Authority..... | 3 |
| | H. Proof of Financial Stability..... | 3 |
| 5. | Intellectual Property Matters..... | 4 |
| | A. Definitions..... | 4 |
| | B. Ownership..... | 5 |
| | C. Further Actions..... | 5 |
| | D. Waiver of Moral Rights..... | 6 |
| | E. Confidentiality..... | 6 |
| | F. Injunctive Relief..... | 6 |
| | G. Return of Materials Pertaining to Work Product..... | 6 |
| | H. Vendor License to Use..... | 7 |
| | I. Third-Party Underlying and Derivative Works..... | 7 |
| | J. Agreement with Subcontracts..... | 7 |
| | K. License to Customer..... | 7 |
| | L. Vendor Development Rights..... | 8 |
| 6. | Product Terms and Conditions..... | 8 |
| | A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)..... | 8 |
| | B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)..... | 8 |
| 7. | Contract Fulfillment and Promotion..... | 9 |
| | A. Service, Sales and Support of the Contract..... | 9 |
| | B. Use of Order Fulfillers..... | 9 |
| | 1) Designation of Order Fulfillers..... | 9 |
| | 2) Changes in Order Fulfiller List..... | 9 |
| | 3) Order Fulfiller Pricing to Customer..... | 10 |

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

| | | |
|-----|--|------|
| C. | Product Warranty and Return Policies..... | 10 |
| D. | Customer Site Preparation | 10 |
| E. | Internet Access to Contract and Pricing Information | 10 |
| | 1) Vendor Website | 10 |
| | 2) Accurate and Timely Contract Information..... | 10 |
| | 3) Website Compliance Checks | 10 |
| | 4) Website Changes..... | 11 |
| | 5) Use of Access Data Prohibited | 11 |
| | 6) Responsibility for Content | 11 |
| F. | DIR Logo | 11 |
| G. | Vendor and Order Fulfiller Logo..... | 11 |
| H. | Trade Show Participation..... | 11 |
| I. | Orientation Meeting..... | 12 |
| J. | Performance Review Meetings..... | 12 |
| K. | DIR Cost Avoidance..... | 12 |
| 8. | Pricing, Purchase Orders, Invoices, and Payments..... | 12 |
| | A. Manufacturer’s Suggested Retail Price (MSRP) or List Price..... | 12 |
| | B. Customer Discount..... | 12 |
| | C. Customer Price..... | 12 |
| | D. Shipping and Handling Fees | 13 |
| | E. Tax-Exempt..... | 13 |
| | F. Travel Expense Reimbursement | 13 |
| | G. Changes to Prices..... | 1313 |
| | H. Purchase Orders | 14 |
| | I. Invoices..... | 14 |
| | J. Payments..... | 14 |
| 9. | Contract Administration..... | 14 |
| | A. Contract Managers | 15 |
| | 1) State Contract Manager..... | 15 |
| | 2) Vendor Contract Manager..... | 15 |
| | B. Reporting and Administrative Fees | 15 |
| | 1) Reporting Responsibility | 15 |
| | 2) Detailed Monthly Report | 15 |
| | 3) Historically Underutilized Businesses Subcontract Reports..... | 155 |
| | 4) DIR Administrative Fee..... | 16 |
| | 5) Accurate and Timely Submission of Reports | 16 |
| | C. Records and Audit..... | 16 |
| | D. Contract Administration Notification | 17 |
| 10. | Vendor Responsibilities | 18 |
| | A. Indemnification | 18 |
| | B. Taxes/Worker’s Compensation/UNEMPLOYMENT INSURANCE | 19 |
| | C. Vendor Certifications..... | 20 |
| | D. Ability to Conduct Business in Texas..... | 21 |

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

| | | |
|-----|--|-----|
| E. | Equal Opportunity Compliance | 21 |
| F. | Use of Subcontractors | 22 |
| G. | Responsibility for Actions | 22 |
| H. | Confidentiality | 22 |
| I. | Security of Premises, Equipment, Data and Personnel..... | 22 |
| J. | Background and/or Criminal History Investigation..... | 23 |
| K. | Limitation of Liability..... | 23 |
| L. | Overcharges | 23 |
| M. | Prohibited Conduct | 23 |
| N. | Required Insurance Coverage | 23 |
| O. | Use of State Property | 25 |
| P. | Immigration..... | 25 |
| Q. | Public Disclosure | 25 |
| R. | Product and/or Services Substitutions | 25 |
| S. | Secure Erasure of Hard Disk Products and/or Services..... | 26 |
| T. | Deceptive Trade Practices; Unfair Business Practices | 26 |
| U. | Drug Free Workplace Policy | 26 |
| V. | Accessibility of Public Information | 26 |
| W. | Vendor Reporting Requirements | 26 |
| 11. | Contract Enforcement | 27 |
| A. | Enforcement of Contract and Dispute Resolution | 27 |
| B. | Termination | 27 |
| 1) | Termination for Non-Appropriation | 27 |
| a) | Termination for Non-Appropriation by Customer..... | 27 |
| b) | Termination for Non-Appropriation by DIR | 27 |
| 2) | Absolute Right | 28 |
| 3) | Termination for Convenience | 28 |
| 4) | Termination for Cause | 28 |
| a) | Contract..... | 28 |
| b) | Purchase Order..... | 28 |
| 5) | Customer Rights Under Termination..... | 29 |
| 6) | Vendor or Order Fulfiller Rights Under Termination..... | 299 |
| C. | Force Majeure | 29 |
| 12. | Notification | 29 |
| A. | Notices | 29 |
| B. | Handling of Written Complaints..... | 29 |
| 13. | Captions | 30 |

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the 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.

3. Definitions

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, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

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

B. Compliance Check – an audit of Vendor's compliance with the Contract may be

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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 for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. 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).
- H. State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute 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.

B. Modification of Contract Terms and/or Amendments

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.

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 a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

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.

C. Invalid Term or Condition

1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.

2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

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 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 and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

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. All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract. 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.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

H. Proof of Financial Stability

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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

5. Intellectual Property Matters

A. Definitions

1) “Work Product” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) “Statement of Work” means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

4) “Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) “Vendor IP” shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor’s provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor’s signature due to the dissolution of Vendor or Vendor’s unreasonable failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

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

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

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

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 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) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) 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, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs,

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiler information: Order Fulfiler name, Order Fulfiler business address, Order Fulfiler CPA Identification Number, Order Fulfiler contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfiler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiler from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiler List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within 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. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

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.

E. Internet Access to Contract and Pricing Information

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 expressed in dollars as well as discount off MSRP or List Price, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The 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 warrants and represents that the website information specified in the above paragraph will be accurately and completely 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 written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks 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 compliant with the

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

pricing as stated in 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 suspend, 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 suspension, 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 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.

F. DIR Logo

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

DIR may use the Vendor's and Order Fulfiller'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 and Order Fulfiller'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. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

required participation. Vendor and Order Fulfillers must display the DIR logo at all 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 or Order Fulfiller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, 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 pricing from three (3) alternative sources under which DIR customers can procure the products.

8. Pricing, Purchase Orders, Invoices, and Payments

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

MSRP is defined as the product sales price list 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.

B. Customer Discount

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

C. Customer Price

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) x (1 + DIR Administrative Fee, as set forth in the Contract).

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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 is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

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

F. Travel Expense Reimbursement

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

G. Changes to Prices

Subject to the requirements of this section, 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.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

- 1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.
- 2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.
- 3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase 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 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. Prices may not be increased for at least ninety (90) calendar days after the contract start date. Price reductions will be accepted at any time.

H. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

I. Invoices

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 provision of acceptance of such products and/or services 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. 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.

3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

9. Contract Administration

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

A. Contract Managers

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 provide a dedicated Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

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 Contract books 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 calendar 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. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the administrative fee due for the reporting period, and other information as required by DIR. 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.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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 CPA rules.

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 fifteenth (15th) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon thirty (30) calendar 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 three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) 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 three (3) 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.

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 late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

C. Records and Audit

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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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 grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. 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) calendar 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 satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii)

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

DIR Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

A. Indemnification

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

3) Infringements

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

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are 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) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, 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 their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are 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) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) to the extent applicable to this 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) agree 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) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

- (xii) have identified all current or former, within the last five years, employees of the State assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiv) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully 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).

D. Ability to Conduct Business in Texas

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

E. Equal Opportunity Compliance

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, the 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

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

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 request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

G. Responsibility for Actions

- 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, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Appendix A to the RFO and/or Section 10.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.

H. Confidentiality

- 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.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

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.

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

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.

M. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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 within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A 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 \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. 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.

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 \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

c) Additional Insured.

O. Use of State Property

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 this Agreement. 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 this Agreement must be fully reimbursed by Vendor to the Customer immediately upon 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.

P. Immigration

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, 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) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and
- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

R. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

S. Secure Erasure of Hard Disk Products and/or Services

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither 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 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.

U. Drug Free Workplace Policy

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; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

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

W. Vendor Reporting Requirements

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

11. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

1) Vendor and DIR agree to the following: (i) 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, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor 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.

B. Termination

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, 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 services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. 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 may terminate Contract if funds sufficient to pay its obligations 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 and/or Order Fulfiller 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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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 may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days written notice.

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) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order 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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

terminate the Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

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, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all 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. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

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

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

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

13. Captions

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

Appendix A
Standard Terms and Conditions For Services Contracts

Table of Contents

| | | |
|----|---|---|
| 1. | No Quantity Guarantees..... | 1 |
| 2. | Definitions..... | 1 |
| 3. | General Provisions | 2 |
| | A. Entire Agreement | 2 |
| | B. Modification of Contract Terms and/or Amendments..... | 2 |
| | C. Invalid Term or Condition | 2 |
| | D. Assignment | 3 |
| | E. Survival | 3 |
| | F. Choice of Law | 3 |
| | G. Limitation of Authority..... | 3 |
| | H. Proof of Financial Stability..... | 3 |
| 4. | Intellectual Property Matters..... | 3 |
| | A. Definitions..... | 3 |
| | B. Ownership..... | 5 |
| | C. Further Actions..... | 5 |
| | D. Waiver of Moral Rights..... | 6 |
| | E. Confidentiality..... | 6 |
| | F. Injunctive Relief..... | 6 |
| | G. Return of Materials Pertaining to Work Product..... | 6 |
| | H. Vendor License to Use..... | 7 |
| | I. Third-Party Underlying and Derivative Works..... | 7 |
| | J. Agreement with Subcontracts..... | 7 |
| | K. License to Customer..... | 7 |
| | L. Vendor Development Rights..... | 8 |
| 5. | Terms and Conditions Applicable to State Agency Purchases Only..... | 8 |
| | A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)..... | 8 |
| | B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)..... | 8 |
| 6. | Contract Fulfillment and Promotion | 9 |
| | A. Service, Sales and Support of the Contract..... | 9 |
| | B. Internet Access to Contract and Pricing Information | 9 |
| | 1) Vendor Website | 9 |
| | 2) Accurate and Timely Contract Information..... | 9 |
| | 3) Website Compliance Checks | 9 |
| | 4) Website Changes..... | 9 |

Appendix A
Standard Terms and Conditions For Services Contracts

| | |
|--|----|
| 5) Use of Access Data Prohibited | 10 |
| 6) Responsibility for Content | 10 |
| C. Services Warranty and Return Policies..... | 10 |
| D. DIR Logo | 10 |
| E. Vendor Logo | 10 |
| F. Trade Show Participation..... | 10 |
| G. Performance Review Meetings..... | 11 |
| H. DIR Cost Avoidance | 11 |
| 7. Pricing, Purchase Orders, Invoices, and Payments..... | 11 |
| A. Manufacturer’s Suggested Retail Price (MSRP) or List Price..... | 11 |
| B. Customer Discount..... | 11 |
| C. Customer Price..... | 11 |
| D. Shipping and Handling Fees | 12 |
| E. Tax-Exempt..... | 12 |
| F. Travel Expense Reimbursement | 12 |
| G. Changes to Prices..... | 12 |
| H. Purchase Orders | 13 |
| I. Invoices..... | 13 |
| J. Payments..... | 13 |
| 8. Contract Administration..... | 13 |
| A. Contract Managers | 13 |
| 1) State Contract Manager..... | 13 |
| 2) Vendor Contract Manager..... | 14 |
| B. Reporting and Administrative Fees | 14 |
| 1) Reporting Responsibility | 14 |
| 2) Detailed Monthly Report | 14 |
| 3) Historically Underutilized Businesses Subcontract Reports..... | 14 |
| 4) DIR Administrative Fee..... | 14 |
| 5) Accurate and Timely Submission of Reports | 15 |
| C. Records and Audit..... | 15 |
| D. Contract Administration Notification | 16 |
| 9. Vendor Responsibilities..... | 17 |
| A. Indemnification..... | 17 |
| 1) Independent contractor..... | 17 |
| 2) Acts or Omissions..... | 17 |
| 3) Infringements | 17 |
| 4) PROPERTY DAMAGE..... | 18 |
| B. Taxes/Worker’s Compensation/UNEMPLOYMENT INSURANCE | 18 |
| C. Vendor Certifications..... | 19 |
| D. Ability to Conduct Business in Texas..... | 20 |
| E. Equal Opportunity Compliance | 21 |
| F. Use of Subcontractors..... | 21 |

Appendix A
Standard Terms and Conditions For Services Contracts

| | | |
|-----|---|----|
| G. | Responsibility for Actions | 21 |
| H. | Confidentiality | 21 |
| I. | Security of Premises, Equipment, Data and Personnel..... | 22 |
| J. | Background and/or Criminal History Investigation..... | 22 |
| K. | Limitation of Liability..... | 22 |
| L. | Overcharges | 22 |
| M. | Prohibited Conduct | 22 |
| N. | Required Insurance Coverage | 23 |
| O. | Use of State Property | 24 |
| P. | Immigration..... | 24 |
| Q. | Public Disclosure | 25 |
| R. | Product and/or Services Substitutions | 25 |
| S. | Secure Erasure of Hard Disk Managed Services Products and/or Services | 25 |
| T. | Deceptive Trade Practices; Unfair Business Practices | 25 |
| U. | Drug Free Workplace Policy | 25 |
| V. | Accessibility of Public Information | 25 |
| W. | Vendor Reporting Responsibilities | 26 |
| 10. | Contract Enforcement | 26 |
| A. | Enforcement of Contract and Dispute Resolution | 26 |
| B. | Termination..... | 26 |
| 1) | Termination for Non-Appropriation | 26 |
| a) | Termination for Non-Appropriation by Customer..... | 26 |
| b) | Termination for Non-Appropriation by DIR | 27 |
| 2) | Absolute Right | 27 |
| 3) | Termination for Convenience | 27 |
| 4) | Termination for Cause | 27 |
| a) | Contract..... | 27 |
| b) | Purchase Order..... | 27 |
| 5) | Customer Rights Under Termination..... | 28 |
| 6) | Vendor or Order Fulfiller Rights Under Termination..... | 28 |
| C. | Force Majeure | 28 |
| 11. | Notification | 28 |
| A. | Notices | 28 |
| B. | Handling of Written Complaints..... | 29 |
| 12. | Captions | 29 |

Appendix A
Standard Terms and Conditions For Services Contracts

1. No Quantity Guarantees

The Contract is not exclusive to the Vendor. Customers may obtain services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of services will be procured through the Contract.

2. Definitions

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, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

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

B. Compliance Check – an audit 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 for

Appendix A
Standard Terms and Conditions For Services Contracts

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

F. 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).

G. State – refers to the State of Texas.

3. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute 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.

B. Modification of Contract Terms and/or Amendments

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.

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 Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

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 Vendor.

C. Invalid Term or Condition

1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full

Appendix A
Standard Terms and Conditions For Services Contracts

force and effect.

D. Assignment

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 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 and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable 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. All Purchase Orders issued and accepted by Vendor shall survive expiration or termination of the Contract. 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.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

H. Proof of Financial Stability

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

4. Intellectual Property Matters

A. Definitions

1)“ Work Product” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals,

Appendix A

Standard Terms and Conditions For Services Contracts

instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating

Appendix A
Standard Terms and Conditions For Services Contracts

to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by

Appendix A
Standard Terms and Conditions For Services Contracts

Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under subparagraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

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

G. Return of Materials Pertaining to Work Product.

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

Appendix A

Standard Terms and Conditions For Services Contracts

intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

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

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

Appendix A
Standard Terms and Conditions For Services Contracts

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

5. Terms and Conditions Applicable to State Agency Purchases Only

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 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) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) 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, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services

Appendix A
Standard Terms and Conditions For Services Contracts

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 coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

6. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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 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. All sales to Customers for services available under the Contract shall be processed through the Contract.

B. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty (30) calendar days from the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the services offered, service specifications, specific contract pricing expressed in dollars as well as discount off MSRP or List Price, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders. The 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 D of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely 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 written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks 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 compliant with the pricing as stated in 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 suspend, terminate or remove a link at any time, in its sole discretion,

Appendix A

Standard Terms and Conditions For Services Contracts

without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, 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 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.

C. Services Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like services.

D. DIR Logo

Vendor may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo, (iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

E. Vendor Logo

DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of 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. 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.

F. Trade Show Participation

At DIR's discretion, Vendor may be required to 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

Appendix A
Standard Terms and Conditions For Services Contracts

similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all 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.

G. Performance Review Meetings

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

H. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

7. Pricing, Purchase Orders, Invoices, and Payments

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

MSRP is defined as the product sales price list 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.

B. Customer Discount

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

C. Customer Price

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) x (1 + DIR Administrative Fee, as set forth in the Contract).

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 is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same

Appendix A

Standard Terms and Conditions For Services Contracts

terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended days to reflect the lower price.

D. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

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

F. Travel Expense Reimbursement

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

G. Changes to Prices

Subject to the requirements of this section, 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.

- 1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.
- 2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.
- 3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not

Appendix A
Standard Terms and Conditions For Services Contracts

accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase 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 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. Prices may not be increased for at least ninety (90) calendar days after the contract start date. Price reductions will be accepted at any time.

H. Purchase Orders

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

I. Invoices

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor.

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 services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

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

J. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

8. Contract Administration

A. Contract Managers

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Managers 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 performance under the terms and conditions of the Contract, and ii) periodic verification of pricing and, iii) verification of monthly

Appendix A
Standard Terms and Conditions For Services Contracts

reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall provide a dedicated Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all services purchased 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 Contract books 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 calendar 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. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the administrative fee due for the reporting period, and other information as required by DIR. 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.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's 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 CPA rules.

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

Appendix A

Standard Terms and Conditions For Services Contracts

Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon thirty (30) calendar 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 three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) 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 three (3) 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.

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 late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency 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 and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended

Appendix A
Standard Terms and Conditions For Services Contracts

price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. 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) calendar days of receipt.

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

D. Contract Administration Notification

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees.

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

Appendix A
Standard Terms and Conditions For Services Contracts

9. Vendor Responsibilities

A. Indemnification

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

3) Infringements

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

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification

Appendix A
Standard Terms and Conditions For Services Contracts

made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX

Appendix A
Standard Terms and Conditions For Services Contracts

LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are 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) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, 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 their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are 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) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the

Appendix A
Standard Terms and Conditions For Services Contracts

Treasury, Office of Foreign Assets Control;

- (ix) agree 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;
- (x) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xi) have identified all current or former, within the last five years, employees of the State assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiii) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xiv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xv) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully 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).

D. Ability to Conduct Business in Texas

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

Appendix A

Standard Terms and Conditions For Services Contracts

E. Equal Opportunity Compliance

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, the 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 request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

G. Responsibility for Actions

- 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, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under the Certification Statement of Appendix A to the RFO and/or Section 9.C. (xi) and (xii), 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.

H. Confidentiality

- 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.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

Appendix A
Standard Terms and Conditions For Services Contracts

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as “Data”) belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer’s security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor’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 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.

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor’s liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor’s liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

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.

M. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation,

Appendix A
Standard Terms and Conditions For Services Contracts

partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use 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 within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A 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 \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. 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.

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 \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.

Appendix A
Standard Terms and Conditions For Services Contracts

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.

O. Use of State Property

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 this Agreement. 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 this Agreement must be fully reimbursed by Vendor to the Customer immediately upon 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.

P. Immigration

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, 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) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and
- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Appendix A
Standard Terms and Conditions For Services Contracts

Q. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

R. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Managed Services Products and/or Services

Vendor agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither 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 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.

U. Drug Free Workplace Policy

The 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; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Appendix A
Standard Terms and Conditions For Services Contracts

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

W. Vendor Reporting Responsibilities

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

10. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

1) Vendor and DIR agree to the following: (i) 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, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor 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.

B. Termination

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, 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 services, they are obligated to pay for the services or they may discontinue using services under any return provisions that Vendor offers. 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.

Appendix A
Standard Terms and Conditions For Services Contracts

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations 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 and/or Order Fulfiller 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 11.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days written notice.

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) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in

Appendix A
Standard Terms and Conditions For Services Contracts

the Purchase Order in accordance with Section 3.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 Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Vendor 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, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all 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. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

11. Notification

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

Appendix A
Standard Terms and Conditions For Services Contracts

B. Handling of Written Complaints

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

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

12. Captions

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

VENDOR LEGAL ENTITY NAME

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 *VENDOR LEGAL ENTITY NAME* (“Vendor”), with its principal place of business at *VENDOR ADDRESS*.

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-XXX, on *POSTING DATE*, for *NAME OF RFO*. DIR subsequently issued a BAFO opportunity on *BAFO DATE*. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-XXX 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, Service Agreement; *Exhibit 1, Vendor’s Response to BAFO, including all addenda; Exhibit 2, the BAFO, including all addenda; Exhibit [3] 2, Vendor’s Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit [4] 3, RFO DIR-TSO-TMP-XXX, 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, *then Exhibit 1, then Exhibit 2, then Exhibit 3, and finally Exhibit 4.* 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 one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend the Contract, by amendment for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional renewal terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to *insert product and RFO scope description here* 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 *insert SPECIFIC services here* 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 *insert number* percent (*insert number*%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$*insert dollars*.

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
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759

Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Vendor Representative

Company Name

Address

City, State Zip

Phone: () -

Facsimile: () -

Email:

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix X of this Contract. No changes to the Software License Agreement 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 X. Vendor and Order Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement terms and conditions.

B. 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.**

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

8. Authorized Exceptions to Contract or any Appendices.

No exceptions have been agreed to by DIR and Vendor.

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

VENDOR LEGAL ENTITY NAME

Authorized By: _____

Name: _____

Title: _____

Date: _____

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

Authorized By: _____

Name: Dale Richardson

Title: Chief Operations Officer

Date: _____

Office of General Counsel: _____

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR SERVICES

VENDOR LEGAL ENTITY NAME

1. Introduction

A. Parties

This Contract for 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 *VENDOR LEGAL ENTITY NAME* (“Vendor”), with its principal place of business at *VENDOR ADDRESS*.

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-XXX, on *POSTING DATE*, for *NAME OF RFO*. DIR subsequently issued a BAFO opportunity on *BAFO DATE*. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-XXX shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement; *Exhibit 1, Vendor’s Response to BAFO, including all addenda; Exhibit 2, the BAFO, including all addenda; Exhibit [3] 2, Vendor’s Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit [4] 3, RFO DIR-TSO-TMP-XXX, 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 *Exhibit 1, then Exhibit 2*, then *Exhibit 3*, and finally *Exhibit 4*. 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 may extend this Contract, by amendment, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional renewal terms.

3. Service Offerings

Services available under this Contract are limited to *insert services and RFO scope description here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

Insert details regarding the services here

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, 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 *insert number* percent (*insert number* %). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$*insert dollars*.

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

If sent to the Vendor:

Vendor Representative
Company Name

Address

City, State Zip

Phone: () -

Facsimile: () -

Email:

7. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Contract and any Appendices.

No exceptions have been agreed to by DIR and Vendor.

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

VENDOR LEGAL ENTITY NAME

Authorized By: _____

Name: _____

Title: _____

Date: _____

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

Authorized By: _____

Name: Dale Richardson

Title: Chief Operations Officer

Date: _____

Office of General Counsel: _____



**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Bid Package 5 – Telecommunications Clauses for Appendix A

This Bid Package 5 to Request for Offer DIR-TSO-TMP-223 contains certain clauses associated with contracts procured under Texas Government Code 2170 Telecommunications Services.

In the event awards for Mobile Device Management (MDM) Products and Related Services are contracted under Texas Government Code 2170 the following clauses will be inserted into the respective Sections of Appendix A Standard Terms and Conditions.

Section titled “Definitions”

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, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

Section titled “Pricing, Purchase Orders, Invoices, and Payments”:

Telecommunication Fees and Surcharges and Taxes

(a) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. This fee may appear on billings to Customers. Any FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

(b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective



**Department of Information Resources
Mobile Device Management Products and Related Services
Request for Offer DIR-TSO-TMP-223**

Bid Package 5 – Telecommunications Clauses for Appendix A

against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.

(c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

Other Fees

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

Back-billing

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.



BID PACKAGE 5

Department of Information Resources

Mobile Device Management Products and Related Services DIR-TSO-TMP-223

Vendor References

VENDOR REFERENCES
 for the Mobile Device Management Products and Related Services RFO Number DIR-TSO-TMP-223
 REFERENCE DEADLINE TO DIR: No later than March 26, 2015 – 2:00 pm CT

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request For Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: MDM.references@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name _____
 Prime Contractor _____
 Subcontractor(s) _____
 Dates of Performance: Starting Date _____ Ending Date _____
 Total Est. Contract Dollar Amount _____

This portion to be completed by the Customer providing reference and returned to DIR at reference email address MDM.references@dir.texas.gov.

Rating: (0) Unsatisfactory; (1) Marginal Satisfactory; (2) Satisfactory; (3) Exceeds Expectations; N/A. Not Applicable
 Definitions for each rating category are contained on the following page.

Please provide your opinion by rating the following:

Quality of Service

- | | |
|--|-------------------------------------|
| 1. Effectiveness in identifying user requirements | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 2. Effectiveness in accomplishing performance metrics | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 3. Identified risk factors and alternatives for alleviating risk | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 4. Effective logistics support (services, personnel) | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 6. Technical qualifications of contractor personnel | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 7. Technical qualifications of subcontractor personnel | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |

Cost

- | | |
|---|-------------------------------------|
| 8. Accurately estimated and controlled costs to complete work | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 9. Timely, current, accurate & complete invoices | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |

Timeliness of Performance

- | | |
|--|-------------------------------------|
| 10. Adherence to delivery schedule (major tasks, milestones) | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 11. Provided timely technical assistance, on-site & off-site | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 12. Timely, current & complete reporting, tracking & documentation | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |

Business Relations & Customer Satisfaction

- | | |
|--|-------------------------------------|
| 13. Effectively managed, coordinated & integrated subcontractors | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 14. Effectively communicated with customer management & staff | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 15. Personnel (professional, cooperative & flexible) | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 16. Subcontractor personnel (professional, cooperative & flexible) | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 17. Overall Satisfaction with Prime Contractor | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 18. Overall Satisfaction with Subcontractor(s) | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |

Comments: (Please use additional page if necessary)

Would you use this Vendor for future MDM Services? Yes ___ No ___

Rater's Name: _____ Date: _____

Organization: _____

Title: _____

Phone Number: _____ Fax Number: _____ Email address: _____

Vendor Reference Evaluation Scoring

| | | | |
|--|--|---|--|
| Excellent (3) | | | |
| There are no quality problems. | There are no cost issues. | There are no delays. | Responses to inquiries, technical, service, and administrative issues are effective and responsive. |
| Satisfactory (2) | | | |
| Nonconformances do not impact achievement of contract requirements. | Cost issues do not impact achievement of contract requirements. | Delays do not impact achievement of contract requirements. | Response to inquiries, technical, service, and administrative issues is usually effective and responsive. |
| Marginal (1) | | | |
| Nonconformances require minor Agency resources to ensure achievement of contract requirements. | Cost issues require minor Agency resources to ensure achievement of contract requirements. | Delays require minor Agency resources to ensure achievement of contract requirements. | Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive. |
| Unsatisfactory (0) | | | |
| Nonconformances are compromising the achievement of contract requirements. | Cost issues are compromising performance of contract requirements. | Delays are compromising the achievement of contract requirements. | Response to inquiries, technical, service, and administrative issues is not effective and responsive. |
| Not Applicable (0) | | | |
| "does not apply" in the response to the question or request for information. | | | |