

**Department of Information Resources
Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services
and Managed Print Services
Request for Offer DIR-TSO-TMP-224**



Department of Information Resources

**Request for Offer
DIR-TSO-TMP-224**

**Print, Scan, Facsimile, Multifunction Devices, 3D
Printers and Related Services and Managed Print
Services**

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1. Introduction

1.1. Purpose

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide printers, scanners, facsimile, multifunction devices (MFD), 3D printers and Related Services and Managed Print Services (MPS) 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. DIR reserves the right to award more than one contract from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

As a result of this RFO, DIR expects to create a contract vehicle that satisfies statewide procurement requirements for printers, scanners, facsimile, MFD, 3D printers and Related Services and MPS contracts and improves the efficiency of the procurement process by shortening the time required to procure these products and services.

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.

1.2. Background

1.2.1 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government or institution of higher education as defined in Texas Government Code, Section 2054.003; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771; any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

DIR combines the buying power of authorized Customers to obtain volume-discounted pricing for selected technology products and services. In addition to offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to make it easier for Customers to acquire these products and services. Customers place orders with and issue payments directly to the Vendors participating in the Co-op Contracts Program. Subject to DIR rights set forth in Sections 3.8 and 3.9 of this RFO, DIR will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for

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products and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at <http://www2.dir.state.tx.us/ict/Pages/contracts.aspx>.

1.2.2 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://www2.dir.state.tx.us/ict/resources/Pages/itcommoditypurchasingforstateagencies.aspx>.

1.2.3 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.

1.2.4 Cost Recovery

DIR recovers the costs of negotiating, executing, and administering the Co-op Contracts through an administrative fee. DIR is authorized to charge a reasonable

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administrative fee to all customers per Section 2157.068(d) of the Texas Government Code. The administrative fee must be included in the Vendor's price to the customer and paid to DIR by the Vendor. The fee has been set at a not-to-exceed level of 2.00% by the current appropriations act of the State Legislature. For the purposes of responding to this RFO, the administrative fee of 0.75% shall NOT be used in calculating the pricing specified in Bid Package 2. DIR may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee.

1.2.5 Historical Sales

Contracts negotiated and managed through the Cooperative Contracts Program resulted in over \$5 billion in Customer purchases for the past three (3) fiscal years combined. Information contained within the table below shows the total purchases for the past three (3) fiscal years by Customer segment. These purchases represent contracts that are hardware, software, and services related. The State's fiscal year runs September 1st through August 31st.

Segment	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014
State Agencies	\$419,114,676	\$455,580,670	\$552,930,806
Local Governments	\$348,786,822	\$376,392,395	\$441,178,176
Higher Education	\$296,859,436	\$323,619,834	\$347,893,226
K-12	\$533,169,068	\$627,118,706	\$702,153,606
Out of State	\$2,849,417	\$1,370,197	\$1,967,044
Assistance Organizations	\$11,146,380	\$12,036,807	\$11,524,367
Total FY	\$1,611,925,799	\$1,796,118,609	\$2,057,647,228

1.2.6 Current Contract

DIR currently has multiple contracts with 13 Vendors to provide MFD, MPS, and Related Services. The volume of products sold through the contracts for fiscal year 2014 was approximately \$115,028,055.00.

This RFO encompasses Term Contracts which were previously administered by The Comptroller of Public Accounts (CPA) Texas Procurement and Support Services (TPASS) for the rental and lease of copy machines. The estimated volume of products

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sold through those contracts for fiscal year 2012 was approximately \$37,282,281.00.

2. Scope

2.1. Products

DIR intends to establish and provide contracts to DIR Customers for printers, scanners, facsimile, MFD, 3D printers and Related Services and MPS. A multifunction device is defined as a product or device that has multiple functions. An example of this might be a printer that also makes copies, faxes and scans.

Vendors may not propose or provide remanufactured, like-new, newly manufactured, refurbished, reconditioned or any other than NEW products or equipment, to include add-on products. This RFO specifically prohibits remanufactured toner cartridges.

The MPS shall be for the management of one or more output devices, including but not limited to production or print type devices, and shall apply to routine office fleet document output devices, such as printers, copiers, faxes, scanners, multifunction units, as well as 3D printer devices. DIR Customers may order the MPS individually or in any combination thereof. 3D printers may include any of the MPS, including but not limited to, installation and maintenance and support services.

For the purposes of this RFO, MPS shall be defined as: assessing, optimizing and managing a Customer's document output environment. These MPS shall provide documentation of current printing and copying device(s) utilizations, workflow, etc.; recommendations to reduce per-pages costs; managing print volume; providing cost effective document output devices configurations regardless of brand or type; procurement and management of all output devices consumable supplies (photoconductor, toner, staples, ink and developer excluding paper); tracking of all output devices; providing volume usage reports; providing help desk services for maintenance and repair; managing user's print behavior and satisfaction, etc. A document output device is any stationary or mobile device that may be wireless or hard-wired, networked or non-networked that permanently affixes print to paper. Devices include, but are not limited to printers, copiers, faxes, scanners, multifunction units, plotters, wide format printers, duplication devices, e-printers and production, high volume printers.

This RFO excludes such services as records management, document management, document storage/imaging/archiving/retrieval, etc.

MPS Requirements

MPS may be proposed per service category listed below or Vendors may propose optional bundled MPS or other miscellaneous or optional MPS not listed in the RFO. Each of the categories below have been given definition and specifications for the purpose of evaluation only and may not specifically define the services offered by the Vendor. In the event that the categories of MPS listed in the Pricing sheets do not adequately align with the Vendor offerings, Bid Package 2, Pricing Index, provides for miscellaneous and optional pricing.

1) Technical Discovery/Assessment Services

Analyze and document current business processes, work flow and usage of existing components and technologies surrounding print management and output devices. Services within this category would include producing inventory reports of output

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devices, usage for printing, copying, (black and white and color) faxing, scanning and associated costs, usage of consumable products (ink/toner), cost analysis reporting, cost savings, and ultimately recommending how to make changes to improve productivity and reduce cost.

2) Change Management

A comprehensive strategy to manage change and control project scope for the MPS, such as a methodology that addresses how solutions contribute to greater user satisfaction and user adoption and how users print behaviors are modified.

3) Implementation and Project Management

Describes in detail the project management processes and methodology for the MPS landscape, such as showing how the most cost effective devices will be installed when a new or replacement device is recommended. The plan should include implementation progress milestones. Implementation plans shall be coordinated and developed by DIR Customer and Vendor.

4) Support Services for Output Devices Owned or Leased by Customer

Manage services on output devices owned or leased by the Customer. This would include, but not be limited to, standard and Ad Hoc usage reports, maintenance, break/fix, troubleshooting, on-site support function, supplies, and upgrading of devices to provide needed technology features.

5) Procurement and Support Services for Output Devices provided by Vendor

Manage procurement and support services including bearing the cost for new devices that may be required by a Customer. All maintenance, break/fix, troubleshooting, and upgrades for such devices would be the responsibility of the Vendor.

6) Maintenance

Manage full maintenance to include all labor, all parts (including drums), all service, all travel and all regular and preventative maintenance. A guaranteed maintenance service shall be included in the monthly rate. Document output device maintenance service shall be provided for all document output devices installed.

Vendor will repair or adjust the machine(s) as required to maintain them in good working order. These costs are borne by the Vendor and are inclusive in the MPS monthly costs.

Preventive maintenance will be based upon specific needs of the individual machines as determined by the Vendor in accordance with manufacturer specifications. Preventive maintenance will include, but not be limited to, lubrication, necessary adjustments and replacement of unserviceable parts, with at least one preventive maintenance inspection per quarter.

Unless otherwise negotiated between the DIR Customer and Vendor, if document output device(s) is not in operation within eight (8) hours of a reported outage, the Vendor must furnish a document output device of the same specifications at no additional cost to the Customer until the inoperable document output device is operational.

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The Vendor shall agree to provide a service log (service history on the machine) on any machine when requested by the Customer. This history will provide the cause of the breakdown and length of time it is down. If the down time is determined to be operator error, misuse or abuse by the Customer, the downtime will not be considered in accessing satisfactory machine performance.

7) Managed Print Security Services

Vendor agrees that all managed service products equipped with hard disk drives (e.g. printers, fax machines, scanners, MFD) shall have the capability to securely erase data written to the hard drive prior to final disposition of the product, in accordance with Texas Administrative Code, Title 1, Chapter 202 (1 TAC 202). Documentation of completed hard disk drive erasure shall be made available to Customer, i.e. certification/validation/report.

8) Consumables Supply Services

Unless otherwise negotiated between the DIR Customer and Vendor, MPS includes the management of output device consumables; toner/ink cartridges, developer, drums, staples etc. It is the Vendor's responsibility to manage the procurement, and restocking of consumables as necessary. All costs for these supplies will be the Vendor's responsibility.

9) Proactive Support Services

Providing electronic monitoring and support services for document output devices that will result in fewer support calls and decrease device down time.

10) Asset Tracking

Manage all tracking of output devices to include, but not be limited to, physical location of device, device usage, and maintenance records.

11) Installation/Moves/Changes

Provide installation of new output devices, relocation of existing or new output devices, and continued modification or upgrade of output devices. All removal and installation charges, to include device hard drive data purging (aka hard drive wiping) or hard drive removal and subsequent return to the DIR Customer, shall be the responsibility of the Vendor. Vendor shall perform all installations and shall verify proper operation of all equipment. For installation and removals that require special rigging, Vendor shall submit a price quote to DIR Customer for approval prior to any work being done. Vendor shall contact the DIR Customer to inquire about stairs, loading dock, etc.

12) Technical Support/Help Desk Service

Provide technical assistance in the installation, operation, maintenance of MPS document output devices upon request. Unless otherwise negotiated between the DIR Customer and Vendor, such assistance shall be available from 8:00 A.M. until 5:00 P.M. (Standard Business Hours), Central Time, Monday through Friday, at no additional cost. Additional services such as: Weekend, Holiday, and 24x7x365 coverage may be negotiated, as required by DIR Customer. Technical services must include assistance in the installation and network configuration of new devices and software. Vendor shall supply a toll-free telephone number and/or specific email

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address for Customer to report maintenance issues, trouble-tickets, and request other how-to assistance as necessary. The support process must include the ability to track service calls as well as a timely confirmation for, and a resolution of, all Customer service requests submitted.

13) Training

Provide output device and work-flow training as necessary to fully take advantage of the MPS. For new device installations, the Vendor shall provide (at a minimum) one (1) on-boarding training session per new device model/category. The number of training sessions shall reflect the size and scope of the installation and the number of users. Each training session will be a minimum of one (1) hour in length and will familiarize users with the new device(s). Training services must include instructional sheets, user guides and other related documentation as part of the program rollout and on an ongoing training/refresher/updated technology as determined by DIR Customer and Vendor.

14) Standard and Ad-hoc Reporting and Documentation

Produce various types of reports via online or hard copy as may be required by DIR Customer. Vendor must define all standard reports and a description of the Ad Hoc reporting process.

15) Managed Print Services Accounting Services

For accounting requirements, when applicable, the document output device(s) provided under MPS must have the ability to account for the usage costs by job, task, device, user, location, department or other similar Customer requirement. Costs for any counting device must be included in monthly MPS pricing.

16) End of Engagement/De-Installation Services

Provide de-installation and removal of Vendor provided output devices, including providing a plan to coordinate these services, at no additional cost to the DIR Customer. Services include, but are not limited to, managing all return processes for all devices provided by Vendor and performing and accrediting hard drive data security and purging in accordance with 1 TAC 202. The de-installation and removal of devices shall occur in a timely manner but no later than a removal completion date as agreed between Customer and Vendor. Customer shall not be liable for payment except for the time that a device is in use by the Customer. If the Vendor fails to meet the agreed upon completion removal date, they may be liable for any late removal fees that may have been previously agreed upon by Customer and Vendor.

17) End of Engagement/Transition Plan

Provide an end of engagement plan that, at a minimum, considers hardware, software and data network licenses and contracts, key personnel (DIR Customer staff and Vendor staff), knowledge transfer facilitated through documentation, accommodation and technology spaces, and data – on disks, storage locations, etc. End of Engagement plans shall be coordinated and developed by DIR Customer and Vendor. In addition, a transition plan that addresses the orderly transition to DIR Customer, or a successor MPS Vendor, of all MPS provided by Vendor.

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Additional Services/Emerging Technologies

Responding Vendors are encouraged to provide any other services, including but not limited to emerging technologies for MPS, in addition to the above services being requested.

Pooling and Overages

Monthly Pooling of Click Charges shall be allowed for DIR Customers under a DIR Contract. Excluding color MFD, the Schedule or other Agreement between the DIR Customer and Vendor shall define each device as a Category of either: High, Medium, or Low according to the device Pages per Minute (PPM) output. Devices on the same contract and within the same Category may pool the allowed number of Click Charges per month for all of the devices within the same category. Overage or Excess Clicks will not be assessed until the total of all the individual Category Click Charges have been pooled together and exhausted.

3D Printers

DIR intends to establish and provide contracts to DIR Customers for 3D printers capable of processing or making three dimensional solid objects from a digital file achieved using additive processes. 3D Printer technologies all share the common theme of sequential-layer of material addition/joining throughout a 3D work envelope under automated control. Responding Vendors should provide full device descriptions including device type, including but not limited to Extrusion, Wire, Granular, Laminated, Light polymerized or Powder bed and inkjet head and the technology associated with the device such as Fused Deposition Modeling (FDM), Electron Beam Freeform Fabrication (EBF3), Selective laser sintering (SLS), etc.

Include any trademark or patent-specific, warranty or licensing agreements with proposal. Vendor may propose accessories, additives and raw materials as Accessories and Optional Items in Bid Package 2, Pricing Sheet.

3D Printer Types and Methodologies

Type	Technology	Type	Technology
Powder bed and inkjet head 3D printing	Plaster-based 3D printing (PP)	Granular	Direct metal laser sintering (DMLS)
Laminated	Laminated object manufacturing (LOM)		Electron-beam melting (EBM)
Light polymerised	Stereolithography (SLA)		Selective laser melting (SLM)
	Digital Light Processing (DLP)		Selective heat sintering (SHS)
Wire	Electron Beam Freeform Fabrication (EBF3)		Selective laser sintering (SLS)
Extrusion	Fused deposition modeling (FDM)		

Service Level Agreements

All Service Level Agreement's (SLA's) shall ensure that the MPS Vendor provides an optimal printing environment for the DIR Customer by establishing service performance metrics with corresponding service level objectives.

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Pricing

DIR's intent in establishing contracts is to provide opportunities for industry proven cost savings associated with print, scan, facsimile, and MFD documents and in the case of 3D printers, the final or output production environment.

The awarded Vendor can make recommendations concerning the replacement of equipment throughout the term of Service by offering a reduction in price or to improve efficiency without an increase in the Related Services or the monthly unit cost.

Any Vendor responding to this RFO must submit specific pricing for the products requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and related services, if any, and MPS, shall be priced and discounted as contained in the Excel spreadsheet attached as "Bid Package 2" to the posting for this RFO, requisition number DIR-TSO-TMP-224, on the Electronic State Business Daily at <http://esbd.cpa.state.tx.us/>. All products including, but not limited to, production print type devices and output devices such as printers, copiers, fax, and scanner capable devices, multifunction units and 3D printers may be made available through a Contract.

Vendors must respond as follows to the "Bid Package 2" spreadsheet. Failure to respond as instructed may result in Vendor's offer being disqualified from further evaluation.

- Pricing Sheet: A representative sample of products has been included on the spreadsheet tabs titled "Instructions, Non-MFD Pricing, MFD Pricing and MPS Pricing" sheets. These are representative samples only. Vendor must offer only one price for each product listed. If Vendor proposes multiple pricing rate structuring, it shall be identified on a separate Price Sheet which identifies the category pricing (e.g. Education, Local Governments). The price to the DIR Customer shall include all shipping and handling fees. All products and services named in this RFO may be made available through a Contract.

In addition to purchases, DIR and any Vendor awarded a Contract as a result of this RFO may agree to provisions that allow leasing of the products offered under the resulting Contract. The two categories of DIR Lease Agreements are included as Bid Packages 6 (Master Operating Lease Agreement) and 7 (Master Lease Agreement) of the RFO. The MFD Pricing Sheet calls for a Lease Rate Factor for the Master Lease Agreement products.

For Bid Package 7, Master Lease Agreements only: Bid Package 2, Pricing Sheet requires the Lease Rate Factor of Purchase/Leases. The Lease Rate Factor is a total percentage (%) which should include, but is not limited to: Residual Value minus (-) any depreciation fee, administrative fee, lease fee, etc. The Residual Value is what the equipment is expected to be worth at the end of the lease. The purpose of the Residual price/value is to determine how much the equipment will depreciate during the term of the lease. To determine the monthly lease payment, the Vendor shall apply the lease factor to the DIR Customer Discount Price off of MSRP.

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Example:

Calculating the Lease Rate Factor based on Customer Discount Price off of MSRP:

Lease Amount	\$ 21,000.00
Monthly Payment Amount	\$ 300.00
Residual Amount	\$ 15,000.00
Lease Term	36 Months

Lease Rate Factor 8.784%

DIR is not soliciting print, scan, facsimile, MFD, 3D printers and related services and MPS for the agency. DIR establishes statewide master contracts for use by DIR eligible customers (state agencies, higher education, K-12 independent school districts, local governments and entities of other states that have entered into Interlocal agreements to utilize 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>. DIR competitively bids for information technology products and services.

Customers must identify their own needs, then contact an awarded DIR Vendor and obtain a price quote for products/services. Customers may submit a statement of work or purchase order to the Vendor when obtaining a quote based on their needs. The Customer makes the best value determination and issues a purchase order directly to the Vendor.

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 8).

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 (Appendix A, item 19).

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 product installation, maintenance and support, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related

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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 of the 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-224, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>.

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 a contract term of one year with three, one-year optional extensions to be exercised by DIR at its discretion. DIR may cease negotiation with a Vendor or award a contract term other than originally anticipated if Vendor Exceptions to DIR Standard Terms and Conditions are excessive, causing prolonged delays or if the Vendor is non-responsive to contract negotiations.

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.

DIR Customers acquiring Services under an awarded DIR contract may be required to execute a Customer Service Agreement (“Agreement”) directly with a Vendor. The Customer will be required to negotiate job-specific requirements directly with a Vendor. Terms and conditions stated in an Agreement shall not weaken a term or condition as stated within the DIR contract. Customers shall be allowed to utilize the products and/or services within a DIR contract either individually or in any combination thereof. At a minimum, a Customer Service Agreement should detail the following items:

- 1) Agreement term and renewal options;
- 2) Detailed plan and requirements for MPS Services roll-out and continued support;

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- 3) Detailed list of all output devices identified by serial number;
- 4) Additional job-specific terms and conditions;
- 5) Detailed list of all services to be provided;
- 6) Pricing schedule, typically priced as a Cost per Copy/Page in accordance with the DIR Contract;
- 7) Responsibilities of the Vendor and Customer;
- 8) Vendor performance expectations, Service levels;
- 9) Payment schedule; and
- 10) Lease terms (as applicable).

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 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. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Date/Time	Activity
November 24, 2014	Publish RFO on Electronic State Business Daily
December 8, 2014 1:30 pm (CT)	Vendor Conference and webinar [optional]
December 11, 2014 2:00 pm (CT)	Deadline for submitting questions
December 22, 2014 2:00 pm (CT)	Deadline for posting answers to questions on the ESBD
December 30, 2014 2:00 pm (CT)	Deadline for DIR to receive Vendor references

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December 30, 2014 2:00 pm (CT)	Deadline for submitting Responses to RFO
December 31, 2014 - until completed	Evaluation of responses, negotiation and contract execution

3.3.2 Vendor Conference

An optional Vendor Conference will be held on the date and time specified in RFO Section 3.3.1 above at the location listed below. The conference will be simulcast in webinar format for those that cannot attend in person.

Please bring a copy of the RFO to the Vendor Conference, as DIR will only supply a limited amount of copies.

William P. Clements Building
300 West 15th Street
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://www2.gotomeeting.com/register/491384682>. 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.

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 the date and time specified above in Section 3.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-224, 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.

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3.4. Historically Underutilized Businesses

The purpose of the Historically Underutilized Business (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 must 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. 11.2% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders' contracts;
3. 32.7% for all special trade construction contracts;
4. 23.6% for professional services contracts;
5. 24.6% for all other services contracts;
6. 21.0% 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 HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

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.

3.4.1 HUB Subcontracting Plan

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **The HUB Goal for this RFO is 21.0 %. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION 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. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be submitted in an envelope that is separate from the rest of the proposal. 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

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without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

3.4.3 HUB Resources Available

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: <http://www.window.state.tx.us/procurement//cmb/hubonly.html>. For additional information, contact the CPA's HUB program office at Texas4hubs@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) Manufacturer or publisher of a product who will sell directly to Customers through a Co-op Contract.
- 2) Manufacturer or publisher of a product who will execute a Co-op contract with DIR and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. The manufacturer or publisher may also sell directly to Customers.
- 3) Dealer or reseller who will sell directly to Customers through a Co-op Contract.

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>.

Hand-signed letters of authorization on manufacturer's letterhead must be submitted with Vendor's proposal. Failure to supply the letter may result in elimination of the related proposal from the solicitation process.

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 must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor 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

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becomes listed on the Terrorism List.

- 2) Should any Vendor or its principals 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 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) 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 17 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;
- 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; and
- 3) Vendor will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

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 the date and time specified in Section 3.3.1 of this RFO. **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.

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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, responses must be received, not post-marked, by the response deadline and, due to the State's mail processing procedures, this method may cause a 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-224" 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;
3. Two (2) thumb drives (**clearly marked with Vendor name**) containing the following;
 - a) One (1) thumb drive containing an electronic folder labeled "Complete Vendor Response" that shall contain the entire Vendor's response.
 - b) One (1) thumb drive containing a labeled electronic folder with any and all response materials, which Vendor asserts are confidential or proprietary*; and a labeled electronic folder containing all non-proprietary/confidential and non-copyrighted materials in the Vendor's response* (redacted copy for public release).

* If Vendor's response does not contain such materials, then thumb drives for these items are not required.

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Paper responses must be bound in a 3-ring binder and the cover of the binders must reference "DIR-TSO-TMP-224" and include the name and address of the responding Vendor.

Each thumb drive must be clearly marked as to its contents. **The response materials on each thumb drive 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 thumb drives, the contents of the signed original printed response will take precedence.

NOTE: Thumb drive(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 of this RFO

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 of this RFO

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 of this RFO

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS**, 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. The paper copy of the HSP must be submitted in a separate envelope.**

4) Product Pricing – Bid Package 2

Brands and products should be listed in the Excel spreadsheet that is attached as "Bid Package 2" to the posting for this RFO, requisition number DIR-TSO-TMP-224, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. Vendor shall provide specific 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) or List Price. Vendor must provide a description of MSRP or List Price and the method being utilized to derive the MSRP. MSRP or List Price is defined as the product sales price list published in some form by the manufacturer or publisher of the product and available to and recognized by the trade. A price list prepared solely for this solicitation is not acceptable. If Vendor offers government and educational pricing, both pricing structures must be included in Vendor's response.

5) Services Description Pricing – Bid Package 2

Vendor shall provide a detailed description and the specific pricing for any value-added, product-related service that Vendor is proposing to offer in response to this RFO. Product-related services include but are not limited to product installation, maintenance and support and product training. The discount being

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offered shall be based upon the MSRP or List Price.

- 6) **Vendor Accessibility Documentation as required in Section 2, Scope, 2.1 Products.**
- 7) **Manufacturer Certification Letters Meeting Requirements of Section 3.5.1**
- 8) **Software License Agreements, Schedules and/or Service Agreements**
Vendor shall provide any Software License Agreements, Schedules and/or Service Agreements that are applicable to the products and/or related services Vendor is proposing. These Agreements at a minimum must allow and provide for inclusion of the terms and conditions of the *Contract for Products and Related Services* (Bid Package 3) and the *Standard Terms and Conditions for Products and Related Services Contracts* (Bid Package 4).
- 9) **Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment – Bid Package 8**

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).

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, in whole or in part, 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-224 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

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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. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but 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 substantiating the exception(s).

The Office of the Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act DIR shall comply with all decisions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor. 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. All proposals determined to be responsive will go through a financial review overseen by the Chief Financial Officer's (CFO's) office. **The financial review is a pass/fail determination that is final.** Only proposals that receive a passing grade will proceed to the Evaluation Committee. DIR will establish an Evaluation Committee to review all responses that have not been rejected. At any time during the evaluation process, DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. DIR's request and Vendor's response shall be in writing. 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:

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- 45% - Pricing
- 30% - Vendor's plan for supporting the Contract and Vendor's history and experience in marketing and providing the products and services requested. (*Appendix A & B*)
- 15% - Acceptance of standard contract terms and conditions (refer to Section 2.3)
- 10% - Vendor's Customer references. (Bid Package 5)

Vendors will be evaluated on performance under existing and prior contracts for similar products or services and the evaluation may include consideration of Vendor performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.108(b).

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 Texas Government Code, Section 2157.003, is obtained for the State.

4.4. Negotiations

At the conclusion of the evaluation, as described within Sections 4.1 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 DIR Executive Management.

4.5. Award of Contract

DIR 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-224 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 pursuant to this RFO are not subject to disclosure under the Public Information Act until all contracts resulting from this RFO have been executed.

Any Contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

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

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**Appendix A
Vendor Information**

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

1) Vendor Legal Entity Name: _____

2) Comptroller of Public Accounts (CPA) 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

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- 8) Provide the year in which your company was created/incorporated.
- 9) Provide a detailed 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 the products and services requested in this RFO 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) 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).

- 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* **in redline form**. Include the basis for

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each exception 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	Explanation of Exception	Proposed Language (redline)

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>

3) Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

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18) Proof of Financial Stability.

All Vendors responding to this RFO and all Vendors that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Vendor to be “in good standing” and a Vendor with which the state is authorized to do business.

Vendors must provide a Dun and Bradstreet D-U-N-S number. The D-U-N-S number MUST be included in the Vendor’s response. **Failure to include the D-U-N-S number listed for the company shall cause automatic rejection of the response.**

19) Electronic Product Environment Assessment Tool (EPEAT). 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, describe Vendor’s efforts to attain EPEAT certifications.

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

- Name:
- Title:
- Address:
- Phone Number:
- Fax:
- Email:

21) **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.

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 the date and time specified in Section 3.3.1 of this RFO. 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-224”	

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Package contains one (1) signed original (clearly marked) of the complete response with one (1) signed original HUB Subcontracting Plan	
Package contains one (1) additional signed original HUB Subcontracting Plan in a separate envelope	
One (1) thumb drive containing a Complete Vendor Response that shall contain the entire Vendor's response.	
One (1) thumb drive containing all response materials, which Vendor asserts are confidential or proprietary*; and folder containing all non-proprietary/confidential and non-copyrighted materials in the Vendor's response* (redacted copy for public release).	
Paper response is bound in a 3-ring binder and the cover of the binder references "DIR-TSO-TMP-224" and includes 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 Pricing and Services Description – Bid Package 2	
Product Accessibility Documentation, Section 2.1 RFO Requirement	
Mandatory Certification Letter(s), Section 3.5.1, 3a	
Software License Agreement(s), Schedule(s) and/or Service Agreement(s)	
Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment – Bid Package 8	

B. Certification Statement

The undersigned hereby certifies on behalf of insert company name here that RFO DIR-TSO-TMP-224 has been read and understood. In submitting its response insert company name here represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor 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) 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;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, 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) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;

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- (viii) Vendor has not given, offered to give, nor intends 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 submitted response;
- (ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (x) Vendor has not, nor has anyone acting for Vendor, 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) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges 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) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, 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;
- (xviii) 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); and
- (xix) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO.

Signature of Officer or Agent empowered to contractually bind the Vendor

Title

Date

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Appendix B
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 (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's Web page for a complete list of Customers outside of Texas: <http://www.dir.texas.gov/overview/Pages/customersoutsidetexas.aspx>

A Contract Marketing Plan, as an example, would list the Marketing elements Vendor would use, such as publishing on the DIR website, email signature tag, Trade Publication Advertisements etc. Submissions of current MPS comparable engagements are a superlative means of demonstrating and supporting a Vendors' capability to provide enterprise level MPS.
- 2) Describe your company's strategy for providing:
 - a. sales,
 - b. order processing, and
 - c. support of eligible DIR Customers throughout the State of Texas as well as entities of other states that have entered into Interlocal agreements utilizing DIR's Cooperative Contracts). See DIR's web page for a complete list of Customers outside of Texas: <http://www.dir.texas.gov/ict/overview/Pages/customersoutsidetexas.aspx>.
- 3) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
 - a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
 - b. Provide names, titles, prior account management experience for accounts of the State's size and type.
 - c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract.
- 4) 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.

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- 5) If your company is a manufacturer or publisher naming Order Fulfillers, provide the information listed below for each proposed Order Fulfiler. **Proposed Order Fulfillers listed below must also be included in Appendix C of this RFO, Vendor's Historically Underutilized Plan (HSP).**
- a. Order Fulfiler 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 Fulfiler

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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. - 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 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.

DIR's HUB Goal for this bidding opportunity is 21.1 %. Failure to complete and comply with the current HSP form may disqualify the bid response. The following documentation should be completed with the HSP:

- Section 4 Affirmation- must be signed and dated;
- Method B (Attachment B) -must provide documentation under Section B-3 with response (if applicable);
- Actual % and dollar amounts must be used on HSP form (if applicable).

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 #: DIR-TSO-TMP-224 Bid Open Date: 11/19/2014
(mm/dd/yyyy)

Enter your company's name here: _____

Requisition #: DIR-TSO-TMP-224

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 <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	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: _____

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SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a.¶ 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 <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	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 #: DIR-TSO-TMP-224 _____

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.

Signature	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.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: DIR-TSO-TMP-224 _____
---------------------------------------	--------------------------------------

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/tpasscblsearch/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 #: DIR-TSO-TMP-224

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 _____ Date (mm/dd/yyyy) Central Time

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

Instructions for DIR-TSO-TMP-224 Bid Package 2, Pricing Index

Incomplete Pricing Per Line Item May Disqualify A Line Item

For the purposes of the evaluation of this RFO, the DIR administrative fee of .75% IS NOT calculated in any Pricing Sheet.

General Instructions for All Pricing Sheets:

1. 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 Hardware, Monochrome Devices - Customer Discount - 10%
Product ABC Hardware, Multifunction Devices - Customer Discount - 15%
Product ABC Hardware, Accessories - Customer Discount - 20%
Product ABC Hardware, All other products - Customer Discount - 8%
2. If Vendor proposes multiple pricing rate structuring, it shall be identified on a separate Price Sheet which identifies the category pricing (e.g. Education, Local Governments).
3. Vendors may not propose a range of discounts for a product (e.g., 0% - 99%).

Instructions for Sheet A Non-MFD Device Pricing

1. Use this pricing page for offering stand-alone, walk-up equipment (Fax, Scanner, Etc). See Example on Sheet A. Use this pricing page for Duplicators or 3D Printers or other devices which do not fall within the MFD Pricing/Volume Groups.
2. Vendor shall provide a description of MSRP, its' public-facing location or the method utilized to derive MSRP.

Instructions for Sheet B Non-MFD Device Lease Pricing - Use this Pricing Sheet to propose Leases on Non-MFD Devices

Instructions for Sheet C MFD Pricing

1. Use this pricing page ONLY for MFD offerings which fall within the Groups/Segments identified. Do not include devices that do not fall within the identified group defined as multifunction devices in Section 2.1 of Bid Package 1.
2. Each unit being proposed must be on a separate sheet. Example: if you are offering 3 machines within the same volume band you should have 1 bid sheet for each unit; 3 sheets total.
3. Provide MSRP and discount information AS WELL as Cost per Copy and Overage pricing based on the PPM and Monthly Volume Bands.
4. Cost per Copy should be calculated on a 20% page coverage.
5. Pricing should be based Inclusive of all supplies.

Instructions for Lease Pricing on Sheet A or Sheet B or Sheet C Pricing sheets.

1. Lease Rate Factors are required for Bid Package 6, Master Lease Agreements. Bid Package 1, Section 2.1, Products, Pricing describes the calculation requirements for proposing Lease Rate Factors on a MLA.
2. Leasing costs must tie back into unit pricing.
3. Lease Pricing is Inclusive of all supplies.

Instructions for Sheet D MPS Pricing

1. Page 1 of the MPS Pricing Sheet includes a **Volume Band Legend** which breaks out the Pages Per Minute (PPM) by Volume. The Volume Bands for Monochrome begin with a "M" (Example: M3) and the Volume Bands for Color & B&W begin with a "C" (Example: C2). Refer to this Legend when pricing the Cost Per Copy / Page of Print.
2. The MPS Pricing Sheet requires Discount % off of MSRP for some Managed Print Services that are "task", "service", or "project"- oriented.
3. Both pricing formats have Miscellaneous/Optional categories to propose MPS that are not identified on the Pricing Sheet.

Proposed pricing shall be acceptable for 120 days from the Due Date of the proposal.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet A Non Multifunction Device (MFD) Pricing Sheet - Devices Listed Here Are Not Primarily MFD's					
Print, Scan, Facsimile, 3D Printers and Related Services for Stand-Alone Devices	Part Number	MSRP	DIR Discount % off MSRP	DIR Discounted Price (MSRP - Discount %)	Description of MSRP
HARDWARE					
Example: ABC Facsimile Machine Model 123	ABC 2677	\$ 2,000.00	42.00%	\$1,160.00	Mfgr Published www.mfgr.msrp.com
Example: DEF 3D Printer, Sintering	DEF AA56	\$ 10,200.00	32.00%	\$6,936.00	Mfgr Published www.mfgr.msrp.com
Example: Plotter/ePrinter 36", Wide Format, JKL Manufacturer, Model 456	456 by	\$5,215.00	34.00%	\$3,441.90	Mfgr Published www.mfgr.msrp.com
RELATED SERVICES	Part/Service Number	MSRP	DIR Discount % off MSRP	DIR Discounted Price (MSRP - Discount %)	Description of MSRP
Example: Annual Maintenance for XXXX	AM Gold	\$ 900.00	30.00%	\$630.00	Mfgr Published www.mfgr.msrp.com
Example: 24X7X365 Telephonic MAKERBOT 3D Printer Technical Support	AM TEL 24X7X365	\$ 725.00	22.00%	\$565.50	Mfgr Published www.mfgr.msrp.com

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet A Non Multifunction Device (MFD) Pricing Sheet - Devices Listed Here Are Not Primarily MFD's					
ACCESSORIES AND SUPPLIES	Part Number	MSRP	DIR Discount % off MSRP	DIR Discounted Price (MSRP - Discount %)	Description of MSRP
Example: MAKERBOT Poly Lactic Acid Large	MB 334	\$ 70.00	15.00%	\$59.50	Mfgr Published www.mfgr.msrp.com
Example: ABC Facsimile Print Cartridge	ABC 225	\$ 45.00	15.00%	\$38.25	Mfgr Published www.mfgr.msrp.com
Example: Yellow Cartridge for Mfgr, Mdl/Series Wide Format ePrinter	987	\$ 67.00	15.00%	\$56.95	Mfgr Published www.mfgr.msrp.com
MISCELLANEOUS MFD PRODUCTS and SERVICES / OPTIONS	Part/Service Number	MSRP	DIR Discount % off MSRP	DIR Discounted Price (MSRP - Discount %)	Description of MSRP

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet B NON-MFD Device Lease Pricing Sheet

Use this Pricing Sheet to Propose Non-MFD Devices that can be leased

Costs include all Supplies, Maintenance, and Support

Manufacturer, Model, Features, Description	MSRP	DIR Customer Discount % from MSRP	Lease Rate Factor 36 Month	36 Month Lease Payment (per unit)	Lease Rate Factor 48 Month	48 Month Lease Payment (per unit)	Lease Rate Factor 60 Month	60 Month Lease Payment (per unit)

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet C Multifunction Device (MFD) Pricing Sheet Monochrome, B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet. Incomplete Line Items May Not Be Considered.

Volume Band M1	1 - 30 Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 2,500

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate Factor 36 Month	Operating Lease Rate Factor 36 Month	Purchase Lease (MLA) Rate Factor 48 Month	Operating Lease Rate Factor 48 Month	Purchase Lease (MLA) Rate Factor 60 Month	Operating Lease Rate Factor 60 Month	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)
Example: Manufacturer Brand ABC, Model 123, Digital copying, Multifunctional, Reduction/Enlargement 25 to 400%, 3 paper drawers, Bypass 100 sheets, Auto Duplex, Sorter is Offset, Photo Mode, Energy Star-compliant	28	\$4,500.00	24.00%	\$3,420.00	\$0.03330	\$0.03087	\$0.02600	\$0.02510	\$0.02250	\$0.02150	\$0.0001	2,500	\$0.0002
DIR Customer Monthly Lease Payment	24 Mo	36 Mo	48 Mo	60 Mo									
	\$0.00	\$0.00	\$0.00	\$0.00									
Annual Maintenance and Support Services for Purchase Units				MONTHLY									
Year 1				\$0.00	\$0.00								
Year 2				\$0.00	\$0.00								
Year 3				\$0.00	\$0.00								
Year 4				\$0.00	\$0.00								

THIS DEVICE: CHECK ONE →	P=Print; C=Copy; F=Fax, S=Scan			
	P/C	P/C/F	P/C/S	P/C/F/S

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet C Multifunction Device (MFD) Pricing Sheet Monochrome, B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band M2	31 - 49 Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 20,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)	
					Factor 36 Month	Factor 36 Month	Factor 48 Month	Factor 48 Month	Factor 60 Month	Factor 60 Month				
DIR Customer Monthly Lease Payment					24 Mo	36 Mo	48 Mo	60 Mo						
					\$0.00	\$0.00	\$0.00	\$0.00						
Annual Maintenance and Support Services for Purchase Units					MONTHLY									
Year 1					\$0.00	\$0.00								
Year 2					\$0.00	\$0.00								
Year 3					\$0.00	\$0.00								
Year 4					\$0.00	\$0.00								

P=Print; C=Copy; F=Fax, S=Scan			
P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE:			
CHECK ONE →			

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet C Multifunction Device (MFD) Pricing Sheet Monochrome, B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band M3	50 - 68 Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 35,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)	
					Factor 36 Month	Factor 36 Month	Factor 48 Month	Factor 48 Month	Factor 60 Month	Factor 60 Month				
DIR Customer Monthly Lease Payment					24 Mo	36 Mo	48 Mo	60 Mo						
					\$0.00	\$0.00	\$0.00	\$0.00						
Annual Maintenance and Support Services for Purchase Units					MONTHLY									
Year 1					\$0.00	\$0.00								
Year 2					\$0.00	\$0.00								
Year 3					\$0.00	\$0.00								
Year 4					\$0.00	\$0.00								

P=Print; C=Copy; F=Fax, S=Scan				
	P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE: CHECK ONE →				

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet C Multifunction Device (MFD) Pricing Sheet Monochrome, B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band M4	69 - 89 Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 50,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)	
					Factor 36 Month	Factor 36 Month	Factor 48 Month	Factor 48 Month	Factor 60 Month	Factor 60 Month				
DIR Customer Monthly Lease Payment					24 Mo	36 Mo	48 Mo	60 Mo						
					\$0.00	\$0.00	\$0.00	\$0.00						
Annual Maintenance and Support Services for Purchase Units					MONTHLY									
Year 1					\$0.00	\$0.00								
Year 2					\$0.00	\$0.00								
Year 3					\$0.00	\$0.00								
Year 4					\$0.00	\$0.00								

P=Print; C=Copy; F=Fax, S=Scan			
P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE:			
CHECK ONE →			

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet C Multifunction Device (MFD) Pricing Sheet Monochrome, B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band M5	90 + Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 100,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)
					Factor 36 Month	Factor 36 Month	Factor 48 Month	Factor 48 Month	Factor 60 Month	Factor 60 Month			
DIR Customer Monthly Lease Payment	24 Mo	36 Mo	48 Mo	60 Mo									
	\$0.00	\$0.00	\$0.00	\$0.00									
Annual Maintenance and Support Services for Purchase Units				MONTHLY									
Year 1			\$0.00	\$0.00									
Year 2			\$0.00	\$0.00									
Year 3			\$0.00	\$0.00									
Year 4			\$0.00	\$0.00									

P=Print; C=Copy; F=Fax, S=Scan				
	P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE:				
CHECK ONE →				

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet C Multifunction Device (MFD) Pricing Sheet Color and B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band C1	1 - 30 Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 20,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate Factor 36 Month	Operating Lease Rate Factor 36 Month	Purchase Lease (MLA) Rate Factor 48 Month	Operating Lease Rate Factor 48 Month	Purchase Lease (MLA) Rate Factor 60 Month	Operating Lease Rate Factor 60 Month	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)	
DIR Customer Monthly Lease Payment					24 Mo	36 Mo	48 Mo	60 Mo						
					\$0.00	\$0.00	\$0.00	\$0.00						
Annual Maintenance and Support Services for Purchase Units					MONTHLY									
Year 1					\$0.00	\$0.00								
Year 2					\$0.00	\$0.00								
Year 3					\$0.00	\$0.00								
Year 4					\$0.00	\$0.00								

P=Print; C=Copy; F=Fax, S=Scan				
	P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE: CHECK ONE →				

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet C Multifunction Device (MFD) Pricing Sheet Color and B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band C2	31 - 50 Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 75,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate Factor 36 Month	Operating Lease Rate Factor 36 Month	Purchase Lease (MLA) Rate Factor 48 Month	Operating Lease Rate Factor 48 Month	Purchase Lease (MLA) Rate Factor 60 Month	Operating Lease Rate Factor 60 Month	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)
DIR Customer Monthly Lease Payment	24 Mo	36 Mo	48 Mo	60 Mo									
	\$0.00	\$0.00	\$0.00	\$0.00									
Annual Maintenance and Support Services for Purchase Units				MONTHLY									
Year 1			\$0.00	\$0.00									
Year 2			\$0.00	\$0.00									
Year 3			\$0.00	\$0.00									
Year 4			\$0.00	\$0.00									

P=Print; C=Copy; F=Fax, S=Scan				
	P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE:				
CHECK ONE →				

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services and Managed Services

Sheet C Multifunction Device (MFD) Pricing Sheet Color & B&W

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet! Incomplete Line Items May Not Be Considered.

Volume Band C3	51 + Pages Per Minute (PPM)
Base Monthly VOLUME	Avg. 100,000

Manufacturer, Model, Features, Description	No. of Avg. Pages Per Minute (PPM)	MSRP	DIR Customer Discount % from MSRP	Customer Purchase Price EACH/Unit (MSRP-Discount)	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Purchase Lease (MLA) Rate	Operating Lease Rate	Cost Per Copy/Page Print (4 decimals)	Copy Allowance Per Month	OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals)	
					Factor 36 Month	Factor 36 Month	Factor 48 Month	Factor 48 Month	Factor 60 Month	Factor 60 Month				
DIR Customer Monthly Lease Payment					24 Mo	36 Mo	48 Mo	60 Mo						
					\$0.00	\$0.00	\$0.00	\$0.00						
Annual Maintenance and Support Services for Purchase Units					MONTHLY									
Year 1					\$0.00	\$0.00								
Year 2					\$0.00	\$0.00								
Year 3					\$0.00	\$0.00								
Year 4					\$0.00	\$0.00								

P=Print; C=Copy; F=Fax, S=Scan				
	P/C	P/C/F	P/C/S	P/C/F/S
THIS DEVICE: CHECK ONE →				

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet C Multifunction Device (MFD) Pricing Sheet

ACCESSORIES (paper handling, paper feeding, finishing, etc.)	MSRP	DIR Customer Discount % From MSRP (2 decimals)	Customer Purchase Price EACH/Unit (MSRP-Discount)
Example: Part No. AAA and Description	\$123.00	15.00%	\$104.55
MISCELLANEOUS/OPTIONAL MFD Products/Services	MSRP	DIR Customer Discount % From MSRP	Purchase Price EACH/Unit (MSRP-Discount)

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet D Managed Print Services (MPS) Pricing Sheet

Be sure to read Instructions on Tab/Worksheet #1 of this Spreadsheet. Incomplete Line Items May Not Be Considered.
Provide complete Descriptions of Services

VOLUME BAND LEGEND

Monochrome, B&W MFD	
Volume Band M1	1 - 30 Pages Per Minute (PPM)
Volume Band M2	31 - 49 Pages Per Minute (PPM)
Volume Band M3	50 - 68 Pages Per Minute (PPM)
Volume Band M4	69 - 89 Pages Per Minute (PPM)
Volume Band M5	90 + Pages Per Minute (PPM)
Color and B&W MFD	
Volume Band C1	1 - 30 Pages Per Minute (PPM)
Volume Band C2	31 - 50 Pages Per Minute (PPM)
Volume Band C3	51 + Pages Per Minute (PPM)

1. Technical Discovery / Assessment Services <i>see RFO Bid Package 1, 2.1, 1)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment
<p>Example: A comprehensive assessment of the customer's existing objectives, capabilities providing agency's recommendation(s) on how to meet or exceed organization's overall performance by providing total office solutions by analyzing and developing customer requirements. We provide a SOW with a specific approach and strategies based on the existing processes, workflow and output environment. Includes Fleet assessment to identify potential software compatibility issues with non-native software deployments, and individual and total energy consumption of the existing fleet.</p>	\$ 42.00 Hour	33.00%	\$28.14	Needs Assessment and Analysis Managed Print Services are included in Misc/Optional Bundled MPS below.

The Managed Print Services below are priced using **Volume Band Cost per Copy/Page of Print**. The **Volume Band** breaks out the Pages Per Minute (PPM) by Volume. See the Volume Band Legend on the first page of this Sheet C MPS Pricing Sheet for volume break-out. The Volume Bands for Monochrome begin with a "M" (Example: M3) and the Volume Bands for Color & B&W begin with a "C" (Example: C2).

Change Management <i>see RFO Bid Package 1, 2.1, 2)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT								
	M1	M2	M3	M4	M5	C1	C2	C3	
Implementation and Project Management <i>see RFO Bid Package 1, 2.1, 3)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT								
	M1	M2	M3	M4	M5	C1	C2	C3	
Support Services for Output Devices Owned or Leased By Customer <i>see RFO Bid Package 1, 2.1, 4)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT								
	M1	M2	M3	M4	M5	C1	C2	C3	

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet D Managed Print Services (MPS) Pricing Sheet

Procurement and Support Services for Output Devices provided by Vendor <i>see RFO Bid Package 1, 2.1, 5)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
Maintenance <i>see RFO Bid Package 1, 2.1, 6)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
Managed Print Security Services <i>see RFO Bid Package 1, 2.1, 7)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
Consumables Supply Services <i>see RFO Bid Package 1, 2.1, 8)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
Proactive Support Services <i>see RFO Bid Package 1, 2.1, 9)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
Asset Tracking <i>see RFO Bid Package 1, 2.1, 10)</i>	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
Managed Print Services - BUNDLED AS AN OPTION (Describe all Services in Detail)	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
If proposing Bundled MPS and pricing by Cost Per Copy/Page of Print, List Here								
Managed Print Services - MISCELLANEOUS/OPTIONAL (Describe Services in Detail)	VOLUME BAND COST PER COPY / PAGE of PRINT							
	M1	M2	M3	M4	M5	C1	C2	C3
If proposing Misc/Optional Single MPS and pricing by Cost Per Copy/Page of Print, List Here								

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet D Managed Print Services (MPS) Pricing Sheet

The MPS below are priced by Discount % off of MSRP because they are "task", "service" oriented.

Installation/Moves/Changes <i>see RFO Bid Package 1, 2.1, 11)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			
Technical Support Help Desk Services <i>see RFO Bid Package 1, 2.1, 12)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			
	\$0.00			
Training <i>see RFO Bid Package 1, 2.1, 13)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			
Standard and Ad-hoc Reporting and Documentation <i>see RFO Bid Package 1, 2.1, 14)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			
Managed Print Services Accounting Services <i>see RFO Bid Package 1, 2.1, 15)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			
End of Engagement/De-Installation Services <i>see RFO Bid Package 1, 2.1, 16)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			
End of Engagement/Transition Plan <i>see RFO Bid Package 1, 2.1, 17)</i>	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
	\$0.00			

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Sheet D Managed Print Services (MPS) Pricing Sheet

Managed Print Services - MISCELLANEOUS/OPTIONAL	MSRP	DIR Discount % off MSRP	Discounted Price (MSRP - Discount %)	Comment/Details
If proposing Misc/Optional Single MPS and pricing by Discount % off MSRP, List Here	\$0.00			
	\$0.00			
	\$0.00			

*NOTE: For the purpose of this Evaluation, these prices DO NOT include the Administrative Fee which may be included in the total cost to the Customer at point of sale.

Bid Package 3

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

VENDOR NAME

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and *VENDOR NAME* (hereinafter “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 of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-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-SDD-TMP-XXX shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-XXX, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-160, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then

Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to *insert product 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 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 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 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, Service and Leasing 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 D 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 D. 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. Master Operating Lease Agreement

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

E. Master Lease Agreement

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

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

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 NAME

Authorized By: _____

Name: _____

Title: _____

Date: _____

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

Authorized By: _____

Name: _____

Title: _____

Date: _____

Office of General Counsel: _____

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

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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.

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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.

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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

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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

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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.

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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,

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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.

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

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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 6.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

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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

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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 Section 5. A., DIR Administrative Fee, of the Contract).

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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 Section 5.A., DIR Administrative Fee, of 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.

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- 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 Section 5.A., DIR Administrative Fee, of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

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.

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9. Contract Administration

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

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

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

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Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall 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

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of the following: i) DIR Contract Administrator name and contact information, and ii) 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.

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

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

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.

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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;

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- (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

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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 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

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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 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

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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. [*Medical Expense each person: \$5,000; Personal Injury and Advertising Liability: \$1,000,000; Products /Completed Operations Aggregate Limit: \$2,000,000; Damage to Premises Rented to You: \$50,000*] 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

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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

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) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude compliance by Vendor 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.

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.

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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 A, 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.

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.

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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 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

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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 the Purchase Order in accordance with Section 10.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.

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

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

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.



Bid Package 5

Department of Information Resources

**Print, Scan, Facsimile and Multifunction Devices and Related
Services and Managed Print Services**

Request for Offer DIR-TSO-TMP-224

Vendor References

VENDOR REFERENCES
Print, Scan, Facsimile, Multifunction Devices, 3D Printers and Related Services
and Managed Print Services

Request for Offer DIR-TSO-TMP-224

REFERENCE DEADLINE TO DIR: No later than December 19, 2014 – 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: MFD.MPS@dir.texas.gov

This portion to be completed by the Vendor that is requesting reference information

Proposing Vendor Name _____
List Categories of Products/Services that you provided to this Reference _____
Prime Contractor (you or another company) _____
Subcontractor(s) (you or another company) _____
Dates of Performance: Starting Date _____ Ending Date _____
Total Est. Contract Dollar Amount with this reference \$ _____

This portion to be completed by the Customer providing reference and returned to DIR at <https://www.mfd.mps@dir.texas.gov>

Rating: (0) Unsatisfactory; (1) Marginally 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 Comprehensive Web Development and Management Services

1. Have you purchased any Printers, Scanners, Multifunction Devices, 3D Printers and Related Services or Managed Print Services (MPS) from this Vendor in the past 2 years?..... Yes ___ No ___
2. Vendor's ability to provide the products/services in a timely manner? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
3. Vendor's knowledge of and ability to answer questions regarding the products and services? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
4. Vendor's ability to resolve problems? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Cost

5. Timely, current, accurate & complete invoices 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Timeliness of Performance

6. Adherence to delivery schedule (major tasks, milestones) 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Business Relations & Customer Satisfaction

7. Effectively communicated with customer management & staff 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
8. Vendor personnel (professional, cooperative & flexible) 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
9. Vendor's attitude toward customer service 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
10. Overall Satisfaction with Vendor 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Comments: (Please use additional page if necessary)

In your opinion, should this Vendor be used again for Print, Scan, Facsimile and Multifunction Devices, 3D Printers and Related Services and Managed Print Services? Yes ___ No ___

In your opinion, should this Vendor be recommended to others? 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.
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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.
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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.
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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.
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MASTER OPERATING LEASE AGREEMENT

- 1. Definitions.** Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
- (a) “Assets” refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
 - (b) “Contract” refers to DIR Contract number DIR-TSO-XXXX into which this Appendix is incorporated.
 - (c) “Event of Default” is defined in Section 23, “Default.”
 - (d) “Event of Loss” means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
 - (e) “Hardware” refers to the computer machinery and equipment specifically identified on the applicable Schedule.
 - (f) “Lease” means the financing transaction described in this MOLA.
 - (g) “Lessee” means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), 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.
 - (h) “Lessor” means the Vendor identified in the Contract.
 - (i) “MOLA” means this Master Operating Lease Agreement (Appendix E). Any reference to “MOLA” includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.
 - (j) “Rent Payment” means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
 - (k) “Schedule” or “Supplementary Schedule” to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee,

applicable Rent Payment, and term of the Lease. To be effective, a Schedule must be executed by both Lessor and Lessee.

- (l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.
- (m) "Software" refers to the computer programs specifically identified on the applicable Schedule.
- (n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.
- (b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.
- (d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.
- (e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both

of those parties arising from the use of this MOLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 (“Default”) of this MOLA.

3. Term of MOLA.

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract, or (b) on the Effective Date specified in Amendment Number (XX), if this MOLA is added to the Contract under such Amendment. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the effective date specified in the Schedule (and, if no date is specified, then on the date the Schedule was signed by Lessee, provided Lessor has also signed the Schedule). Unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the “Schedule Term”). Specifically with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 (“Appropriation of Funds”) of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor’s election to cancel the Schedule pursuant to Section 24 (“Remedies”) of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 (“Remedies”) of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

- (a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.
- (b) With respect to Lessor’s obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a “purchase sale.” Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 (“Lease”) hereof for the transaction(s) between Lessor and Lessee.

- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.
- (d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

- (a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.
- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MOLA (and any Schedule), and applied to reduce future Rent Payments. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 8I of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.

Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or any Schedule or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.

7. Liens.

Lessee shall keep the Assets free and clear of all levies, liens and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

8. Appropriation of Funds.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any fiscal period (as set forth on the Schedule) of Lessee beyond the fiscal period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to those of the Assets on the Schedule so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on the Schedule will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 (“Option to Extend; Surrender of Assets”) of this MOLA, and the applicable Schedule shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first fiscal period of the Schedule Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas, as applicable, beyond the fiscal period for which sufficient funds have been appropriated to make Rent Payments hereunder.

9. Assignment of Warranties.

Each Schedule is intended to be a true lease and operating lease as defined in Tex. Bus. & Comm. Code Article 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the applicable Schedule, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 (“Remedies”) hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Schedule Term unless due to Lessor’s acts or omissions: (i) Lessee’s dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Schedule Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

10. Inspection and Acceptance.

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time period, the Assets shall be deemed accepted by Lessee as of the twentieth (20th) business day, as described above. In the event Lessee does not accept the Assets, Vendor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Schedule on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer or licensor, as applicable. Lessor and its assigns, including either of their respective agents shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

11. Installation and Delivery; Use of Assets; Repair and Maintenance.

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

Except as set forth on the applicable Schedule, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another location of Lessee within the continental United States, provided Lessee is not in default on any Schedule and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee

shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

13. Taxes.

Unless otherwise agreed by the parties on the applicable Schedule, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on the Schedule, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration as described in the Financial Disclosure Summary Work Sheet (Attachment 1) hereafter imposed, assessed or payable during the term of the relevant Schedule including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the relevant Schedule, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the relevant Schedule.

14. Ownership.

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

15. Option to Extend; Surrender of Hardware and Software Assets.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term, Lessor shall notify Lessee in writing of options to extend the Schedule for continued use of the Hardware or Software specified in that Schedule. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of such Schedule Term. In the event the Lease is extended for some but not all of the Hardware and Software specified on a Schedule, the Schedule shall be updated to reflect those changes. At the end of the Schedule Term (as well as with respect to any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.
- (b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight

prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware (“Return Condition”), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee’s cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Schedule for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in that Schedule or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee’s premises or any other premises where the Hardware may be found to take possession of and to remove the Hardware, at Lessee’s sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee’s obligation to return Hardware may, at Lessor’s option, be specifically enforced by Lessor.

16. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee’s quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 (“Default”) of the MOLA) has not occurred.

17. Warranties regarding the Assets.

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect

to Lessor, Lessee leases the Hardware and Software “as is”. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee’s request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

19. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified on the Schedule, whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;

- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or any Schedule between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;
- (b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;
- (d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;

- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MOLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. Representations and Warranties of Lessor.

Lessor represents and warrants for the benefit of DIR and each Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;
- (d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or any Schedule;
- (f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum

payable on its due date; (b) Lessee's material breach of this MOLA, any Schedule, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee's filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law, (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subsection of a substantial part of Lessee's property or any part of the Hardware to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

24. Remedies.

(a) Lessor's Remedies.

- i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:
 - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;
 - B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;
 - C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;
 - D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and not as a penalty, the sum of:
 - I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;
 - II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs,

fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and

III. interest on (I) from the date of default at 1½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.

ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.

iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

(b) Lessee's Remedies. Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Tex. Bus. & Comm. Code § 2A.508 through § 2A.522, including without limitation, the right to cancel a Schedule and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.

(c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or a Schedule does not prevent that party from enforcing its rights at a later time.

25. Notices and Waivers.

- (a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) incumbency certificate; and (e) other documents specified in the applicable Schedule as being reasonably required by Lessor.

28. Miscellaneous.

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.

- (b) Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Assets, other than as set forth in this MOLA, including the Contract, and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MOLA, including the Contract, and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA may be amended only by written instrument executed by Lessor and DIR. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

**Attachment 1 to the Master Operating Lease Agreement
Financial Disclosure Summary**

Lease Rate Factor(s):	Response	Notes
Equipment Type A		
Equipment Type B		
Equipment Type C		
How is Daily Rental calculated?		
Is Daily Rental invoiced separately or rolled into monthly rental?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Is this a Step Lease?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does this lease include software?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, who owns the software?	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor	
Personal Property Tax	Response	Notes
Estimated PPT		
PPT Payment made by	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor on Agency behalf	
PPT calculation method	<input type="checkbox"/> Agency pays direct <input type="checkbox"/> Lessor pays and passes invoice through <input type="checkbox"/> Lessor estimates and includes <input type="checkbox"/> Lessor sets PPT at disclosed rate	
If PPT rate changes, how are charge backs or short falls handled?	<input type="checkbox"/> N/A - Agency pays direct <input type="checkbox"/> N/A - Lessor pays/passes invoice through <input type="checkbox"/> Lessor is responsible <input type="checkbox"/> Lessee is invoiced for short fall	
Equipment Schedule Details	Response	Notes
Can Agency make decisions at asset level (extend, purchase, return)?	<input type="checkbox"/> Asset level <input type="checkbox"/> All and not less than all	
Does this ES auto extend?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, how long?		
What is the cost of the Auto extension?		
What is the notice period?		

Are negotiated extensions FMV based?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
On FMV, can Agency select own evaluator?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is asset and lease information available online?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
End of Lease Details	Response	Notes
Where are the assets returned to?		
What is the return freight cost?		
Who pays the return freight cost?	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor	
Do I need to return original packaging?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?	
Do I need to return original manuals and documentation?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?	
Do I need to return software?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?	
Is there an FMV purchase cost cap?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost cap percentage?	
What is the cost for a lost asset?		
What is the cost for missing equipment?		
What is the cost for data sanitization on assets with memory?		
What is the cost for data sanitization?		
What is the cost for on-site data destruction?		

MASTER LEASE AGREEMENT

1. Scope.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule (“Schedule”), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement (“MLA”). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term “Equipment” shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-XXX, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Equipment for its own use, DIR is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee’s Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 of this MLA.

Any reference to “MLA” shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by DIR and Lessor.

As to conditions precedent to Lessor’s obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, the Acceptance Certificate, Opinion of Counsel, and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee’s financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number XXX (XX) and shall continue until (i) the obligations of Lessee under every Schedule are fully

discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed in conjunction to this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee (“Commencement Date”), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor’s election to cancel the Schedule pursuant to Section 24 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a “purchase sale” in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-XXX on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by

the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MLA and any Schedule. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8K of the Contract in making payments to the Lessor. Any sum received by the Lessor later than ten (10) business days after its due date will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. Late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed

upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

- (a) This paragraph applies only to Lessees designated as state agencies defined in Section 2054.003, Texas Government Code, including institutions of higher education as defined in Texas Education Code, Section 61.003 and those state agencies utilizing a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

- (b) This paragraph applies only to Lessees designated as local government entities.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the

Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

(a) All transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a

place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.

- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Texas without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together with all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.
- (b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location,

unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, approved by Lessor and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, without notice or demand, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Equipment. As an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred.

15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED

DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.

- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR agree to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.

- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment.

18. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

At its expense, Lessee shall keep the Equipment insured against all risks of loss and damage with companies acceptable to Lessor for an amount equal to the original cost of the Equipment, with Lessor or its assign(s) named as a loss payee. Lessee shall also maintain comprehensive general liability insurance, with Lessor or its assign(s) named as an additional insured. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount satisfactory to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor or its assign(s) the certificates of insurance or duplicates thereof or other evidence satisfactory to Lessor or its assign(s) of such insurance coverage. Evidence of such insurance coverage shall be furnished no later than the Schedule Commencement Date of each Schedule and from time to time as Lessor or its assign(s) may request. Each insurer shall agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor that it will give Lessor or its assign(s) thirty (30) days prior written notice of the effective date of any alteration or cancellation of such policy. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. Lessee may self-insure with respect to the required coverage.

Further, Lessees that are defined as state agencies in accordance with Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, may self-insure their obligations in this section.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;
- (b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;
- (d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and
- (h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;
- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result

in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and

- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

24. Remedies.

- (a) Upon the occurrence of an "Event of Default" and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of Lessor's economic loss for the breach thereof; (iii) whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Equipment wherever located, without demand, liability, court order or other process of law, and for such purposes Lessee, to the extent authorized by Texas law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and not as a penalty, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without

Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

- (b) Upon return or repossession of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Equipment shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (d) Neither DIR nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default

shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor’s right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor’s assigns may each do the same (hereunder collectively “Assignment”). All such Assignments shall be subject to each Lessee’s rights under the Schedule(s) executed between it and Lessor and to DIR’s rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor’s obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor’s assigns do not perform Lessor’s obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.

- (b) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR’S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE’S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR’S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor, DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement;

provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) proof of self-insurance acceptable to Lessor; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives the following rights and remedies conferred upon Lessee by the Uniform Commercial Code: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code ("UCC"). Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

- (a) Jurisdiction. The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, suit may be brought in the federal or state courts where Lessee has its principal office or where the Equipment is located.

- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an “Original” for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a “Copy”. NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY “COPY” OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE “ORIGINAL” COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-XXX and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:
- (i) it has not given, offered to give, and does 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 this MLA and/or any Schedules executed hereunder;
 - (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and

acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;

- (iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it 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,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) 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 MLA;
- (viii) Lessor 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;
- (ix) as of the effective date of the MLA, 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;
- (x) to the extent applicable to this scope of this MLA, Lessor 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;
- (xi) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xii) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.

- (xiii) 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;
- (xiv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xv) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xvi) Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has 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.

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

- (i) Dispute Resolution. The following paragraph applies only to Lessees designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

(j) Sovereign Immunity. Nothing herein shall be construed to waive the State's sovereign immunity.

31. Amendments.

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and DIR.



Department of Information Resources

**Request for Offer
DIR-TSO-TMP-224**

**Print, Scan, Facsimile, Multifunction Devices,
3D Printers and Related Services
and Managed Print Services
Bid Package 8**



Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations.

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility information such as VPATs. All questions, inquiries, etc. should only be directed to Carrie Cooper: Phone: 512-936-2353 Fax: 512-936-6896 Email: carrie.cooper@dir.texas.gov

Organization information

Organization name: _____
Organization address: _____
Responder contact information: _____
Date of assessment completion: _____

My organization is a (choose one or more if applicable)

- Manufacturer: My organization develops and sells its own ICT products / services
- Service Provider: My organization sells IT development services
- Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS 3rd party products

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.

Responses

1. Develop, implement, and maintain an ICT accessibility policy.

0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)

1a. Having an ICT accessibility policy.

- 1 My organization is developing an ICT accessibility policy.
- 2 My organization is finalizing an ICT accessibility policy.
- 3 My organization has approved an ICT accessibility policy.

1b. Having appropriate plans in place to implement and maintain the policy.

- 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
- 2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.
- 3 My organization has approved plans for accessibility policy implementation and maintenance.

1c. Establishing metrics and tracking progress towards achieving compliance to the policy.

- 1 My organization is identifying metrics that can be used to gauge policy compliance.
- 2 My organization is collecting metrics and has begun designing progress reporting based on them.
- 3 My organization is tracking progress on policy adoption and continues to refine the metrics.

Section 1 Comments (Provide any comments or additional information on this section here.)

2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.

0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)

2a. Developing an organization wide governance system.

- 1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
- 2 My organization is finalizing plans that will result in an organization wide governance system.

3 My organization has approved plans for an organization wide governance system.

2b. Designating one or more individuals responsible for implementation.

- 2 My organization has identified key individuals in the implementation process.
- 3 My organization has assigned implementation duties and responsibilities to appropriate individuals.

2c. Implementing reporting/decision mechanism and maintain records.

- 1 My organization is developing tools and procedures for tracking ICT accessibility issues.
- 2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
- 3 My organization uses reports to make organizational changes to improve ICT accessibility.

Section 2 Comments (Provide any comments or additional information on this section here.)

3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

Manufacturers: Address processes that pertain to your development of ICT products.

Service providers: Address processes that pertain to your development of ICT services.

Integrators: Address processes that pertain to your ICT integration services and solutions.

Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

3a. Identifying candidate processes for criteria integration.

- 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- 3 My organization has approved plans to integrate accessibility criteria into these processes.

3b. Implementing process changes.

- 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
- 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

3c. Integrate fully into all key processes.

- 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

4. Provide processes for addressing inaccessible ICT.

Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.

Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.

Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.

Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.

0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)

4a. Creating plans that include dates for compliance of inaccessible ICT.

- 1 We are developing plans to identify and test ICT developed and sold by our organization.
- 2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
- 3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

4b. Providing alternate means of access until the ICT is accessible.

0 We do not have plans for providing alternate means of access for our organization's ICT offerings.

- 1 We are developing plans for providing alternate means of access for our organization's ICT offerings.
- 2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
- 3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects

- 1 We are developing a corrective actions process for handling accessibility technical issues and defects
- 2 We are implementing a corrective actions process for handling accessibility technical issues and defects
- 3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.

- 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
- 1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 2 We have a record keeping system for tracking the accessibility status of current and future products / services.
- 2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
- 3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)

- 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

- 0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
- 2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
- 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
- 3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
- 2 We have developed a process to track resource training and augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

- 0 We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.

2 Our accessibility policy and documentation (VPATS, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATS

2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.

3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.

3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Section 6 Comments (Provide any comments or additional information on this section here.)

Results	
Vendor	
Total Points	0
Percent Complete	0%



FAQs for Policy-Driven Adoption for Accessibility (PDAA)

For companies/vendors

1. What is PDAA?

demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles: enables organizations to drive themselves towards the creation of accessible offerings over the long term.

- Enabling products for accessibility requires integrating accessibility criteria into all accessible offerings based on technical standards. Gaps in vendor internal governance systems and leadership commitment inhibit their ability to meet these standards.
- Agency procurement organizations need assurances that vendors have the ability

2. Why are buying organizations requesting information on company accessibility policy?

accessible to people with disabilities requires commitment in many areas of that organization. PDAA data helps buying organizations understand a vendor's accessibility implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical

3. Why is PDAA information important to the buying organization?

commercial off the shelf (COTS) and non-COTS offerings, which can increase the procuring organizations' confidence in the accuracy of vendor's accessibility Templates) only apply to COTS products and services. In many cases, vendor VPATs lack credibility due to limited knowledge about their offerings' accessibility. Additionally, there is no standard reporting format for non-COTS offerings such as development

4. How will this information be used?

regard to its ICT accessibility policy. The baseline illustrates the depth and maturity of the vendor's support for accessibility policy and practices as illustrated via the PDAA http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA_Maturity_Matrix.ppt assessed. The vendor responses from the questionnaire may be considered as an element in vendor selection; however, this would be determined by the procuring organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

5. We already submit VPATs as part of solicitation responses. Is that adequate?

holistic presentation of the organization’s approach to accessibility. The expectation is that organizations with mature approaches to PDAA will greatly improve the levels of accessibility in products. It should also result in well documented, accurate VPATs,

6. What is the PDAA Maturity Model?

on next line) provides buying organizations and vendors with a simple dashboard or matrix to track and demonstrate vendors’ progress toward full system-wide support of

http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA_Maturity_Matrix.pptx

7. Where can I obtain more information on Accessibility Policy Implementation for my organization?

<http://www2.dir.state.tx.us/management/accessibility/tools/Pages/ProcurementTools.aspx>

For government organizations/agencies

8. What is PDAA?

demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles: enables organizations to drive themselves towards the creation of accessible offerings over the long term.

- Enabling products for accessibility requires the integration of accessibility criteria accessible offerings based on technical standards, but gaps in internal governance and commitment by industry inhibits the adoption and implementation of these standards.
- Agency procurement organizations need assurances that vendors have the ability

9. Does the PDAA replace VPATs?

holistic presentation of the organization’s approach to accessibility. VPATs are still a valuable tool at the product level, and the expectation is that vendors with mature

10. Why a “maturity model” of evaluation?

various areas of an organization. As with any organization-wide initiative, implementation cannot occur all at once. The PDAA Maturity Model is used to gauge progress towards the complete implementation of PDAA core criteria. (Link on next line.

http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA_Maturity_Matrix.pptx

11. Why should we support vendors who have mature PDAA practices?

implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical

12. How should we score PDAA information?

collected from all bidders, and how the agency uses that information will depend on questionnaire may be used as criteria in selecting offerings or vendors. organizations will share what they learn.

13. Where does the PDAA information fit within the procurement process?

public procurements. The information given in a PDAA report can help you better judge the ability of a vendor to: complete a VPAT correctly, produce accessible custom ICT offerings (web sites, web applications, software, etc.), resolve accessibility defects when discovered, and otherwise be a partner in helping you meet your compliance obligations.

14. What happens if the vendor claims the information is confidential or a trade secret?

procurement laws, policies, or practices may already address how you handle such

15. What other states are using the PDAA model?

national associations to harmonize the criteria for this model, and for obtaining and evaluating PDAA information. The goal is for more states and other government entities

16. Where can I obtain more information on Accessibility Policy implementation for my organization?

<http://www2.dir.state.tx.us/management/accessibility/tools/Pages/ProcurementTools.aspx>

EXAMPLE



Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. The assessment is not a substitute for other requested accessibility information such as VPATS. All questions, inquiries, etc. should only be directed to Carrie Cooper: Phone: 512-936-2353 Fax: 512-936-6896 Email: carrie.cooper@dir.texas.gov

Organization Information

Organization name: _____ Company X _____
Organization address: _____ 1111 State Blvd. Anytown, TX 78701 _____
Responder contact information: _____ myemailaddress@yahoo.com _____
Date of assessment completion: _____ 1/1/15 _____

My organization is a (choose one or more if applicable)

- Manufacturer:** My organization develops and sells its own ICT products / services
- Service Provider:** My organization sells IT development services
- Integrator:** My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- Reseller or Catalogue Supplier:** Does not develop or have its own products, but offers COTS 3rd party products

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.

Responses	1. Develop, implement, and maintain an ICT accessibility policy.
	0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)
2	1a. Having an ICT accessibility policy. 1 My organization is developing an ICT accessibility policy. 2 My organization is finalizing an ICT accessibility policy. 3 My organization has approved an ICT accessibility policy.
1	1b. Having appropriate plans in place to implement and maintain the policy. 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained. 2 My organization has completed planning for initial implementation and maintenance of our accessibility policy. 3 My organization has approved plans for accessibility policy implementation and maintenance.
1	1c. Establishing metrics and tracking progress towards achieving compliance to the policy. 1 My organization is identifying metrics that can be used to gauge policy compliance. 2 My organization is collecting metrics and has begun designing progress reporting based on them. 3 My organization is tracking progress on policy adoption and continues to refine the metrics. Section 1 Comments (Provide any comments or additional information on this section here.)
	2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.
	0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)
1	2a. Developing an organization wide governance system. 1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility. 2 My organization is finalizing plans that will result in an organization wide governance system. 3 My organization has approved plans for an organization wide governance system.
2	2b. Designating one or more individuals responsible for implementation. 2 My organization has identified key individuals in the implementation process. 3 My organization has assigned implementation duties and responsibilities to appropriate individuals.
1	2c. Implementing reporting/decision mechanism and maintain records. 1 My organization is developing tools and procedures for tracking ICT accessibility issues. 2 My organization is tracking and keeping records of ICT accessibility reporting and decisions. 3 My organization uses reports to make organizational changes to improve ICT accessibility. Section 2 Comments (Provide any comments or additional information on this section here.)
	3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.
	Manufacturers: Address processes that pertain to your development of ICT products. Service providers: Address processes that pertain to your development of ICT services. Integrators: Address processes that pertain to your ICT integration services and solutions. Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.
	0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)
1	3a. Identifying candidate processes for criteria integration. 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps. 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes. 3 My organization has approved plans to integrate accessibility criteria into these processes.
1	3b. Implementing process changes. 1 My organization has begun modifying its key business processes to integrate accessibility criteria. 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes. 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.
	3c. Integrate fully into all key processes. 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings. 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings. Section 3 Comments (Provide any comments or additional information on this section here.)
	4. Provide processes for addressing inaccessible ICT.
	Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d. Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d. Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d. Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.
	0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)
2	4a. Creating plans that include dates for compliance of inaccessible ICT. 1 We are developing plans to identify and test ICT developed and sold by our organization. 2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance. 3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.
2	4b. Providing alternate means of access until the ICT is accessible. 0 We do not have plans for providing alternate means of access for our organization's ICT offerings. 1 We are developing plans for providing alternate means of access for our organization's ICT offerings. 2 We are implementing methods providing alternate means of access for our organization's ICT offerings. 3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.
2	4c. Implementing a corrective actions process(es) for handling accessibility technical issues and defects 1 We are developing a corrective actions process for handling accessibility technical issues and defects 2 We are implementing a corrective actions process for handling accessibility technical issues and defects 3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.
1	4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking. 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services. 2 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects. 2 We have a record keeping system for tracking the accessibility status of current and future products / services. 2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects. 3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings. 3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.
	4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only) 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

EXAMPLE

- 2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

- 0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
- 2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
- 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
- 3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 2 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

- 0 We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 2 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
- 3 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Section 6 Comments (Provide any comments or additional information on this section here.)

Results	
Company X	
Total Points	18
Percent Complete	30%





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Addendum # 1

This Addendum # 1 to Request for Offer DIR-TSO-TMP-224:

1. Extends the Deadline for posting answers to questions on the ESBD;
2. Extends the Deadline for DIR to receive Vendor references;
3. Extends the Deadline for submitting Responses to the RFO; and
4. Changes the Start Date for the Evaluation of responses, negotiation and contract execution.
5. Defines manufacturer product exclusions.

1. Bid Package 1, Request For Offer, Section 3.3.1. RFO Schedule, is amended as follows:

Date/Time	Activity
November 24, 2014	Publish RFO on Electronic State Business Daily
December 8, 2014 1:30 pm (CT)	Vendor Conference and webinar [optional]
December 11, 2014 2:00 pm (CT)	Deadline for submitting questions
December 22, 2014 2:00 pm (CT)	Deadline for posting answers to questions on the ESBD
January 13, 2015 2:00 pm (CT)	Deadline for DIR to receive Vendor references
January 13, 2015 2:00 pm (CT)	Deadline for submitting Responses to RFO
January 14, 2015 - until completed	Evaluation of responses, negotiation and contract execution

2. Bid Package 1, Request For Offer, Section 2.1 Products is hereby amended to add:

Exclusions

The following product brands have existing Manufacturer Branded contracts with DIR and are excluded from this solicitation:

Dell, Hewlett-Packard, IBM, Panasonic

In the event that DIR identifies other manufacturers to be excluded, the manufacturer brand names will be included in a future addendum.

End of Addendum 1



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Addendum # 2

This Addendum # 2 to Request for Offer DIR-TSO-TMP-224:

1. Replaces Bid Package 5, Vendor References;
2. Replaces Bid Package 2, Pricing Index in its entirety;
3. Provides a copy of the December 8, 2014 Vendor Conference Sign-In Sheet as an attachment to this Addendum # 2;
4. Provides a copy of the Vendor Pre-Bid Conference Power Point presentation as an attachment to this Addendum # 2;
5. Extends the Deadline for DIR to respond to Vendor questions to 01/09/2015;
6. Extends the Deadline for DIR to receive Vendor references to 02/09/2015;
7. Extends the Deadline for submitting Responses to the RFO to 02/09/2015;
8. Changes the Start Date for the Evaluation of responses, negotiation and contract execution to 02/10/2015;
9. Adds a second round of Vendor questions and sets the Due Date of 01/14/2015; and
10. Adds a Deadline for DIR to respond to the second round of Vendor questions by 01/29/2015.

The RFO is amended as follows:

1. Bid Package 5 is hereby replaced in its entirety with Bid Package 5.A, Vendor References. The replacement reflects the change of Due Date for DIR to receive Vendor references per this Addendum # 2, and corrects a typographical error.
2. Bid Package 2, Instructions are hereby replaced in their entirety. The changes reflect the replacements that have been made to the Pricing Sheets in this Addendum # 2.
3. Bid Package 2, Sheet A NON-MFD Device Pricing Sheet is hereby replaced in its entirety with Bid Package 2, Sheet A2 NON-MFD Device Pricing Sheet. The replacement reflects the addition of a column for Part Numbers.
4. Bid Package 2, Sheet B NON-MFD Lease Pricing Sheet is hereby replaced in its entirety with Bid Package 2, Sheet B2 NON-MFD Lease/Rental Pricing Sheet. The replacement reflects:
 - a. the addition of a column for Part Numbers;
 - b. the elimination of Lease Rate Factor pricing;
 - c. the addition of Monthly Rental pricing; and
 - d. the addition of Maintenance and Support Services pricing.
5. Bid Package 2, Sheet C Multifunction Device (MFD) Pricing Sheet is hereby replaced in its entirety with Bid Package 2, Sheet C2 Multifunction Device (MFD) Pricing Sheet. The replacement reflects:
 - a. the addition of a column for Part/Service Numbers;
 - b. the elimination of Lease Rate Factor pricing;
 - c. the addition of Monthly Rental pricing; and
 - d. changes to the pricing format for Maintenance and Support Services.



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Addendum # 2

6. Bid Package 2, Sheet D Managed Print Services (MPS) Pricing Sheet is hereby replaced in its entirety with Bid Package 2, Sheet D2 Managed Print Services (MPS) Pricing Sheet. The replacement reflects the addition of a column for Part/Service Numbers and adds an area to propose an Optional Pricing method to the Miscellaneous/Option category.
7. Adds the December 8, 2014 Vendor Conference Sign-In Sheet as an attachment to this Addendum # 2.
8. Adds the Vendor Pre-Bid Conference Power Point presentation as an attachment to this Addendum # 2.
9. Adds a second round of Vendor questions and sets a Deadline for the submission of questions.
10. Adds a Deadline for posting answers to the second round of Vendor questions.
11. Bid Package 1, Request For Offer, Section 3.3.1. RFO Schedule, is amended as follows:

Date/Time	Activity
November 24, 2014	Publish RFO on Electronic State Business Daily (ESBD)
December 8, 2014 1:30 pm (CT)	Vendor Conference and webinar [optional]
December 11, 2014 2:00 pm (CT)	Deadline for submitting questions
January 9, 2015 2:00 pm (CT)	Deadline for posting answers to questions on the ESBD
January 14, 2015 2:00 pm (CT)	Deadline for the submission of Round 2 questions
January 29, 2015 2:00 pm (CT)	Deadline for posting answers to Round 2 questions on the ESBD
February 9, 2015 2:00 pm (CT)	Deadline for DIR to receive Vendor references
February 9, 2015 2:00 pm (CT)	Deadline for submitting Responses to RFO
February 10, 2015 - until completed	Evaluation of responses, negotiation and contract execution

End of Addendum 2



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Addendum # 3

This Addendum # 3 to Request for Offer DIR-TSO-TMP-224:

1. Contains questions and answers submitted in writing at the Pre-Bid Vendor Conference and Webinar, and to the Purchasing Point of Contact.

QUESTIONS AND OFFICIAL ANSWERS:

1. **Question:** (Reference section 1.2 Cost Recovery)
 - a. If DIR changes the Admin fee will vendors be allowed to change their price?
 - b. How will any change in admin Fee effect equipment installed under a different Fee Schedule where prices cannot be adjusted?
 - c. How will the bid price be adjusted to include the Fee after the bid is submitted?

Answer:

- a. Refer to Bid Package 1, Section 1.2.4 Cost Recovery and Bid Package 4, Section 9B, Reporting and Administrative Fees for information regarding Administrative Fees.
 - b. If a change in the administrative fee occurs, it will be for sales beginning on the effective date of the change.
 - c. The administrative fee is not part of the solicitation Pricing Sheets, therefore, the bid price does not require adjustment.
2. **Question:** (Reference section 1.2.6 Current Contract) Should vendors stop paying SmartBuy feeds to TPASS and start paying fees to DIR?

Answer: If you have an existing survivable purchase order for equipment under TPASS contracts, you should continue paying fees as prescribed. If a new order is issued under a DIR contract you should begin paying the administrative fee as defined in the DIR contract.

3. **Question:** (Reference section 2.1 Products) What does DIR mean by individual or any combination thereof?

Answer: DIR Customers may wish to procure one, several, or all of the categories of Managed Print Services.

4. **Question:** (Reference section 2.1 Products, Item 6 Maintenance) Down time remedies are generally negotiated between the customer and vendor as part of the SLA. Would DIR consider removing this requirement?

Answer: No, this requirement was defined within the solicitation in order that all Vendors could have the same baseline information for pricing. If the Vendor proposes multiple levels of maintenance which offers different response times, those should be proposed as Miscellaneous/Optional Services.



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Addendum # 3

5. **Question:** (Reference section 2.1 Products, Item 6 Maintenance) Today, all records are input electronically and retained in a vendor database. Would DIR consider this method of service history compliant?

Answer: Yes, an electronically-maintained database of service history would meet the requirement as long as all required elements of the report are met.

6. **Question:** (Reference section 2.1 Products, Item 13 Training) With technology today, there are more efficient and effective methods of training. Would DIR consider removing this requirement and make it part of the SLA negotiated between the customer and vendor?

Answer: This requirement was defined within the solicitation in order that all Vendors could have the same baseline information for pricing. If the Vendor proposes multiple modes of training or does not offer a training that meets these minimum requirements, those should be proposed as Miscellaneous/Optional Services.

7. **Question:** (Reference section 2.1 MPS Requirements - Additional Services/Emerging Technologies) As new services and technology becomes available, can these be added in the future?

Answer: In the event that a Vendor wishes to introduce a new product, service, or emerging technology into an existing DIR contract, they should make a request to DIR's Contract Manager for consideration but it must meet criteria considered to be either emerging or new technology.

8. **Question:** (Reference section 2.1 MPS Requirements – Pooling and Overages)
- a. Why is color excluded?
 - b. Pooling requirement should be negotiated between vendor and customer. Would DIR consider removing this requirement?
 - c. How would any vendor account for price changes that would accompany any unique pooling/meter considerations? (e.g. Pooled meter may modify the published meter rates, how will this be accounted for in the offer/terms or, some Customers would require different volume allowances to meet their unique requirements etc....)

Answer:

- a. DIR has deliberately not included color as a mandatory pooling requirement. Should the Customer and Vendor agree to pool color devices, they may do so by written agreement.
 - b. No
 - c. The Vendor must meet the minimum pooling requirements. Any pooling agreements made between the Customer and Vendor which provide added value (beyond the minimum pooling requirements) to the Customer are encouraged.
9. **Question:** (Reference section 2.1 Product MPS Requirements – Pricing) What is the process/guidelines for adding (not simply replace but add) new products or services?



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Addendum # 3

Answer: Refer to the Answer to Question 7.

- 10. Question:** (Reference section 2.1 Product MPS Requirements – Pricing) Should vendors offering rental options provide a rental agreement for consideration by DIR? And/Or How would DIR users be able to take advantage of more flexible vendor offers where these offers may alter the published bid pricing?

Answer: Addendum # 2 to the RFO added pricing for Rental options. Customers may negotiate, and Vendors may offer, better pricing than is established in the contract Pricing Index.

- 11. Question:** (Reference section 4.2 Evaluation Criteria) Can you describe how price will be evaluated? Specifically, what component of price will be evaluated and how (if multiple products are bid in each category how would their different prices be evaluated)? Can DIR provide the price evaluation formulas or criteria that will be given to the committee?

Answer: DIR will use the pricing data provided by the Vendor in their proposal to evaluate pricing. DIR does not provide specifics (formulas, calculations) of the pricing evaluations.

- 12. Question:** (Reference section 3.11 RFO Schedule) Would DIR please extend the deadline for submitting responses to the RFO to January 16, 2015. Deadline for answering questions is December 22nd, giving vendors no time to react to answers that material effect RFP responses.

Answer: Addendum # 2 to Request for Offer DIR-TSO-TMP-224 extends the Deadline for submitting Responses to the RFO to February 9, 2015.

- 13. Question:** (Reference Bid Package 2 – Sheet C - MFD Pricing) Would DIR please describe the specific differences between a purchase lease and an operating lease?

Answer: One definition would be: Operating lease is a contract wherein the owner, called the Lessor, permits the user, called the Lessee, the use of an asset for a particular period which is shorter than the economic life of the asset without any transfer of ownership rights. A purchase (capital) lease is a lease of business equipment which represents ownership and is reflected on the agency's balance sheet as an asset. A capital lease, in contrast to an operating lease, is treated as a purchase from the standpoint of the entity that is leasing, for accounting or other purposes. DIR strongly encourages the Vendor to work with its finance and legal staff for the answer to this question.

- 14. Question:** (Reference Bid Package 2 – Sheet C - MFD Pricing “Rows 6, 22, 36, 50, 64, 79, 93 & 108; Column A Manufacturer, Model, Features, Description”) Can DIR please provide minimum specifications and accessories for each of these Volume Bands? This will insure vendors are offering comparable equipment in each Band. In the absence of minimum specifications and accessories a vendor could offer a base MFD that would be the low bid but would not be operational or functional in any office environment (see attached sample minimum equipment specifications).



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Answer: The Pricing Sheet purposely excludes minimum specifications for each Volume Band. It is intended that the Vendor propose all of the products and services that they wish to sell on the contract within the Volume Band that most closely meets the band criteria. Each product should be quoted as it will be configured in any resulting Vendor Contract Pricing Index. The products and base configurations in the Vendor proposal will mirror products and base configurations in the contract Pricing Index. The Vendor should provide a detailed list of product specifications in the space provided for Description that describes all of the features of the base unit. There is a category to propose Accessories that are peripheral to base units. Vendor shall list all services and products to be sold on contract. Vendor shall identify each product or Service by a Part/Service Number. In the event that there is not an associated number, assign a Part/Service Number for the purpose of the proposal.

- 15. Question:** (Reference Bid Package 2 – Sheet C - MFD Pricing “ Rows 6, 22, 36, 50, 64, 79, 93 & 108; Columns F, H & J” “ Purchase Lease (MLA) Rate Factor 36, 48 & 60 Month”) Can DIR please provide a stated purchase option amount at the end of the lease (usually \$1.00) so all vendors are responding to the same amount?

Answer: Multiple questions have been submitted regarding The Lease Rate Factor pricing requirements and the answer to this Question 15 will act as a response to all questions relating to Lease Rate Factors. The Lease Rate Factor pricing requirements have been removed from the Pricing Sheets. See Addendum # 2 Price Sheet changes.

- 16. Question:** (Reference Bid Package 2 – Sheet C - MFD Pricing “ Rows 6, 22, 36, 50, 64, 79, 93 & 108; Columns F, H & J” “ Purchase Lease (MLA) Rate Factor 36, 48 & 60 Month”) Are we to assume DIR intends to multiply the Lease Factor by the DIR price to obtain a monthly lease payment? Does this represent the equipment lease payment only and exclude full service maintenance repair and supplies or should the vendor bundle the maintenance and supplies into the lease payment?

As an alternative we would request that the vendor be able to quote a specific monthly lease price in lieu of the current price exhibit methodology.

Answer: Refer to the answer to Question 15 (above).

- 17. Question:** (Reference Bid Package 2 – Sheet C - MFD Pricing “ Rows 6, 22, 36, 50, 64, 79, 93 & 108; Columns F, H & J” “ Purchase Lease (MLA) Rate Factor 36, 48 & 60 Month”) Are we to assume DIR intends to multiply the Lease Factor by the DIR price to obtain a monthly lease payment? If so, How will Maintenance, Copy Allowance and Supplies be factored in or added to the Purchase Lease payment to calculate the “Cost Per Copy/Page Print (4 decimals)” in “Row 6, Row 22, Row 36, Row 50, Row 64, Row 79, Row 93 & Row 108, Colum L”?

Answer: Refer to the answer to Question 15 (above).



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Addendum # 3

18. Question: (Reference Bid Package 2 – Sheet C - MFD Pricing “Rows 6, 22, 36, 50, 64, 79, 93 & 108; Columns G, I & K” “Operating Lease Rate Factor 36, 48 & 60 Month”) Are we to assume DIR intends to multiply the Operating Lease Factor by the DIR price to obtain a monthly lease payment? Operating leases are based on a fair market value (FMV) residual to be determined at some point in the future. An Operating Lease is not typically based on the net purchase price but a lower price point. How would an operating lease factor apply if the FMV cannot be determined?

Answer: Refer to the answer to Question 15 (above).

19. Question: (Reference Bid Package 2 – Sheet C - MFD Pricing “Rows 6, 22, 36, 50, 64, 79, 93 & 108; Columns G, I & K” “Operating Lease Rate Factor 36, 48 & 60 Month”) Are we to assume DIR intends to multiply the Operating Lease Factor by the DIR price to obtain a monthly lease payment? Does this represent the equipment operating lease payment only and exclude full service maintenance repair and supplies or should the vendor bundle the maintenance and supplies into the lease payment?

Answer: Refer to the answer to Question 15 (above).

20. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “Rows 6, 22, 36, 50, 64, 79, 93 & 08; Columns G, I & K” “Operating Lease Rate Factor 36, 48 & 60 Month”) Are we to assume DIR intends to multiply the Operating Lease Factor by the DIR price to obtain a monthly lease payment? If so, How will Maintenance, Copy Allowance and Supplies be factored in or added to the Purchase Lease payment to calculate the “Cost Per Copy/Page Print (4 decimals)” in “Row 6, Row 22, Row 36, Row 50, Row 64, Row 79, Row 93 & Row 108, Colum L”?

Answer: Refer to the answer to Question 15 (above).

21. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “Rows 6, 22 36, 50, 64, 79, 93 & 108; Column L” “Cost Per Copy/Page Print (4 decimals)”) What does this number represent? Is it the Machine Lease Payment excluding maintenance and supplies divided by the Base Monthly Volume Average?
Is it the Machine Lease Payment including maintenance and supplies divided by the Base Monthly Volume Average?

Answer: Addendum #2 to the RFO revises the format for calculation of the Equipment Lease and Maintenance costs (which includes all supplies except paper) on the Pricing Sheets.

22. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “Rows 6, 22, 36, 50, 64, 79, 93 & 108; Column L” “Cost Per Copy/Page Print (4 decimals)”) If the Operating Lease Factor and the Purchase Lease Factor result in a different Lease Payments shouldn't there be a “Cost Per Copy/Page Print (4 decimals)” column for each form of lease?

Answer: Refer to the answer to Question 15 (above).



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23. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “Rows 4, 20, 34, 48, 62, 77, 91, 106; Base Monthly VOLUME AVG.”) Will price evaluation occur at the Base Monthly Volume Avg.?

Answer: See the answer to Question 11 (above).

24. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “Rows 6, 22, 36, 50, 64, 79, 93 & 108; Column M Copy Allowance Per Month”
a. Can the vendor offer any copy allowance and if no copy allowance is included (0);
b. Will DIR add volume based on vendors OVERAGE Cost Per Copy/Page Print after Exceeding Copy Allowance (4 decimals) Column N for price evaluation at the Base Monthly VOLUME AVG.?

Answer:

- a. Yes, the Vendor can offer any copy allowance. If no copy allowance is included on the base device, state “0”.
- b. Please refer to the answer for Question 11 (above).

25. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “Rows 9, 24, 38, 52, 66, 81, 95 & 110; DIR Customer Monthly Lease Payment (24, 36, 48, 60 Mo.)
a. Which Lease Payment should this represent; Purchase Lease or Operating Lease?
b. Does this payment exclude or include maintenance, supplies and copy allowance?
c. Why did DIR include a 24mo. Lease Payment in this section and no other section of Bid Package 2?

Answer:

- a. If there is a difference in the monthly payment, propose both and delineate between the two.
- b. Refer to the answer to Question 21 (above).
- c. The Lease Payment for 24 months appears in all relevant Price Sheets as amended in Addendum # 2.

26. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing - “Rows 11, 26, 40, 54, 68, 83, 97 & 112; Annual Maintenance and Support Services for Purchase Units” What does this represent? Is it intended to be added to the operating lease and the purchase lease to obtain the total monthly payment? Should this price include or exclude supplies and copy allowance?

Answer: Refer to the answer to Question 21 (above).

27. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing “THIS DEVICE: CHECK ONE → P=Print; C=Copy; F=Fax, S=Scan” Does this mean are the products capable or does it mean they come standard with (P,C,F,S)?

Answer: This requirement has been eliminated from the Pricing Sheets. See Addendum # 2 Price Sheet changes.



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28. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing) How does DIR intend to address the 100's of customers who require a 30 day rental agreement especially those TPASS 985-L2 customer DIR is porting over to this contract?

Answer: The Rental option has been added to relevant Pricing Sheets. See Addendum # 2 Price Sheet changes.

29. Question: (Reference Bid Package 2 – Sheet C – MFD Pricing) Would DIR consider a simpler, less variable Bid Package Pricing Sheet? See Sample Below.

I believe all vendors want to be evaluated on an apples to apples basis especially as it relates to price. This pricing template provided by DIR has multiple variables. Example: there are no minimum equipment specifications or required features. Something as simple as requiring an 11x17 paper size can have a huge swing in equipment price, so most vendors won't include 11x17. Does that meet the State's requirements? Having no stated purchase option on a purchase lease could make a huge swing in price. Having all vendors bid to the same requirement minimizes vendor assumptions and puts everyone on the same playing field.

Answer: Addendum # 2 reflects changes to each of the four (4) Pricing Sheets. The Vendors are not bidding to the same requirement because they are proposing their own unique products. Refer to the answer to Question 14 for further clarification regarding configuration and specifications. A product that is not part of the base unit but is priced as an accessory may be added to the base unit throughout the contract term.

30. Question: (Reference section 2.3 Form of Contract) DIR has included a Purchase Lease Agreement and an Operating Lease Agreement. As with the DIR-SDD-1683 there are other Agreements that DIR has approved such as a Rental Agreement, a Services and Solutions Agreement, a Print Services Agreement or a Mobile Print Agreement.

- a. Should vendors include other proposed agreements for DIR's consideration at the time of the RFP submission or will these agreement be considered post award?
- b. If vendors propose additional agreements to bring clarity to a particular set of solutions, and the terms of such agreements do not conflict with the DIR terms contained in the RFO, will this cause point deductions on the evaluation?

Answer:

- a. Vendors may submit other agreements outside of the adjunct documents posted to the RFO i.e., Service and Support Agreements, Schedules, Rental Agreements.
- b. No. The referenced section of the RFO names only the following two documents relevant to Exceptions to terms: Contract for Products and Related Services (Bid Package 3) and Standard Terms and Conditions for Products and Related Services Contracts (Bid Package 4).



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31. Question: (Reference section 2 -SCOPE- MPS Requirements)

If we leave, some or all, of the MPS pre-populated categories (1-17) in the MPS Pricing tab, in Bid Package 2, blank or direct them to our description and pricing, in the Miscellaneous and Options section will we be non-compliant or disqualified? What if our offering does not list all the items they have described under that category, are we non-compliant?

Answer: No, you will not be considered non-compliant nor will you be disqualified. Note the following language in 2.1 Products:

“MPS may be proposed per service category listed below or Vendors may propose optional bundled MPS or other miscellaneous or optional MPS not listed in the RFO. Each of the categories below have been given definition and specifications for the purpose of evaluation only and may not specifically define the services offered by the Vendor. In the event that the categories of MPS listed in the Pricing sheets do not adequately align with the Vendor offerings, Bid Package 2, Pricing Index, provides for miscellaneous and optional pricing.”

32. Question:

- a. If the vendor proposes multiple machines within one segment may those machines be at different discounts from MSRP?
- b. Will there be a base model configuration?

Answer:

- a. Discounts may vary from MSRP within a segment and between one page (device) and another page (device).
- b. Refer to the answers to Questions 14 and 29.

33. Question: Can the Discount on accessories vary to provide DIR the best possible price, or do you require a blanket discount across the board for all accessories?

Answer: Yes, discount percent from MSRP may vary on accessories.

34. Question: Can the discount off MSRP be 2 decimals, such as 57.24%?

Answer: Yes

35. Question: With only 3 categories for B&W, should all the equipment that we bid in a certain category (low, medium and high) have the same monthly copy allowance? Can we have a color monthly allowance?

Answer: There are five categories for B&W (Monochrome), they are M1 through M5 and Color/B&W has three categories, C1 through C3. The Volume Band is the stable criteria, meaning that you should list your devices that print between 1 – 30 PPM in Volume Band C1. If your device prints 31 PPM, list it in the C2 Volume Band category. The word Base Monthly Volume quantity has “Avg” in front of it; your device Monthly Volume may vary.



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36. Question: Within all the categories (low, medium and high) can the cpc and overage vary by model?

Answer: Color/B&W has three categories, C1 through C3. Yes, the cost per copy and overage may vary by model. See the answer to Question 24.

37. Question: How many vendors will be selected? Is there a goal?

Answer: Section 1.1 of Bid Package 1 states the purpose of the solicitation, "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". No set number of contract award(s) are contemplated.

38. Question: May a vendor no bid the MPS Sheet D for Managed Print Services (MPS) and be considered for product and services for Non-Multifunctional and Multifunctional products as requested per Sheet A, B and C?

Answer: Yes

39. Question: Lease factors are requested in Price Sheets A, B, and C. How are rate factors considered in the pricing evaluation? Should rate factors include return costs for equipment at end of term, property taxes, and late fee waivers?

Answer: Refer to the answer to Question 15.

40. Question: Please clarify the pricing of the Administrative Fee. There appears to be a sliding scale from .075% to 2%. How is the end price to the customer to be determined?

Answer: The current Administrative Fee is .75% or three-fourths of one percent. DIR has statutory authority to make the determination and may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee. The administrative fee must be included in the Vendor's price to the Customer and paid to DIR by the Vendor.

41. Question: Please clarify the request for information regarding sales with other State contracts.

Answer: Item 13 of Appendix A of Bid Package 1, RFO states, "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". In the event that a Vendor holds a contract for use by other public entities, DIR may opt to perform a Cost Avoidance analysis. Bid Package 1, Section 1.2.3., Cost Avoidance Performance Measures states, "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."



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42. Question: Will this contract replace current printer, fax, and MFD contracts that will expire in May 2015?

Answer: The posting of RFO DIR-TSO-TMP-224 coincides with the expiration of multiple MPS contracts. If a Vendor holding a current contract is awarded a new contract as a result of best value, the current contract holder has the option to continue the current contract through the termination date. Any contract award resulting from this competitive solicitation is not intended to replace a contract, rather to provide opportunities for eligible Customers to access sources for their Print, Scan, Facsimile, Multifunctional Devices, 3D Printers and Related Services and Managed Print Services needs and requirements.

43. Question: If we include the 100,000 per month and the customer only runs 85,000, we can still collect the entire monthly fee, correct?

Answer: Yes, if you have a copy allowance of 100,000 copies per month that means that the Customer will not begin accruing overage charges until their 100,001st copy.

44. Question: Do we have to pool copies?

Answer: Yes, pooling of monochrome (B&W) devices is mandatory.

45. Question: Does every possible device model need to be submitted for evaluation purposes or do we simply submit a sample of the product line for each band?

Answer: Refer to the answers for Questions 14 and 25 (above).

46. Question: Are we bound to the pricing submitted here or once the evaluation process is done, will we be working with individual customers to develop unique pricing for each of their situations?

Answer: The pricing that you propose (and may be further negotiated prior to contract award) is binding throughout the term of the contract. However customers are allowed to negotiate lower pricing (higher discounts) based on their specific requirements.

47. Question: For the purpose of evaluation, supplies must be included with cost of maintenance to create CPC, but if awarded, customer will still have the right to purchase maintenance (labor and parts) and purchase supplies separately if they wish?

Answer: If a Customer purchases a device, they have the option to purchase maintenance (which includes all supplies except paper). The Monthly Equipment Lease and Maintenance (and supplies) costs are broken out on the Price Sheets, however each lease agreement will provide the equipment lease and maintenance (and supplies). All monthly Rentals will include maintenance and supplies in the monthly rental price.

48. Question: An Operating Lease does not have an interest rate and also must include property tax. This makes it difficult to respond to your request.



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Answer: Refer to Bid Package 7 Master Lease Agreement, Section 6. Liens and Taxes.

49. Question: Will we pay DIR for Service/Supply bundled into the lease or only the equipment?

Answer: Administrative Fees will be paid to DIR for all sales made on a DIR contract.

50. Question: Are staples to be included in the cost-per-copy (cpc)?

Answer: Yes

51. Question: Are you asking for a 24-month lease, as it is not on the price schedule?

Answer: Refer to the answer to Question 25.c (above).

52. Question: The MPS schedule cannot be accurately quoted, as generally this area has to do with taking over an existing fleet of units. Printers vary in supply costs and maintenance costs. Volume Band pricing without models does not apply in this part of the bid. Some other method of calculation is needed.

Answer: The MPS Price Sheet provides the flexibility for you to price your product/service in a manner that is consistent with your business practices. We ask for pricing Per Unit; a MPS unit could be per bundle of services, per copy or other published pricing. DIR seeks transparency in pricing. There are miscellaneous and optional pricing categories for you to communicate and propose your pricing.

53. Question: Who will be responsible for insurance on the leased equipment?

Answer: The equipment title holder is responsible for meeting insurance requirements.

54. Question: Pricing Section, Page 9, states "The MFD Pricing Sheet calls for a Lease Rate Factor for the Master Lease Agreement products.... To determine the monthly lease payment, the Vendor shall apply the lease factor to the DIR Customer Discount Price off of MSRP".

Lease rate factors are generally tied to US Daily Treasury Yield Curve Rates and can change based on fluctuations in the financial markets. To allow for vendors to modify their leasing schedule we respectfully request that the state adopt language, similar to the clause outlined below, in order to establish a process governing this issue. This proposed language is currently commonly used in the other state contract for MFP's, Printers, and Related devices.

"All lease factor quotes must be quoted as a decimal multiplying factor in such a manner that the purchase price may be multiplied by the lease factor to arrive at the resulting monthly payment including any taxes that are the responsibility of the Awarded Vendors. Awarded Vendors may update all lease rates on a quarterly basis for changes in the financial markets. In order for the Awarded Vendor to alter the bid lease rates, all lease rates must be indexed against the US Daily Treasury Yield Curve Rates. An Awarded



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Vendor shall update its dedicated contract website to reflect this change. Yield Curve Rates with a fixed margin as of the last publishing date of each Calendar Quarter (as published at <http://www.ustreas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml>).

Answer: Refer to the answer to Question 15 (above).

- 55. Question:** 3D Printers: If a manufacturer is in the final stages of manufacturing a 3D printer for the US can an award be granted with an allowable discount % If the manufacturer agrees not to exceed the GSA pricing for these printers once launched in the US? http://www.ricoh.com/release/2014/0908_1.html

Answer: DIR cannot negotiate or award a futures contract however Bid Package 1, 2.1 Products, MPS Requirements has provisions for adding emerging technologies to existing contracts.

- 56. Question:** Acceptance Period: MOLA---Section 10: requests 20 days for acceptance period MLA---Section 9: requests 10 days for acceptance period. We respectfully request for consistency that the acceptance period be changed to match the MLA.

Answer: The terms in the MLA and the MOLA have been vetted and remain intact unless negotiated individually in consideration of a compelling business requirement.

- 57. Question:** Regarding the MOLA & MLA, in order to maintain continuity in customer service and fleet management, will the state allow the use of currently approved DIR vendor documentation?

Answer: No. Each solicitation is developed in compliance with current legislative and statutory requirements and current DIR policy. Contract awards capture those elements that are current at the time of award.

- 58. Question:** Appendix A, Page 26, Question # 19 is related to EPEAT – Many vendors do have their printers, scanners, etc. EPEAT certified at this time. Is this a requirement for this RFP and if so, how will this be scored?

Answer: The requirements for EPEAT are stated in Bid Package 1, Section 2.1 Products under the heading Electronic Product Environment Assessment Tool (EPEAT). The Vendor responsiveness to the requirement will not be scored. DIR will use the data for the identification and assessment of high-performing, environmentally preferable products that assist DIR Customers in making informed purchasing decisions.

- 59. Question:** Mandatory Requirement Content # 6 on Page 20, Section 3.7.3, Vendor Accessibility Documentation – What is this requirement. The description does not appear in Section 2, Scope 2.1. Can you please clarify exactly what the expectation/requirement is?



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Answer: Bid Package 8 Policy Driven Adoption Assessment has a Frequently Asked Questions ([FAQ](#)) tab that describes the program and includes hyperlinks for access to further information. Bid Package 8 includes an [Example](#) tab and an [Assessment](#) tab which is the mandatory form that must be submitted. For additional information, you may contact Jeff Kline, DIR's EIR Accessibility Coordinator at 512-463-3248.

60. Question: Is the ICT Attachment 1 a requirement that is scored or is this informational only?

Answer: Unable to understand your reference to "ICT Attachment 1". Bid Package 1, Section 4.2 Evaluation Criteria describes the evaluation scoring. Additionally, Appendix A Vendor Information, Item 21 [Statement of Compliance](#) lists Mandatory Response Contents.

61. Question: Is this intention to award multiple vendors to this contract?

Answer: Refer to the answer for Question 37 (above).

62. Question: The RFO is set up in what appears to be a menu style response for each individual offering under the MPS section Attachment 7 sheet D. Is the award of this contract going to be a menu style award where customers utilizing the DIR contract can pick and choose the options they want? If so are we bound to deliver these individual options at the cost per page that we are responding to each section with?

Answer: Reference the answer to Question 31.a (above). DIR seeks pricing transparency – tell us what you sell and how you price it.

63. Question: Cost recovery. Currently .75%. Should DIR adjust this fee upward or downward do the vendors have the ability to adjust their prices accordingly? Does this fee need to be shown as a separate line item on the customers invoice?

Answer: Refer to the answer to Question 1. Bid Package 3 Product Contract, Section 5 DIR Administrative Fee states, "All prices quoted to Customers shall include the administrative fee".

64. Question: Lease rates. Do lease rates need to be fixed for the term of the contract or can they be adjusted quarterly?

Answer: The lease rates proposed will remain fixed throughout the contract term.

65. Question: Do staples need to be included in the cost of service?

Answer: Yes. All supplies except paper are included in maintenance and support services.

66. Question: Pooling copies is recommended on like volume bands. Can we pool across volume bands if an agency would like a pool and or cost per copy for the fleet?



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Answer: Yes, pooling across volume bands, including color in pooling or other value-adding strategies can be made by agreement between the Vendor and Customer.

67. Question: Appendix A Standard Terms & Conditions. Admin Fee. Can DIR extend the payment of the admin fee for 30 days due by the 15th of the next month?

Answer: No, the payment date has been established to coincide with DIR Finance and Accounting obligations.

68. Question: Appendix A Standard Terms & Conditions. Admin Fee. Accurate and timely submission of reports, Vendor shall deliver any inaccurate or late reports or late administrative fee payment within 3 business days upon written notification by DIR. We respectfully request this be changed to 10 days.

Answer: DIR does not contemplate a change in this requirement. DIR recommends that Vendors plan accordingly for the administrative due dates that they agree to at the time that they execute a contract.

69. Question: Appendix A Standard Terms and conditions, Termination for convenience. A customer may terminate a PO giving 30 day written notice. We request under a lease the customer must fulfill its lease obligation and or pay cancellation fees not to exceed stream of payment?

Answer: DIR does not enter into cooperative contracts that obligate a Customer to the payment of cancellation fees. Appendix A, Section 11. Contract Enforcement, B. Termination, 6. Vendor or Order Fulfiller Rights states, "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.

Bid Package 6, Master Operating Lease, Section 4 Term of Schedule states, "The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein". The REMEDIES for these types of termination are defined Section 8 Appropriation of Funds and Section 24, Remedies.

This process does not apply to a rental which allows for 30 day cancellation without penalty.

70. Question: The State is looking for the MOLA to be an operating and or FMV lease and the MLA can be FMV or Capital lease. Does the agency designate on the PO for the MLA whether or not it is an FMV or Capital lease?



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Answer: When a lease agreement is made between a Customer and a Vendor, it becomes an Appendix to the agreement (Service Agreement, SOW, PO, or other document) and should be accordingly identified as a contract document. MOLA = **M**aster **O**perating **L**ease **A**greement; DIR does not consider this as a capital lease. MLA = **M**aster **L**ease **A**greement = capital lease.

71. Question: As part of the MPS program are vendors expected to support 3rd party devices. If so will we be required to submit a letter of supply with our offer for any third party devices we may need to support in the future? If we can bid what is the format you would like to see it in?

Answer: If the Vendor proposes to provide maintenance support of third party hardware or software, it shall be stated in their proposal. The Vendor need not provide a letter of certification/authorization for this type of support. The Vendor is responsible for acquiring any type of credentials required by a manufacturer to act as an authorized repair facility in order to preclude voiding a warranty. DIR requires manufacturer authorization/certification for Resellers.

72. Question: The price sheets for MFD categories C1-C-3 only have one column for a cost per copy. They need to be altered to have a column for a cost of a black and white copy and a column for the cost of a color copy.

Answer: Categories **M1 – M5** are for **M**onochrome (also known as Black and White). Categories **C1 – C3** are for **C**olor. Any device that prints color is assumed to also print black and white.

73. Question: Appendix A vendor information number 12, 13 and 14 provide entity name, does that mean contract name?

Answer: Appendix A, Vendor Information asks about the sales that your company has sold the products to that are entities such as: Texas state agencies, local governments, independent school districts, and institutions of higher education, public universities, other states or consortiums. Name the agencies, local governments, independent school districts, and institutions of higher education, public universities, other states or consortiums. Examples: Texas Department of Insurance, Texas Workforce Commission. You may list any further defining information such as associated contract numbers.

74. Question: Does lowering the price for a single unit or service under the DIR contract trigger a price reduction for the DIR contract?

Answer: If a DIR Customer and Vendor negotiate a lower price based on volume purchase or special promotion, it does not trigger a price reduction on the DIR Pricing Index.



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75. Question: Appendix A, Standard terms and conditions page 13 section 3. Price Reductions. This requirement applies to products or services quoted by Vendor or its resellers.

- a. does this include contracts that are held by resellers?
- b. for a quantity of one (1) under like terms and conditions and do not apply to volume or special pricing purchases. Can you provide a more specific definition of volume or special pricing purchases?

Answer:

- a. Yes. Neither the Vendor or Resellers on DIR contract may sell under a non-DIR contract to eligible Customers that are required to purchase through DIR contracts. Texas Government Code, Chapter 2054 requires state agencies to buy through these contracts unless a formal exemption is obtained.
- b. Example:
 - i. of a Vendor offering volume pricing:
 1. lower price for purchase of 10 to 20 printers and still lower price for purchase of 21 to 30 printers.
 - ii. of special pricing purchases?
 1. Christmas Special pricing for printers now through December 24th.

76. Question: Since the State of Oklahoma will be participating on this contract, should Oklahoma resellers be included in Appendix C HUB Subcontracting Plan?

Answer: Any Reseller that will be selling should be included in Appendix C, HUB Subcontracting Plan. Some Vendors may consider it sound business strategy to include Resellers with proximity near potential Customers.

77. Question: Do the SLA requirements list under the MPS section of bid package 1 applies to all products and services acquired on this contract?

Answer: The particular SLA requirements listed in Bid Package 1 such as Help Desk and Response time are minimum requirements for maintenance and support services. If a Vendor proposes service and support levels that vary from these minimum requirements, they should propose them as Miscellaneous or Optional services and submit the Service Level Agreement(s) that details the optional support with their proposal.

78. Question: Could you provide a sample of a State agency purchase order?

Answer: Each state agency has a purchase order that is unique to the individual agency.

79. Question: MOLA page 16, Are negotiated extensions FMV Based. Does this mean is the extension negotiated based upon the present value of the equipment?

Answer: This Attachment 1 to the MOLA, Financial Summary requests that the Vendor disclose the elements of Equipment Schedule Detail. Refer to Sections 4 Term of Schedule and 15.a Option to Extend; Surrender of Hardware and Software Assets of the MOLA for further information on Schedules and Option to Extend.



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80. Question: Price discounts. If we are offering more than one machine in a particular segment can we offer different discounts within the segment?

Answer: Yes, but only one discount per page (device).

81. Question: Within all the categories (low, medium and high) can the cpc and overage vary by model within the same category?

Answer: Refer to the answer for Question 36.

82. Question: Are vendors required to offer lease options as part of their proposed offering in response to this RFO?

Answer: No

83. Question: Are vendors required to offer both a Master Lease Agreement and a Master Operating Lease Agreement as part of their proposed offering in response to this RFO?

Answer: No

84. Question: If everything is acceptable (meets all the requirements) to the DIR with an offer (including the prices), will the DIR award contracts to multiple resellers that provide the same manufacturer's equipment if each company submitting a response has the letter from the manufacturer authorizing them to sell the products?

Answer: All things being equal, DIR may award multiple contracts to multiple Vendors selling the same product or service. Additionally, a Vendor (contract holder) may make a business decision to engage multiple resellers or order fulfillers on the same contract to sell the same manufacturer products.

85. Question: Does the TX DIR prefer to have only manufacturer's product be offered only in one contract?

Answer: DIR's prefers to enter into contracts that achieve the highest overall value to the state whether it be the same manufacturer product amongst one or multiple contracts.

86. Question: Once a contract has been issued, can the manufacturer cause the contract to be cancelled by revoking the authorization to sell their product to that specific contract holder?

Answer: A manufacturer's revocation of authorization to sell a brand impacts the ability of the contract holder to sell that brand only. If the Vendor only sold one brand and the authorization to sell that brand was revoked by the manufacturer, then the contract would be terminated.



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87. Question: If the contract contains more than one manufacturer and one of the manufacturer revokes the right to resell their product from the contract holder, will all other manufacturers get cancelled?

Answer: Refer to the answer to Question 86.

88. Question: Are vendors required to offer all categories of products (i.e., printers, scanners, facsimile machines, multi-function devices, 3D printers, related services, and managed print services) as their proposed offering in response to this RFO?

Answer: No, Vendors shall propose products and services that are unique to their line of business.

89. Question: Will vendors be considered for award if they propose some, but not all, of the categories of products (e.g., printers, scanners, facsimile machines, and multi-function devices only) as their proposed offering in response to this RFO?

Answer: Yes, such proposals will be considered; see the answer to Question 88.

90. Question: Solicitation, Page 4, Item 6, Maintenance states that output devices that are not in operation with 8 hours of reported outage must be replaced with a like loaner. Please clarify that this requirement is for the MPS portion of the RFP and not the products such as 3D printers. 3D printers are very expensive, and loaners are not kept on site.

Answer: The requirement is a MPS Services requirement listed in Bid Package 1 as a minimum requirement for equipment replacement support services. If a Vendor proposes service and support levels that vary from this minimum requirement, they should propose them as Miscellaneous or Optional Services and submit the Service Level Agreement(s) that details the optional support with their proposal.

91. Question: Solicitation, Page 8, Service Level Agreement Please clarify that vendors are to provide their own SLA based on the products that they are offering.

Answer: Vendors shall submit their own SLA based on the products that they are offering. Refer to the answer to Question 30.a

92. Question: Solicitation, Page 9, Pricing. Please clarify how vendors will be able to add products throughout the contract period. On the current contract, we cannot offer a new 3rd party product if we did not offer that particular 3rd party product on our original RFP response. If the State does not allow new 3rd party product adds throughout the contract period, the State customers are greatly limited on new technology.

Answer: Vendors may add product/services that fall within the categories that were originally proposed. Refer to the answer for Question 7 regarding the process for adding new product. A product category or a manufacturer brand that was not proposed on the original response may not be added to a contract.



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93. Question: Solicitation, Page 9, Pricing- Specifically Leasing. Please clarify if we have to offer all products for leasing or can we choose to offer some on the MLA and not the MOLA, or can we offer purchase only?

Answer: The Vendor has the option to propose leasing some, all or none of the products without penalty.

94. Question: Solicitation, Page 10, Accessibility states that if products are exempt from accessibility requirements, we must present that position during the Q&A period. Most of the Wide format printers, software, scanners and 3D printers do not fall under the categories established by the Federal Government for accessibility requirements. Please clarify that we can offer products that do not have VPAT's and are exempt from accessibility requirements in these categories.

Answer: This question was provided to DIR's Accessibility Coordinator who provided the following answer, "I do not believe this statement to be correct. These are network connected devices that have both hardware and software interfaces used by general users and not specially trained service personnel. In general, if there is a user interface, either on the machine (such as a flat panel control interface) or controlled by software on a client or browser, a VPAT from the manufacturer for each product or product family is required.

Also, the accessibility documentation for these products also needs to be made available (see Bid Package 8).

95. Question: Solicitation, Page 1, Item 1.1 Introduction. Please clarify if each vendor will be negotiating their own terms?

Answer: Bid Package 1, Section 2.3 Form of Contract states, "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". Refer to section 2.3 in regards to Exceptions submitted at the time that a proposal is submitted specifically, the language that states, "If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date".

96. Question: Solicitation, Page 5, Item 11, Installation/moves/charges. Please clarify who is responsible for the removal and return cost of equipment.

Answer: All removal and return charges, shall be the responsibility of the Vendor.

97. Question: General question -Will the state provide tax exempt certificates to vendors upon request or with orders?



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Answer: Each individual Customer has policy regarding provisioning tax exempt certificates to Vendors. If that is a Vendor requirement it should be communicated to a potential Customer.

- 98. Question:** Appendix A, Page 24, Section N-Required Insurance coverage- Please clarify who is responsible for risk of loss of equipment under the MLA or MOLA

Answer: The title holder (owner) of the equipment is responsible for risk of loss of equipment.

- 99. Question:** Appendix A, Page 29, Section 5 Customer Rights under Termination. Please clarify what this is saying. Does an individual transaction survive DIR's termination of the agreement as a whole—in other words, Cancellation of the DIR contract would prevent any additional orders, but those for equipment in place would remain and payments would continue?

Answer: Bid Package 4, Standard Terms and Conditions, Section 11 Contract Enforcement, B. Termination, Part 5 Customer Rights under Termination states that obligations and orders transacted under an active DIR contract survive the termination of contract and those obligations, of both the Vendor and Customer would continue until all of the obligations were met.

- 100. Question:** Appendix A, Page 29, Item C-Force Majeure Please clarify that equipment payment would continue in the case of Force Majeure. The funding has been allocated, so equipment payments should continue, but payment for service would be suspended.

Answer: Bid Package 4, Standard Terms and Conditions, Section 11 Contract Enforcement, C. Force Majeure states, "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". If any Party experiencing a Force Majeure event could show that the event affected the ability to make payment, they would be relieved of doing so for a period of time.

- 101. Question:** Bid Package 3, Page 2, Item 2. Term of Contract Please clarify that this clause is for the ordering period of the contract and does not apply to lease terms.

Answer: Bid Package 3, Page 2, Item 2. Term of Contract describes the term of a contract. The term of a lease may not be synonymous with the term of the contract.

- 102. Question:** MOLA, Page 6, Item 12 Relocation. Please change to require 30 day written notice of moves. Moves require paperwork and planning on the part of vendors.



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Answer: Any agreement between the Customer and Vendor to require a 30 day written notice of moves should be documented in writing and signed by both parties to the Agreement.

103. Question: MOLA, Page 15, Item 28 Miscellaneous Please explain what this section is saying. We do not understand this section.

Answer: The first paragraph, "Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended."

This means that if a Lessor has not yet delivered equipment and Lessor is prevented from delivering the equipment due to causes beyond its control, the Customer would not be responsible for payments if the equipment is not delivered.

End of Addendum 3



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Addendum # 4

This Addendum # 4 to Request for Offer DIR-TSO-TMP-224:

Contains answers to the second round of questions which were submitted in writing to the Purchasing Point of Contact.

QUESTIONS AND OFFICIAL ANSWERS:

- 1. Question:** Are we allowed to submit software on this Offer? I ask because there is another DIR Contract scheduled to be released for software. I wanted to clarify if scanning software was allowed in this Offer or if we had to submit the software component of the scanners in the "Software Products and Related Services RFO" getting ready to be published.

Answer: Stand-alone software is not acceptable under this scope. For software to be allowed, its primary function is the operation of the device and it must be bundled with the equipment and be shown with bundled pricing only. An example would be operating system software for a scanner.

- 2. Question:** May the software bid on this contract be sold alone, or must it be bundled with hardware?

Answer: Refer to the answer to Question # 1.

- 3. Question:** Page 6, Item #15, Managed Print Services Accounting Services: Some of these capabilities require additional software which is offered as purchase only as requested by the pricing sheet. May we offer the software as a monthly lease option for the length of the term the customer leases the products for if they request this service?

Answer: Stand-alone software is not acceptable under this scope. If a Vendor proposes to provide a Service, such as reporting or accounting services, the software costs and licensing to accomplish this Service is the responsibility of the Vendor. The Vendor is responsible for the pricing strategy to capture costs associated with providing the Service(s). Refer to the answer to Question # 1.

- 4. Question:** Please clarify who is responsible for payment of the return of equipment at lease end, customer or vendor? Page 9 Pricing.

Answer: Costs associated with transportation to and from the customer site as well as installation and de-installation are borne by the Vendor and are not reimbursable. The Vendor is responsible for the pricing strategy to capture these costs.

- 5. Question:** Pricing, Bid Package #2, Tab B2 and C2: Is installation of the device at the customer site part of this offer? If yes, where is this to be priced? For example is this part of the lease? Please advise.

Answer: Refer to the answer to Question # 4.



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6. **Question:** Pricing, Bid Package #2, Tab B2 and C2: Is deinstallation of the device at the customer site part of this offer when leased for return at the lease expiration? If yes, where is this to be priced, please advise.

Answer: Refer to the answer to Question # 4.

7. **Question:** Can you please clarify the paragraph for Bid Package 7 and the example? It seems that the request is to show what comprises the FMV lease rate. If that is the case can we list what the rate is comprised of? For example rate includes Personal Property Tax, Insurance, etc.

Answer: Your question does not make reference to any particular paragraph in Bid Package 7 and DIR is unable to determine the source paragraph from which your question originates.

8. **Question:** Pricing, page 9 - Are the terms of the MOLA and MLA negotiable?

Answer: The terms in the MLA and the MOLA have been vetted and remain intact unless negotiated individually in consideration of a compelling business requirement.

9. **Question:** (Reference Appendix A, Terms and Conditions: Termination for Convenience) Please clarify and confirm that this termination only impacts the contract and that any orders installed continue to be made; they are not impacted by this termination. Customer cannot terminate PO once equipment is installed and accepted.

Answer: The Customer can terminate a purchase order once equipment is installed and accepted, as the Termination for Convenience term in Appendix A is a governing term and impacts the contract, the lease and governs the terms and conditions of a resulting purchase order unless it is specifically written and agreed otherwise in a purchase order. Refer to Appendix A, Section 11. Contract Enforcement, B. Termination, 6. Vendor or Order Fulfillee Rights which states, "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". Although a termination for convenience may be invoked, that does not imply that the Lessor does not have Remedy.

Bid Package 6, Master Operating Lease, Section 4 Term of Schedule states, "The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein". The REMEDIES for these types of termination are defined Section 8 Appropriation of Funds and Section 24, Remedies.



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This process does not apply to a rental which allows for 30 day cancellation without penalty.

- 10. Question:** Please confirm that Non-SLG entities (Non-Profits) will not receive cancellation for non-appropriations.

Answer: DIR cannot confirm that Non-SLG entities will not receive cancellation for non-appropriations. Some state and local governments are not mandated by Texas Government Code, Chapter 2054 to use DIR contracts for their procurements (i.e. Non-SLG entities), however any entity that elects to use a DIR contract is subject to all of the terms and conditions of the DIR contract (including cancellation).

- 11. Question:** (Reference: Master Lease agreement P 2 (D): Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any schedule for the lease of Equipment with any Lessee.)

Does this mean that lessees do not have to use this MLA when financing, can you please clarify?

Answer: Lessees must use the Master Lease agreement for capital-type leases and they must use the Master Operating Lease for Operating Leases.

The section that you refer to states that the Lessor shall not be bound to use the MLA *exclusively* [sic]. Bid Package 4 Standard Terms and Conditions, Section 4 General Provisions acknowledges the opportunity for the inclusion of additional documents such as *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.*

- 12. Question:** (Reference BID Package 2) Please confirm our understanding that the Base monthly volume will be the same for all vendors in each volume band and it's just for evaluation purposes.

Answer: The actual Base Monthly Volume proposed by Vendors will not be the same. The Base Monthly Volumes listed on the Pricing Sheets are DIR's average estimates which are provided to show what *could be* recommended by the manufacturer.

As an example, on one Pricing Sheet, the Base Monthly Volume per month indicates "Avg. 2,500" and on another Pricing Sheet, "Avg. 50,000". DIR placed those (average) estimates in the Pricing Sheets to show what *might be* recommended by the manufacturer for the average device within a particular Volume Band. The device(s) that you propose will probably not print exactly 2,500 copies or 50,000 per month. The Product Description of your proposal should detail the *actual* manufacturer specifications for Monthly Base Volume for the device that you are proposing by indicating, as an example: "Device prints 23 pages per minute (Volume Band) and manufacturer recommends Monthly Volume (Base Monthly Volume) not exceed 3,100 copies per month".



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The criteria that determines where you should propose a device on Pricing Sheet C2 is the Volume Band. These Volume Band categories were established in order for you to propose like-volume devices in a group. If a device that you are proposing prints 23 pages per minute, it should be proposed in the Pricing Sheet for devices that print between 1 and 30 copies per month.

- 13. Question:** In addendum 3 question 72. While the color units also print black and white the cost of that copy would differ from the cost of a color copy. An additional column needs to be added to the price sheet so vendors can show the cost of a color copy and the cost of a black and white copy.

Answer: Refer to Addendum 2, Bid Package 2 Pricing Sheets. The Pricing Sheets titled C2, MFD Pricing has three (3) sheets available for color copiers – those are titled, “Sheet C1 (also C2 and C3) Multifunction Device (MFD) Pricing Sheet Color and B & W”. These are for copiers that print in color. As any device that prints in color will also print in monochrome (B & W), if you are asking how to delineate the Cost per Copy for Monthly Base Maintenance between Color copies and B&W copies on the same device, enter “B&W .0001 / Color .0002” in the cell.

- 14. Question:** Question #72 from original Q&A – Question was not answered correctly as the B&W CPC rates on a monochrome device have no correlation to a B&W CPC on a color device. These are two different prices and in no way relate to each other. State needs to add a column for C1 – C3 for B&W CPC’s or allow vendors to insert this pricing themselves. This also applies to Monochrome & Color Desktop Printers and will need to be added to the Non MFD tab as well.

Answer: Refer to the answer to Question # 13.

- 15. Question:** (Reference BID Package 2) On the revised pricing sheet, there does not appear to be a place for the color cost per copy. Where should that CPC should be noted?

Answer: Refer to the answer to Question # 13.

- 16. Question:** (Reference BID Package 2) Also on the pricing pages, there are volumes noted for the color mfp products. Is the volume noted for black and white only?

Answer: Refer to the answer to Question # 13.

- 17. Question:** (Reference BID Package 2) Please confirm that under the rate factor column (MLA) you will accept what is included in the lease rate and no formula will be required as described in pages 9-10 of the RFO.

Answer: With the posting of Addendum # 2 to the ESBD, the Lease Rate Factor pricing requirements have been eliminated from the Pricing Sheets. Refer to Addendum # 2 Bid Package 2 Price Sheet revisions.



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Addendum # 4

18. Question: (Reference BID Package 2) Please confirm that in the DIR Customer Monthly lease payment, you just want the hardware lease payment, also you list a 24 month in this section and in the column above there is no 24 month column.

Answer: Addendum # 2 amended the Pricing Sheets to the RFO. Pricing Sheets B2 and C2 have a place for the monthly equipment lease cost (including copy allowances). A separate section of the Pricing Sheet is designated for proposing Maintenance Costs. The Lease Payment for 24 months appears in all relevant Price Sheets as amended in Addendum # 2.

The original Pricing Sheets that were posted to the ESD with the RFO will not be acceptable for evaluation. Only the Pricing Sheets that were amended in Amendment # 2 will be acceptable for evaluation.

19. Question: (Reference BID Package 2) Please confirm in the Annual Maintenance and Support section all vendors will use the Base Monthly Volume for the specific bands multiplied by the vendors CPC to come up with the monthly amount and the multiply that monthly amount by 12 to come up with the yearly amount.

Answer: Your question refers to the original Pricing sheets that were posted to the ESD with the RFO. Addendum # 2 was posted to the ESD and included revised Pricing Sheets. However, in Pricing Sheets B2 and C2, there are two sections available in the Annual Maintenance section of the Pricing Sheets, one is available for Vendors that may price maintenance by a set amount each month and the other is for Vendors that may price maintenance by cost per copy. **The original Pricing Sheets that were posted to the ESD with the RFO will not be acceptable for evaluation.** Only the Pricing Sheets that were amended in Addendum # 2 will be acceptable for evaluation.

20. Question: Pricing, Bid Package #2, Tab B2, Non MFD pricing: Cell C5, etc. states Annual Maintenance Including all supplies for leased device. Please confirm all items that make up this segment. For example is it maintenance, parts, labor, break-fix, supplies, staples, drums excluding paper?

Answer: Although not all-inclusive, annual maintenance for Non MFD would include, but not limited to, maintenance, parts, labor, break-fix, supplies that are required for the functionality of the devices such as staplers, toner and drums excluding paper. It is possible that 3D Printer supplies could differ.

21. Question: Pricing, Bid Package #2, Tab C2, MFD pricing: Cell C11, etc. states Annual Maintenance Including all supplies for leased device. Please confirm all items that make up this segment. For example is it maintenance, parts, labor, break-fix, supplies, staples, drums excluding paper?

Answer: Refer to the answer to Question 20.



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22. Question: Pricing, Bid Package #2, Tab B2 and C2: each band listed if there is more than one device to be bid in the category, please confirm how multiple devices are to be represented for each band. Example, is only one device to be listed and then copy the format for each additional device. This is important as not all devices within the same range have the same cost per page, etc.

Answer: The upper right-hand corner of each Pricing Sheet states, "One Product Per Page". If you are proposing ten devices, you will submit ten pages.

23. Question: Pricing, Bid Package #2 has Tab A2 for purchase of non MFD devices, B2 for Non MFD rent/lease, C2 for MFD pricing and D2 for MPS Pricing. Please confirm each of these tabs are separate and distinct offers from the other. For example are the MPS services stackable on any of the offers within tabs A2, B2 or C2? Another example would be if a device is offered for sale on Tab A2, could a customer ask to only utilize the maintenance portion offered on B2 with the cost per page?

Answer: Each Pricing Sheet tab is separate and unique from the other Pricing Sheet tabs.

24. Question: In Addendum 3 question 64 is stated that lease rates must remain fixed throughout the contract term. Interest rates can fluctuate up or down over the course of time. We respectfully request that we have the ability to change lease rates on a quarterly basis. These rate changes would not have any effect on leases that have already commenced. The users lease payment would not change during the course of an existing lease.

Answer: Lease rates must remain fixed throughout the contract term. When a Customer and a Vendor commit to a certain term at a certain rate, it provides reliable and stable benefits to both parties. The Vendor is responsible for employing a business strategy that is responsive to variable costs.

25. Question: Pricing, Bid Package #2, Tab D2: the pricing example provided in this tab references a per hour rate then a discount. Please confirm that the price basis for column C may be per hour, per unit, per device or any other unit of measurement to charge for the service offered and/or will multiple pricing options be allowed.

Answer: The category for Technical Discovery / Assessment Services is considered a one-time service which would most likely be priced per hour. The first page of Pricing Sheet D2 states, "*Bid Package 2 Pricing Index, Sheet D2, MPS Pricing Sheet provides several ways to price MPS according to your business pricing strategies. There is a format for pricing MPS by cost per copy or by percentage discount from MSRP. The miscellaneous/optional format is available for proposing MPS that are either defined or priced differently than in the categories listed in the first portion of the Price Sheet.*"

If your pricing or your service is different than what is called for in the column heading, it should be priced under Miscellaneous/Optional Pricing which begins on Line 83.



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26. Question: Pricing, Bid Package #2, Tab D2: for all pricing on tab D2 will the state accept a per device price versus a cost per copy? Or in addition to cost per copy? Please advise.

Answer: Price Sheet D2 is for Managed Print **Services**. If you wish to offer the sale of a Non-Multifunction device, you should use Price Sheet A2; if you wish to offer the lease or rental of a Non-Multifunction device, you should use Price Sheet B2; if you wish to offer the sale, lease or rental of a Multifunction device, you should use Price Sheet C2; if you wish to provide Managed Print Services, you should use Price Sheet D2. Additionally, refer to the answer to Question 25.

27. Question: (Reference Package 2 Pricing Index) Sheet C2 MFD pricing shows columns for monthly lease as well as copy allowance. If a manufacturer is only offering outright purchase of these devices can leasing information and copy allowance be omitted without penalty to the vendor?

Answer: Yes. Refer to the answer to Question # 26.

28. Question: Pricing, Bid Package 2, Tab B2 and C2, the accessory pricing requested states monthly lease price, what is the term this should be based on? Should this not have the option to offer a lease price for all the leasing options? Example price for 24 months, 36 months, 48 months and 60 months?

Answer: If you propose to price accessories and delineate by month (24, 36, 48, and 60 months) on Price Sheet B2 or C2, you should list them on separate lines, noting 24 Month Lease for (product description) on one line, 36 Month Lease for (product description) on a separate line, etc.

29. Question: Where are vendors supposed to provide the lease accessory pricing for the various lease terms (24, 36, 48, 60 lease terms) on MFD? There is currently only one column for lease price. Please add lease columns for 24 -60 months for accessory pricing.

Answer: Refer to the answer to Question # 28.

30. Question: (Reference Bid Package 2 Sheet C -MFD Pricing; Row 122 Accessories; Column G "Monthly Lease Price") Should there be a 24, 36, 48 & 60 month column, to correspond with the equipment monthly lease payment?

Answer: Refer to the answer to Question # 28.

31. Question: Page 4 of RFO, item #4, Support Services for Output Devices Owned or Leased by Customer: Please define what upgrading of devices includes.

Answer: Here is an example of an upgrade on a device: Your company supports a customer with maintenance for a device that was not installed with a document stacker and they request that a document stacker be installed. These Managed Print Services ensure that the Support Services provided under the existing maintenance agreement will



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encompass the installation and maintenance (upgrade) of the document stacker. Additionally, refer to the answer to Question in # 32, below.

- 32. Question:** Page 4 of RFO, item #6, Maintenance: Maintenance is requested in this segment, if this is a separate offer, please advise why maintenance is part of items 4 and 5 prior to #6. Is the maintenance requested in items 4 and 5 defined as what is outlined in item #6?

Answer: Bid Package 1, Section 2.1 Products, MPS Requirements states, “..... Each of the categories below have been given definition and specifications for the purpose of evaluation only and may not specifically define the services offered by the Vendor. In the event that the categories of MPS listed in the Pricing sheets do not adequately align with the Vendor offerings, Bid Package 2, Pricing Index, provides for miscellaneous and optional services as well as pricing.” You may add lines to the Managed Print Services category and define/describe the unique MPS Services that you propose and price by Volume Band Cost per Copy / Page of Print or you may price MPS Services that have different descriptions in Miscellaneous/Options.

- 33. Question:** Page 4 of RFO, item #5, Procurement and Support Services for Output Devices Provided by Vendor: What does bearing the cost of new devices mean, please explain? Further it states upgrades for such devices, please define what upgrades are and how the pricing is to be offered.

Answer: Since this category title lists Procurement, an example might be: in the event that a Customer with an existing maintenance agreement requests an upgrade which requires a network cable that is unique to a third-party, the Vendor would procure the network cable (i.e. procurement services) and complete the upgrade and charge the Customer for the part at a later date.

You are not limited to provisioning the MPS as defined in the Pricing Sheet; refer to the answers to Questions # 25, # 31 and # 32.

- 34. Question:** Page 5, Item #8 Consumables Supply Services: Does this term refer to the actual cost of the consumables or is this for shipping, delivery and management of the toner replenishment? Example is this only for the management of the auto toner delivery or is it to include the toner cost?

Answer: This is for the management/logistics (restocking, ordering, etc.) of all consumable supplies including staples, developer and toner but not paper. All costs for these supplies, including shipping will be the Vendor’s responsibility under maintenance support services.

- 35. Question:** Page 5, Item #11, Installation/Moves/Changes: This item refers to hard drive wiping/removal which is normally part of an end of lease return service versus an installation or change service. Suggest this be a separate offer or included in item 7 which addresses hard drive data purging.



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Answer: Refer to the answer to Question # 32. Additionally, you may add lines to the Managed Print Services category and define/describe the unique MPS Services that you propose and price by Volume Band Cost per Copy / Page of Print or you may price MPS Services that have different descriptions in Miscellaneous/Options.

- 36. Question:** Page 5, Item #14, Standard and Ad-hoc Reporting and Documentation: Standard and Ad-hoc reporting is part of Item #4, please define further how this is different from the inclusion in #4 above? If it is the same as #4, where should reporting be included? Please note that standard and Ad-hoc Reporting was not included in item #5 above, please confirm if it should be?

Answer: Refer to the answer to Question # 32. You may add lines to the Managed Print Services category and define/describe the unique MPS Services that you propose and price by Volume Band Cost per Copy / Page of Print or if your pricing is bundled, you may price the MPS under Miscellaneous/Optional.

- 37. Question:** Would the state please consider an additional extension of 2 weeks given the number of open items regarding the pricing spreadsheet which will take a significant time to complete. We appreciate the consideration.

Answer: Addendum # 2 extended the Due Date for submissions to February 9, 2015 at 2:00 P.M. At this time, DIR does not contemplate another extension.

- 38. Question:** If Model number is the same, can we use the same page for additional part #? Example, Xerox WC 3655/S and Xerox WC 3655/SM.

Answer: No, the device description would be different, as would the device part number and therefore the devices should be proposed on separate sheets (pages).

- 39. Question:** (Reference Bid Package 3 – Sample Contract for Products and Related Services Please see Page 4 – Section 7D Master Operating Lease Agreement) This Section states that the MOLA is Appendix F when in actuality the MOLA is Appendix E (In the OOP Section C and in the Appendix Section). Section 7E Master Lease Agreement This Section states that the MLA is Appendix G when in the OOP Section C and in the Appendix, that MLA is Appendix F. Is DIR planning on issuing a correction or clarification?

Answer: This is a sample contract. Any corrections to an actual contract will be made at the time of contract award.

- 40. Question:** Reference Appendix A Standard Terms and Conditions Section 11B.4(b) Termination for Cause PO: Customer or Order Fulfiler 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 10.B.2 above, upon the following preconditions. Please clarify if the correct reference should be 11.B.2 Absolute Right.

Answer: The correct reference should be 11.B.2.



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- 41. Question:** Addendum # 2 added rentals to the RFP. However they were only added to the price sheet. Can you provide us with the terms and conditions of a rental agreement? Are we required to offer rental pricing to be considered for an award?

Answer: You are not required to offer rentals; if your business plan does not include rentals, you should not propose rentals. One Vendor may submit a proposal that offers only one device or one service while another Vendor may submit a proposal that offers 500 devices with six (6) services. If a Vendor proposes rentals, they may submit a rental agreement, or any other type of document with their proposal. Refer to Bid Package 1, 3.7.3 Mandatory Response Contents, 8) Software License Agreements, Schedules and/or Service Agreements for further information.

- 42. Question:** Are vendors mandated to offer a rental plan or is it optional?

Answer: Refer to the answer to Question # 41.

- 43. Question:** Regarding the required references, should all references be for the prime vendor, or prime vendor plus any subcontractors?

Answer: References should be for the Vendor that is proposing an offer to DIR in anticipation of a contract award.

- 44. Question:** Reference Bid package 1, Appendix A, Vendor Information, Page 22, Item 12, 13, 14.) The State is requesting entity names, total sales, quantity and discount % off list price. This list of customers can be quite extensive as well as contain confidential information. In addition, % discounts off of list price can vary according to product line and specific products. Can respondents simply indicate other State contract numbers they hold and list a few State agencies, without having to reveal total sales volume and quantity of units sold?

Answer: No. Incomplete or missing information will be scored accordingly.

- 45. Question:** Since VPATs are typically a requirement for federal opportunities, if proposed vendor does not have all VPATs completed by time of bid submission, would the state allow vendor to provide the remaining VPATs at a later date?

Answer: The Vendor should provide the data that they have at time of the submission of their proposal. In order to demonstrate their effort they should detail the progress that they have made to-date to complete the VPATs. Additionally, the Vendor should describe the strategy they are employing to complete the remainder of VPATs and provide an Expected Availability Date (EAD) for final submission but, in any event, all VPATs should be available on the contract start date and available via links from the Vendor's DIR landing page.

- 46. Question:** If vendor does not have all VPATs completed at time of bid submission, would their RFO be rejected?



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Answer: If VPATs are incomplete at the time of submission, the Vendor's proposal would not be rejected. Refer to the answer for Question # 45.

47. Question: Should vendor only propose products for which they have completed VPATs?

Answer: Refer to the answers to Questions # 45 and 46.

48. Question: Now that MOLA has been removed from price sheets, where do we provide our MOLA Lease pricing for all available lease plans 24-60 months?

Answer: If you propose to differentiate costs between a MLA and a MOLA, you could submit separate pages for each lease type and annotate in the Product Description that the pricing is for MLA or MOLA. Or, all other pricing components being equal, you could also enter "MOLA \$10 / MLA \$12" in the Monthly Lease Cost cell. In that instance, indicate that the pricing is different between the two agreements as a footnote and also in the Product Description.

49. Question: Pricing Sheet TAB A2 Non MFP Products Pricing should be eliminated and Sheet B2 should have a column added for customer purchase price and have all NON MFP Products on one tab. It is a very inefficient method of submitting pricing. In addition to being very time consuming, if a model has purchase and lease pricing associated with it, it should all be on one sheet. It will be very confusing for the State and end users to go back and forth between the two sheets to see check the model numbers for purchase and lease pricing for the same device.

Answer: While DIR appreciates the input, the Pricing Sheets will not be further revised.

50. Question: Wide format service is priced as a "Per Square Foot" basis not a Cost per Copy (CPC). Would it be acceptable for the vendor to indicate this as a foot note for maintenance? Also, there are color wide format printer involved that will have cost per square foot for color impression price and cost per square foot for B&W impression price. Maintenance price sheet needs to have a "Per Square Foot" a column for B&W Impressions and one added for Color Impressions. Please adjust price sheets accordingly or allow vendors to insert pricing themselves.

Answer: If your Cost Per Copy differs, enter "B&W .0001 SF / Color .0002 SF" in the cell and indicate the "Per Square Foot" Unit modification as a footnote and in the Product Description.

End of Addendum # 4



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Addendum # 5

This Addendum # 5 to Request for Offer DIR-TSO-TMP-224:

1. Extends the Deadline for DIR to respond to Vendor questions to 01/30/2015;
2. Extends the Deadline for DIR to receive Vendor references to 02/17/2015;
3. Extends the Deadline for submitting Responses to the RFO to 02/17/2015;
4. Changes the Start Date for the Evaluation of responses, negotiation and contract execution to 02/18/2015; and
5. Contains additional answers to the second round of questions which were submitted in writing to the Purchasing Point of Contact prior to the due date.

The RFO is amended as follows:

1. Bid Package 1, Request For Offer, Section 3.3.1. RFO Schedule, is amended as follows:

Date/Time	Activity
November 24, 2014	Publish RFO on Electronic State Business Daily (ESBD)
December 8, 2014 1:30 pm (CT)	Vendor Conference and webinar [optional]
December 11, 2014 2:00 pm (CT)	Deadline for submitting questions
January 9, 2015 2:00 pm (CT)	Deadline for posting answers to questions on the ESBD
January 14, 2015 2:00 pm (CT)	Deadline for the submission of Round 2 questions
January 30, 2015 5:00 pm (CT)	Deadline for posting answers to Round 2 questions on the ESBD
February 17, 2015 2:00 pm (CT)	Deadline for DIR to receive Vendor references
February 17, 2015 2:00 pm (CT)	Deadline for submitting Responses to RFO
February 18, 2015 - until completed	Evaluation of responses, negotiation and contract execution

2. Questions and Official Answers:

1. Question: The examples of the description fields on Sheet A2 vs Sheet C2 appear to require less information for the description of the item. Is the state requiring a more detailed description for MFD devices vs. stand-alone printers?

Answer: The contents of the description fields are examples only. DIR prefers that you provide a detailed description.

2. Question: If vendor offers multiple discounts per category, as referenced below, are they still required to enter each part# & description on the non-MFD price sheets (A2)?

Answer: Yes.



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3. Question: If the vendor choose only to offer "purchase" options for printers & MFDs, would their bid response be rejected because they opted not to provide lease and/or rental options or MPS offerings?

Answer: No, your proposal would not be rejected. You are not required to offer rentals. If your business plan does not include rentals, you should not propose rentals. One Vendor may submit a proposal that offers only one device or one service while another Vendor may submit a proposal that offers 500 devices with six (6) services.

4. Question: Does the state interpret "related services" to be equivalent to a mfg. extended warranty?

Answer: Bid Package 1, RFO, Section 2.2 Related Services states, "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 product installation, maintenance and support, managed services and product 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". An Extended Warranty would quantify as Maintenance and Support Services and therefore could be defined as Related Services.

5. Question: The format of the pricing is different from previous contracts; if awarded a bid, will these templates become the official price list or will DIR allow the vendors to create their own format for a contract price list?

Answer: Pricing Sheets are unique to a solicitation. DIR does not have a singular official Price List. Vendors may not format their contract Appendix C, Pricing Index.

6. Question: If the vendor's printer products are not currently certified and they provide the state with their efforts toward the certification process, will the state impose a deadline to the vendor when their products must be EPEAT certified?

Answer: No, the state does not impose EPEAT certification deadlines.

7. Question: Would the state remove the vendor if their printers/MFDs are not EPEAT certified?

Answer: No, DIR would not reject a Vendor's proposal if any of their products were not EPEAT certified. The last paragraph of Bid Package 1 RFO, Section 2.1 states, "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 (Appendix A, item 19)".

8. Question: If the vendor proposes dot matrix printers, are VPATs required for them as well or are VPATs only applicable to mono/color laser and/or LED printers and/or stand-alone devices?



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Answer: Voluntary Product Accessibility Template® (VPAT), would include dot matrix printers. VPATs are tools used to document Information and Communication Technologies (ICT) product conformance with the accessibility standards under Section 508 of the Rehabilitation Act.

9. Question: Dell, HP, IBM & Panasonic are excluded from responding to this bid based on them having existing Manufacturer Branded contracts with DIR. If other vendors (i.e., manufacturers) hold a current DIR with their branded products, why would they not be excluded from responding to this bid?

Answer: DIR makes the determination which manufacturer's products/services will be solicited and awarded as Branded contracts. Because a DIR Vendor is a manufacturer and sells their own product does not necessarily dictate that they have a Branded contract. Branded contracts are solicited, awarded and titled as Branded. In a situation where a Vendor has a DIR Branded contract but it does provide Print, Scan, Facsimile, Multifunctional Devices, 3D Printers and Related Services and Managed Print Services Contracts, they would not be included in the solicitation as an excluded Branded product.

10. Question: Once awarded, will this new contract replace all current DIR-SDD-xxxx contracts that are set to expire in 2015?

Answer: The posting of RFO DIR-TSO-TMP-224 coincides with the expiration of multiple MPS contracts. If a Vendor holding a current contract is awarded a new contract as a result of best value, the current contract holder has the option to continue the current contract through the termination date. Any contract award resulting from this competitive solicitation is not intended to replace a contract, rather to provide opportunities for eligible Customers to access sources for their Print, Scan, Facsimile, Multifunctional Devices, 3D Printers and Related Services and Managed Print Services needs and requirements.

11. Question: In the prior opportunity, DIR-SDD-TMP-160, the question was submitted: "We respectfully request the state to review the benefit derived by the contract end users if they are unable to source toner cartridges either along with the purchase of the equipment or for subsequent use from the same contract. Typically contract users return to the same contracts to obtain supplies as needed. This one stop shopping is one of the primary features of a DIR contract. Its offers the DIR contract user the benefit of convenience and familiarity while also providing an additional source of revenue payable to DIR through the administrative fee. Taking into consideration the possible benefits would the state please consider restating the language to one of the following examples to allow for either the purchase of new and or remanufactured toner cartridges in Request for Offer DIR-SDD-TMP-160? "This RFO allows for new toner cartridges but specifically prohibits remanufactured toner cartridges" or "This RFO allows for new toner cartridges and remanufactured toner cartridges."

Addendum #4 later modified Section 2.1 Products, per the following:

Section 2.1, Products, is revised as follows:

".....This RFO specifically prohibits remanufactured toner cartridges. Vendors may submit discounts for new toner cartridges."



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In the present opportunity, DIR-TSO-TMP-224, Section 2.1, Products the section again prohibits remanufactured toner cartridges, as before, but does not appear to either specifically include or exclude the potential need for the acquisition of individual new toner cartridges on an as needed basis, outside the context of inclusive MPS and CPC situations. As this flexibility to choose the most suitable acquisition option can be so important for entities that operate in lower volume environments, 50 PPM and lower, that neither have a large population of machines nor the desire to purchase a full maintenance option would the state please consider restating the language of Section 2.1, Products to affirm the possibility that vendors may offer this option by adding the following phrase to Section 2.1 Products: Vendors may submit discounts for new toner cartridges or simply confirm that vendors may respond with this option if the state has already made the option inherently included elsewhere in the RFO.

Answer: Each of the Pricing Sheets have Accessories and Supplies and Miscellaneous/Optional Pricing categories. You should price new toner cartridges in the Accessories and Supplies category. There is no connection between RFO DIR-SDD-TMP-160 and RFO DIR-TSO-TMP-224.

12. Question: Sheet C – Multifunction Device (MFD) Pricing Sheet. The sheet appears to clarify the options for service if supplies are included for CPC but does not provide an opportunity to respond to if the supplies are purchased separately. If this page is only being used for evaluation purposes then it would not create a problem for the vendors if they could submit that information under the Miscellaneous MFD Service/Options page but if it must be included on the pricing sheet in order to be considered on the contract would the state consider adding an additional column so vendors may reply with the price for maintenance (time and materials only), in particular for speeds of 50+ pages and below for annual contracts at that volume?

Answer: If a product is sold separately, it should be priced in the Accessories and Supplies category. If a service is sold separately, it should be priced in the Miscellaneous/Optional category. Pricing Sheets are not used for evaluation purposes only. Pricing should be by individual product or service and not by category.

In Pricing Sheets B2 and C2, there are two pricing options available in the Annual Maintenance section of the Pricing Sheets, one is available for Vendors that may price annual maintenance by a set amount each month and the other is for Vendors that may price maintenance by cost per copy. If a Vendor proposes to price Annual Maintenance as an annual cost versus a monthly cost, indicate that the pricing is different (annual and not monthly) in the Product Description and under the Monthly Base Maintenance cell indicate: **\$200/year**. Also provide a footnote that describes the difference. **The original Pricing Sheets that were posted to the ESBD with the RFO will not be acceptable for evaluation.** Only the Pricing Sheets that were amended in Addendum # 2 will be accepted for evaluation.

End of Addendum # 5