



# **Adobe® Volume Licensing**

## **Enterprise Agreement**

### **Program Guide**

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## Adobe Enterprise Agreement (EA) Summary

The Adobe Enterprise Agreement (EA) is a three-year volume licensing program that makes it easy to standardize on Adobe products widely across organizations. The EA program offers select products and benefits that:

- Enable standardization across large organizations
- Provide the best pricing available on volume purchases
- Reduce management, deployment and purchasing costs
- Enable organizations to stay current with access to the latest software versions available

To qualify for EA, a minimum purchase of licenses and Enterprise Maintenance and Support (M&S) is required for the 3-year term of the agreement. In addition, customers must agree to the terms and conditions online, or sign up through a paper based-agreement.

<b>Definition</b>	<b>Standardize</b> <ol style="list-style-type: none"><li>1. Everyone at the same organization who is completing the same task --such as creating a PDF--is using the same tool (such as Acrobat).</li><li>2. All users of a given product are using the same version across an organization.</li></ol>
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## EA Discount Levels & Tiers

One of the benefits of the EA Program is that customers will have access to the products covered by their EA at a predictable price for the entire three-year term. At the time of enrollment, the customer's EA Discount Level and Discount Tier will be established and will remain in effect for the duration of the EA term. Adobe will offer the same pricing on products covered under the EA to the EA Reseller for the three-year term.

### ***Discount Level***

The Enterprise Agreement utilizes two different criteria to establish a price level for each customer. The first criterion is the customer's current CLP Discount Level. If the customer has an active CLP membership, then the EA Discount Level will be the same as the customer's current CLP Discount Level. If the customer has no CLP, then the customer will enter EA at Discount Level 1.

## Discount Tier

The second criteria for determining EA discount is the Discount Tier. There are seven discount tiers within each level, so that depending on the number of units of M&S purchased with the initial order, customers can achieve a deeper level of discount within that tier.

## Enterprise-wide coverage

In addition to the standard Discount Levels, (1-4 for commercial customers and levels 1 & 2 for government) there is an additional Enterprise-wide Discount Level which offers additional discounts on some products for organizations that choose to cover 100% of the computers with licenses and M&S under the EA.

WORLDWIDE COMMERCIAL CUSTOMERS																				
Customer Type: Commercial entity	As defined in the Enterprise Agreement terms and conditions.																			
Basis of EA	Current Cumulative License Program (CLP) Discount Level determines EA Discount Level. If no active CLP, customers have EA Discount Level 1.  Total number of units of M&S on initial order determines Discount Tier																			
<table><tr><th>Discount Level</th><th>Discount Tier</th><th>Minimum Number of M&amp;S Units</th></tr><tr><td rowspan="7">1  2  3  4  Enterprise Wide Level (100% coverage)</td><td>1</td><td>100</td></tr><tr><td>2</td><td>250</td></tr><tr><td>3</td><td>500</td></tr><tr><td>4</td><td>750</td></tr><tr><td>5</td><td>1,000</td></tr><tr><td>6</td><td>1,500</td></tr><tr><td>7</td><td>2,000+</td></tr></table>			Discount Level	Discount Tier	Minimum Number of M&S Units	1  2  3  4  Enterprise Wide Level (100% coverage)	1	100	2	250	3	500	4	750	5	1,000	6	1,500	7	2,000+
Discount Level	Discount Tier	Minimum Number of M&S Units																		
1  2  3  4  Enterprise Wide Level (100% coverage)	1	100																		
	2	250																		
	3	500																		
	4	750																		
	5	1,000																		
	6	1,500																		
	7	2,000+																		
Agreement Term	Three (3) years, between Customer and Adobe																			

Annual True-up	Annually on each anniversary
License Type	Perpetual license with 3 years Maintenance & Support

## WORLDWIDE GOVERNMENT CUSTOMERS

Member Type: Government entity	As defined in the Enterprise Agreement terms and conditions.																			
Basis of EA	<p>Current Cumulative License Program (CLP) Discount Level determines EA Discount Level. If no active CLP, customers have EA Discount Level 1.</p> <p>Total number of units of M&amp;S on initial order determines Discount Tier.</p>																			
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License Type	Perpetual License with 3 years Maintenance & Support																			

## Eligibility

New or renewing EA customers agree to the terms and conditions and enroll online in the EA program with Adobe. When approved, the customer receives an Enterprise Agreement (EA) Number online at the time of submission, and via email from Adobe.

To qualify for a new EA, customers must meet both of the following criteria:

1. Order a minimum of 100 units of a combination of new, upsell<sup>1</sup> or upgrade licenses that are offered under the EA program.
2. Order M&S for all existing licenses and new licenses being purchased under the EA for the full three-year term. Existing licenses must be the current version and includes licenses purchased through any volume licensing program or retail version. The M&S order must meet the minimum required for the EA program. M&S shall be purchased on an annual basis for all EA licenses throughout the EA term.

### NOTE

All EA licenses must be at the then current shipping version prior to purchasing M&S. Upgrade licenses need to be purchased for all older version licenses of products covered under the EA at the commencement of the EA term.

If the customer has existing licenses for products covered in the EA, then these licenses need to be included in the EA by purchasing M&S for them for the term of the EA. For example: If a customer signs an EA for Acrobat XI Standard and they have existing Acrobat X and 9 Standard licenses that were purchased through CLP, then the customer would need to include these licenses in the EA and buy upgrades for those licenses and M&S for the term of the EA for all existing Acrobat Standard licenses.

## Self-enrolled Affiliates under CLP

CLP Program Members who have Self-enrolled Affiliates participating in their CLP have the option of either listing the Self-enrolled Affiliates as part of their Enterprise on the EA enrollment form, (and will share the same serial numbers as the Customer) or having the Self-enrolled Affiliates enroll in their own EA.

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<sup>1</sup> Upsell shall mean conversion of a lower edition license into a higher edition license of a product within the same EA product family (e.g. conversion of an Acrobat Standard license into an Acrobat Professional license);

## Agreement term

The EA Term begins on the day that Adobe accepts the customer's agreement enrollment (known as the effective date) and will be active for 36 months (to the day) from that date.

## Product availability

The following products are offered for purchase under the EA program.

- Acrobat Standard, Acrobat Professional
- Adobe Presenter

Once customers qualify for and enroll in EA, they may purchase any combination of eligible Adobe products on one EA agreement.

## Enrollment

Customers may enroll in EA online at Adobe.com by completing the online enrollment form and clicking to accept the program terms and conditions. Customers wishing to sign a paper document can print a PDF of the online enrollment form and submit it with a signature.

## License type

**Perpetual license** is the licensing option offered under EA. It allows customers to purchase a single license and grants the rights to use that license in perpetuity in accordance with the terms and conditions of the applicable EULA (End User License Agreement).

## Designated ALC

EA participants have the option to designate an Adobe License Center (ALC) on the EA enrollment form. A Designated ALC is a reseller authorized by Adobe to offer the EA program for Commercial, and/or Government customers. (In this Program Guide the term "Reseller" is used to describe the entity from whom the customer orders Adobe software.)

By choosing a Designated ALC, the customer is authorizing Adobe to send the Designated ALC information pertaining to the customer, its agreement, and orders.



## Changing Resellers

During the three-year EA term, the Customer has the option to work with whichever Reseller they choose. If a customer desires to change the Reseller from the time in which they enroll to the time of the initial order or between any True-up orders, then the customer must submit a Change of Reseller form to Adobe. This form may be obtained from a customer's current Reseller. Change of Reseller forms may not be submitted during the 90 days preceding the customer's anniversary date.

## Adobe's Licensing Website

The Adobe Licensing Website (LWS) (<https://licensing.adobe.com/>) allows customers to access pertinent volume licensing information including: detailed purchase history, LWS account information, product serial numbers and agreement expiration dates.

New customers receive an email containing instructions on setting up their LWS account, which includes information on how to use their email address as the login, and how to set a password.

### ***End User ID number***

Adobe establishes an End User ID number for each EA customer. The same End User ID can be used for CLP purchases and EA purchases in order to track all volume licenses in one central place. Information about all orders for that customer can be found within the Adobe Licensing Website (<http://www.adobe.com/volume-licensing>) using the End User ID. This number is different from the customer's Enterprise Agreement Number, which is valid only during the three-year duration of the Enterprise Agreement. Customers retain the same End User ID even after an agreement expires and a new one begins.

### ***Reports***

Customers may run a Purchase History report that summarizes all orders reported to Adobe.

## Customer Service

Adobe Customer Service provides support for Adobe Volume Licensing participants. Customers may call 1-800-833-6687 or go to <http://www.adobe.com/support/avl/>. Outside the U.S. and Canada, customers can visit their local AVL Customer Service page at Adobe.com

## How to Order

EA customers work directly with a Reseller of their choosing to place orders for Adobe software and Maintenance & Support. During the term of an EA, the customer places a

total of four orders: an initial order and two subsequent True-up orders at each anniversary to cover additional licenses deployed throughout the year and for the following year M&S. Customers will also place one final order at the end of their term to cover any licenses that were deployed since the previous true-up order.

### ***Initial Order***

Within 30 days of receipt of the Enterprise Agreement Number, the customer must submit a purchase order for an initial order to their Reseller. This order must meet the minimum number of units selected during the enrollment process for the EA Discount Tier selected. The customer then receives an order confirmation email that includes directions for accessing serial numbers for the products ordered.

If this purchase order does not meet the minimum units for the selected Discount Tier, the order is not processed, serial numbers are not generated, and the order is returned for correction. If the customer does not correct and resubmit the order within 30 days, Adobe sends the customer and the Designated ALC, if chosen during enrollment, an email notice indicating the initial order has not been received. Adobe may suspend and/or terminate the Enterprise Agreement if the initial order is not met within 45 days.

### ***Annual True-up***

At each EA anniversary, EA customers are required to report any growth on their deployment of Adobe products covered under the EA, or in the case of Enterprise Wide based EAs, EA customers shall report any increase in the number of computers in the customer's Enterprise. EA customers are required to place a True-up order within 30 days of their anniversary date (before or after) to purchase additional licenses, if any, with M&S. Regardless of whether or not additional licenses need to be purchased, Customers must purchase M&S for all EA licenses, or computers in the case of Enterprise Wide based EAs, on each anniversary date for the upcoming year throughout the EA term.

#### **Examples**

1. ABC Company started an EA by purchasing 1,000 Acrobat Standard licenses and M&S. After one year, on the anniversary of their EA, ABC Company has grown and they are now using 1200 licenses of Acrobat Standard. In this case, ABC Company owes Adobe a "true-up" order for 200 licenses and M&S for 1,200 licenses for the forthcoming year to reflect the increased usage.
2. DEF Company started out their EA by purchasing 350 licenses of Acrobat Pro. After one year, on the anniversary of their EA, DEF still has 350 licenses of Acrobat Pro deployed. In this case, DEF Company needs only to purchase 350 units of M&S to cover year two of their EA.

To purchase anniversary M&S and/or True Up orders, Customers need to contact their Reseller.

## **No Substitution**

On the annual True-up order, customers are required to purchase Maintenance and Support for the following year for the same licenses that were covered at the beginning of the agreement. Any additional licenses purchased must also be covered with M&S at the time of the annual true-up. Substitutions are not permitted.

### **For example:**

ABC Company enrolled in EA and purchased 100 Acrobat Professional licenses. They also purchased 100 units of M&S for those licenses. At True-up time, ABC Company purchases 10 units of Presenter. ABC Company is required to purchase 100 units of M&S for Acrobat Professional and 10 units of M&S for Presenter, for a total of 110 M&S (not 90 for Acrobat and 10 for Presenter) on their True-up order.

## **CLP Point accrual**

Customers are strongly encouraged to enroll in CLP prior to enrolling in EA. EA customers that have an active CLP prior to enrolling in EA will receive points towards their CLP for the initial EA purchase and with all annual true-up orders. For qualifying EA purchases that are entitled to receive CLP points, the EA point values shall be equivalent to the then-current CLP point values for those purchases.

## **License Certificates**

Adobe provides a PDF certificate of each transaction that occurs. The certificate is automatically generated and posted to the customer's account in LWS. Certificate items include:

- Address
- Adobe End User ID
- Adobe Order Number
- Certificate ID
- Enterprise Agreement Number
- End User Name
- End User PO (purchase order)
- Licensing Program
- Products Licensed
- Quantity licensed
- Quantity returned, transferred, or upgraded
- Serial Numbers
- SKU Description
- SKU Number

- Stamp or other mark on certificate that indicates if the order is Returned, Upgraded, or Transferred
- Start and end dates for License (if applicable) & Maintenance & Support.
- Total Product Point Value.

**NOTE**

License certificates are for customer reference only and do not serve as valid documentation for compliance audits.

## Media and documentation

Documentation is available online for most Adobe desktop products. Customers may order any software media or printed documentation that they require. Quantities must not exceed the number of licenses being ordered and/or owned.

**NOTE**

Media and printed documentation orders do not count toward minimum units or point value.

## Electronic Software Delivery (ESD)

For EA customers, Adobe provides Electronic Software Delivery (ESD) for selected products via the Adobe Licensing Website (LWS) (<https://www.licensing.adobe.com>). Customers can only download products for which they currently have licenses, and some of the Adobe products may not be available through ESD. Adobe Customer Service can assist customers with ESD download issues.

Adobe provides the customer's Program Administrator, and any Deploy-to contacts listed on an order, with access to a secure ESD server.

The Program Administrator and the Deploy-to Contacts may grant additional users access to LWS with rights to use ESD, and may also transfer their administrative rights to a different contact within the organization.

**NOTE**

The number of downloads for each product is tracked on the download site and is available for customers to view on the ESD download screen.

## Serial Numbers

Customers are issued one serial number for each specific product as defined by version, language, and platform except for products that come in both Macintosh® and Windows®

versions. For these products, customers receive serial numbers for both platforms, even when only one platform is licensed.

Customers use their respective serial numbers for all installations of a given product. Serial numbers do not change when Enterprise Agreements are renewed as long as the same End User ID is selected on the enrollment.

Customers can retrieve serial numbers by logging into LWS and following the online instructions.

## Returns

Purchases made under an Enterprise Agreement may only be returned for one of the following reasons:

- The wrong product, language, platform, or quantity was delivered. (This could include Adobe shipping the item requested on the Reseller's purchase order, but this information not matching what the customer ordered.)
- The customer receives a duplicate shipment or duplicate billing (due to a duplicate purchase order from the Reseller).

Adobe must approve any request for returns. The customer must make the request for a return within 30 days of the original license order. The request must state the reason and provide proof of the original order date. An Adobe Letter of Destruction provided by the Reseller (if applicable) with an original authorized signature from the customer must be received in order to issue credit. In addition, the customer will also receive a confirmation one-way Letter of Destruction with every return.

If a return is approved, and the customer has an active CLP, the customer's CLP point totals will be adjusted in the next monthly cycle.

A customer cannot make a partial return of an order. Following are two return examples that would cause a return to move the EA to a lower level:

Example 1 - The return would place the customer in a lower Discount Tier. The request may be rejected until the customer amends its EA to the new Discount Tier.

Example 2 - The customer wishes to return 100% of its initial order and continue its EA membership. The request is approved only if it is accompanied by an order that meets the minimum initial point requirement for the customer's original Discount Level.

## Enterprise Maintenance & Support

The Adobe Enterprise Agreement (EA) includes mandatory Enterprise Maintenance and Support Program (M&S). Customers are required to purchase M&S for all licenses/seats

for all products covered under the EA. The M&S Program provides customers with the latest versions of products licensed under the EA program (upgrades) along with expert technical support coverage at a 24\*7 basis. Points are accumulated for the M&S Program purchases for CLP Members and the overall quantity of units of support contribute to the customer's EA Discount Tier.<sup>2</sup>Maintenance

The Maintenance component of M&S provides the customer with the right to receive any upgrades that Adobe makes generally available during the term of their M&S coverage.

Coverage begins on the effective date of the EA and ends on the expiration date of the EA (subject to payment of the appropriate M&S fees year-over-year).

**NOTE**

Customers may not order more units of M&S than the number of applicable EA licenses deployed in the customer's enterprise.

If Adobe discontinues an EA product for which a customer has ordered M&S, the customer shall not be entitled to a refund of the pre-paid M&S fees.

## ***Enterprise Support Program***

The support program included in Adobe EA, **Enterprise Support Program**, is a 24\*7 unlimited incident support coverage directly delivered by Adobe Global Support Center of Excellence through multiple support channels.

The Support Program framework and features are designed to provide customers with responsive support coverage to address any technical or usage questions they may have in deploying, running and maintaining Adobe software (purchased under EA) in their environment or systems.

### **Framework and Features**

- **Hours of Support Availability** - 24x7x365. Adobe support engineers are available to attend to the Enterprise Support around the clock.
- **Unlimited Number of Incidents** – EA customers can register as many support incidents as they wish to during the M&S term. Adobe defines an incident as an issue that focuses on one aspect of the product – e.g. use of a specific documented feature of the product or assistance with a specific problem or error message

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<sup>2</sup> For United States government customers, this requirement is subject to fiscal funding requirements and termination rights as addressed in the Enrollment Form/Volume Licensing Enterprise Agreement.

- **Four (4) Authorized Support Contacts** - Under this Enterprise Support program, customers may select up to four individuals from their organization as Authorized Support Contacts to raise EA support cases to Adobe. Customers may change the Authorized Support Contacts at any time during the M&S term by providing Adobe with the updated information.
- **Target Response Time** - In order to serve customers most effectively, Adobe will assign a priority level and corresponding target response time based on the context of each EA support case. Target Response Time means the elapsed time from Adobe's receipt of a properly documented request for an EA support case from an Authorized Support Contact to Adobe's assignment of a support engineer to work such EA support case. Since the scope and complexity of the issues may vary, Adobe cannot guarantee resolution within specific time frames. However, Adobe will make an effort to resolve customer's EA support case as quickly as possible.

The Target Response Time during normal business hours are -

- **Priority 1:** 1 hour
- **Priority 2:** 2 hours
- **Priority 3:** 4 hours
- **Priority 4:** 1 business day

Issue Type (Severity)	Description
Priority 1 (Critical)	Extremely serious interruptions to a production system.
Priority 2 (Urgent)	Serious interruptions to normal operations, will negatively impact an enterprise-wide installation, urgent deadlines or at risk.
Priority 3 (Important)	Interruptions in normal operations.
Priority 4 (Minor)	Minimal/ no interruptions to normal operations.

## Support Channels

- **Phone Support** - Upon commencement of the customer's EA, a designated phone number will be provided to all EA customers, which is directly managed by Adobe Global Support Center of Excellence.
- **Email Support** - Upon commencement of the customer's EA, an email alias will be provided to all EA customers, which is directly managed by Adobe Global Support Center of Excellence.
- **Web Support/Customer Support Portal** - Adobe will provide customers' chosen Authorized Support Contacts with credentials to be able to log on to Adobe Customer Support Portal. In this portal, customers can raise support cases, track progress and review services.

**Service Scope**

- **On-boarding Service** –To help EA customers quickly get started on the support program and to introduce them to the expertise and resources available, Adobe will set up an on-boarding session with EA customers within 30 days of the effective date of the customer’s EA. Adobe Global Support Center of Excellence will manage and deliver this introductory communication. Customers’ Authorized Support Contacts and Purchasing Managers will benefit from this session. The session may include but is not limited to the following -
  - Introduction to Adobe Global Support Center of Excellence
  - Enablement on Adobe Licensing Website
  - Walkthrough of License and Support Contracts
  - Sharing of Adobe best practices documentation available
  - Introduction to the channels for support
  - Q&A session
- **Deployment Planning Support** – The Enterprise Support Program aims at providing a responsive support during customers’ critical milestones. During new product deployment or upgrade, the Adobe Global Support Center of Excellence will provide remote support as a regular case EA support case.
- **Production Support** - Covers questions related to installation and configuration within the technical documentation provided with the product. Adobe will not provide support beyond the recommended technical details provided with the product. Adobe support engineers will offer tips, best practices and remote support on how to install and configure the product(s) based on customer’s needs.
- **Interoperability issues** – Support shall be provided for cases related to connections between Adobe’s products, between the product and the operating system, and between products and required technologies (databases, web servers, etc.). Support is limited to set up of the Adobe product and configuration between the products, but shall not extend to the configuration of any 3rd party technology (Support will ensure “connection” is working, but will not extend further).
- **Technical Problem Resolution** - Adobe EA customers can raise unlimited support cases for technical problems outlined within the technical documentation provided with the product. The scope includes diagnosing and troubleshooting incidents reported in EA support case. Adobe will work to find resolution or recommend alternative methods (workarounds) to ensure the business continuity of customers.  
**Resolution** - Once an issue is accepted as being within the extent of technical



support, resolution of a technical support issue shall be defined as accomplishing any one of the following:

- Providing a reasonable solution to the issue
- Providing a reasonable work-around to the issue
- Determination by Adobe that the issue is an enhancement request and forwarding the request to Adobe Product Management
- Escalation by Adobe of the incident/product defect to Adobe Engineering for review

**Workarounds** - When a problem is reported, the primary objective is to find a satisfactory solution as soon as possible. The first step is to determine whether there are certain coding techniques or workarounds that meet with customer's business requirements. A workaround provides a temporary solution that will allow the customer to complete a task that would not have been otherwise possible due to the initial problem or limitation of the software.

- **How to Support on Product features** – Adobe will offer support for documented features within Adobe products to help customers get the most out of the products. It must be specific to a product feature, and doesn't extend to questions on concept or process.
- **Patches and Hot Fixes** - During software program usage, issues may arise that are unique to certain operating environments. Additionally, old software can have compatibility issues with new systems or new software may be incompatible with old systems. From time to time Adobe may release a patch or hot fix to address such issues. EA customers are entitled to receive these patches and hot fixes.
- **Remote Diagnostics/ Support** - Using Adobe Acrobat Connect Professional software, customers can give temporary control of their desktop to Adobe support consultants for quick and efficient troubleshooting and problem resolution.

**NOTE**

Customers will only get support coverage for the licenses under EA. For support coverage on products purchased under CLP, customer may purchase Gold Support program separately.

### **Payment Options**

Customers must pay the M&S fee in three annual installments; at the start of the agreement to cover year 1, on the first anniversary to cover year two, and on the second anniversary to cover year three.

## ***Enterprise Maintenance and Support Renewals***

Adobe will notify customers at least 60 days prior to the expiration date of current agreement to assist them with the renewal process. If customers wish to discuss any component of their M&S renewal, they can contact one of our renewal representatives or Adobe partner.

## ***Service Enhancement Options***

These options can be purchased as add-ons to a customer's current support program, to tailor support coverage to the business needs:

- **Additional Authorized Support Contacts** – Additional Authorized Support Contacts can be purchased and can be added at any time during the M&S term.
- **Enterprise Advantage Support** - In addition to Enterprise Support, EA offers customers the opportunity to enhance Support with a personalized support program: Enterprise Advantage Support. This program facilitates the highest level of support expertise and responsiveness through designated Adobe support specialists. The Enterprise Advantage Support Program is a purchasable option as an enhancement to the Enterprise Support Program.

The service enhancement and benefits of Enterprise Advantage Support includes -

- Personalized support tailored to a customer's specific needs — All support cases and escalations are directly handled by a designated support team of specialists who understand a customer's unique IT environment, infrastructure, and business priorities.
- Accelerated support — the program gives direct access to in-region/onshore designated Adobe specialists on a 24x7 basis
- Highest level of responsiveness — Enhanced target response time for critical business issues - 30 minutes for P1 cases and 1 hour for P2 cases
- Service reviews — Quarterly service reviews facilitated by Adobe for continual improvement.
- Three (3) additional Authorized Support Contacts — the program gives customers the opportunity to select three additional individuals as Authorized Support Contacts who can raise EA support cases to Adobe.

### **NOTE**

Enterprise Advantage Support is a service enhancement option on top of the Enterprise Support Program. These two programs are not interchangeable

## Enterprise Agreement Policies

In addition to the EA details already described, Adobe maintains the following EA policies to ensure that customers fully understand the agreement and software use requirements under the program.

### ***Backward Licensing***

Adobe typically allows customers to order a current-version license but use the prior version. These members can contact Adobe Customer Service to request a serial number for the earlier version if they do not already have one. When using the previous version, the customer must follow all guidelines of the current-version EULA. Media, documentation, and/or support for older product versions may no longer be available. For example: ABC Company currently uses Acrobat 9 throughout the company and needs 100 additional licenses, but Adobe now sells Acrobat X. ABC Company may purchase the 100 licenses as Acrobat X, but install Acrobat 9. However those 100 licenses have to follow the Acrobat X EULA. Some restrictions apply.

### ***Cross-language Licensing***

Licenses sold in a specific language grant use rights to that language. Licenses sold with the designation of “All” as their language do allow customers to deploy the product in any language they choose. A language designation of “All” attached as a description to M&S does not confer “All” language use rights.

Exceptions to the conditions above may apply when the customer has active Maintenance coverage and the new version of their product is not available in the originally licensed language, or a new local language is made available. In these instances Adobe will communicate what cross-language rights may apply.

### ***Cross-platform Licensing***

Customers receive product serial numbers and media, if ordered, for both Windows and Mac as long as the product is available for both Windows and Mac and the two platforms are at the same version. Customers can choose to use either platform, so long as the total number of licenses being used does not exceed the number purchased.

### ***End User License Agreement***

All use of the product is governed by the End User License Agreement (EULA) for the product that usually must be accepted by electronic click through. EULAs may be found at (<http://adobe.com/products/eulas/>). Where the EA terms and conditions conflicts with a EULA, the EA terms and conditions supersedes the EULA, but only as is necessary to resolve the conflict.

## **Termination**

Termination is when the Enterprise Agreement between Adobe and a customer ends prior to the time the EA is scheduled to end.

<b>NOTE</b>	Any M&S purchased during the EA is forfeited when an EA is terminated.
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Failure to annually file Exhibit B, pay for any True Up licenses and pay for additional years of M&S could result in termination of the EA itself, as well as revocation of the licenses purchased under the EA. Adobe reserves the right to terminate an EA for failure to place an initial order. For more information, see Initial Order on page 10.

## **Use of Information**

Adobe may use information about customers or affiliates for purposes of administering the EA and for fulfilling its obligations under the EA. Such information may be used among Adobe entities worldwide and among resellers worldwide. This includes but is not limited to, the following:

Sharing necessary program information of any customer or affiliates, including Enterprise Agreement Number, End User ID, and name and contact details of an EA Program Administrator, with its Reseller and with Adobe entities involved in program administration, wherever they may be located.

Adobe will use the name and contact details of a customer or Program Administrator to send program related communications to such licensing contacts. This includes, but is not limited to, notices of upgrades, program changes, and notice of discontinuance of SKUs.

## **For more information**

Contact a Reseller or Adobe Customer Service, or visit <http://www.adobe.com/go/volumelicensing>.

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**ADOBE® VOLUME LICENSING ENTERPRISE AGREEMENT FOR GOVERNMENT****EXHIBIT A  
GOVERNMENT CUSTOMER EA ENROLLMENT FORM**

*Unless otherwise indicated, all information is required and any missing information will delay/suspend/terminate the EA Agreement processing.*

**1. Enrollee Information.**

Enrollee Name: Connie Heinecke E-mail: connie.heinecke@fortbendcountytexas.gov  
 Tel number: 281-341-4585 Fax number: 281-341-4526

**2. Customer Applicant Information.**

Organization Name: Fort Bend County  
 Department: Information Technology  
 Street Address: 500 Liberty St.  
 Address: \_\_\_\_\_  
 City and State/Province: Richmond, Texas  
 Country: US Zip/Postal Code: 77469

**3. Program Administrator Contact Information**

Administrator Name: Clay Elliott Title: Operations Manager  
 E-mail: Clay.Elliott@fortbendcountytexas.gov Tel number: 281-341-4588  
 Fax number: 281-341-4526

**4. CLP Membership Status**

If Customer has an existing active CLP Membership or if Customer has just entered into a new CLP Membership in conjunction with this EA Agreement, please include such CLP Agreement number (or if Customer does not have a CLP Membership, leave blank):

**5. EA Information. The following information shall be completed (if Customer wishes to enroll in more than one EA, please contact Adobe rather than enrolling hereunder):**

**a. Enterprise-Wide Agreement:**

Please indicate if there will be Enterprise Wide deployment (meaning all computers in the Enterprise are covered with an EA eligible license)

☐ Yes ☒ No

If yes, then the total quantity of Enterprise Maintenance and Support units purchased pursuant to the Customer's initial order to the Reseller shall equal the total number of Computers contained in the Customer's Enterprise at the time the initial order is made.

**b. EA Discount Level. Select current CLP Discount level below. If there is no current CLP Membership in place, please select Level 1:**

☒ Level 1

☐ Level 2

☐ Enterprise Wide (for certain qualified products only)

***EA Discount Tier: Indicate the appropriate EA Discount Tier that corresponds to the total units of Enterprise Maintenance and Support being purchased in your initial order.***

- ☒ Tier 1 100 - 249
- ☐ Tier 2 250 - 499
- ☐ Tier 3 500 - 749
- ☐ Tier 4 750 - 999
- ☐ Tier 5 1,000 - 1,499
- ☐ Tier 6 1,500 - 1,999
- ☐ Tier 7 2,000+

***c. Enterprise.***

Customer must specify any participating Affiliates to be included within the definition of Enterprise for the EA Agreement. Please provide the Affiliate organization name, street address, city, state/province, ZIP/postal code, and country.

Organization Name	Street Address	City	State/Province	Zip/Postal Code	Country

## ADOBE® VOLUME LICENSING ENTERPRISE AGREEMENT FOR GOVERNMENT CUSTOMERS

This Adobe® Volume Licensing Enterprise Agreement (herein "Agreement") is effective as of either the date last signed below or, if Customer enrolls online the date accepted by Adobe (the "Effective Date") and entered into between ADOBE SYSTEMS INCORPORATED, a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704 ("Adobe Systems"), if the Agreement is entered into while Customer is in the United States, Canada or Mexico, and, otherwise, ADOBE SYSTEMS SOFTWARE IRELAND LIMITED, a company incorporated in Ireland and having a place of business at 4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland ("Adobe Ireland") (both individually in their territories and collectively referred to as "Adobe"), and the entity identified in Exhibit A under Customer Applicant Information (herein "Customer").

### 1. Program Description.

**1.1 General and EA Term.** The Adobe® Volume Licensing Enterprise Agreement Program ("EA") is a flexible volume licensing program that is administered by the Customer's designated Adobe License Center ("ALC"), Platinum Certified Reseller ("PCR"), Platinum or Gold Reseller, or Customer's selected reseller in accordance with the EA Program Guide, as defined below. References to "Reseller" in this document refer to Customer's ALC, PCR, Platinum or Gold Reseller, or Customer's designated reseller, as applicable. As described in the EA Program Guide, the EA is designed to simplify Customer's IT management by providing predictable special pricing and reducing software license deployment and management costs. For the purposes of this Agreement, the term "Enterprise" shall mean the entirety of Customer's governmental entity including any Affiliates listed as part of the Enterprise, as further described in the EA Enrollment Form attached hereto as Exhibit A, but excluding any governmental components for which the Customer does not have budgetary oversight over. In the avoidance of doubt, Customer's Enterprise: (i) is limited to the Customer and any subdivisions of such Customer such as sub-agencies, sub-departments, sub-commissions, sub-boards, sub-offices, sub-authorities, or other sub-components of Customer, (ii) only includes those independent subdivisions that exist as independent agencies of Customer if such agencies are listed as Affiliates of Customer, as further described in the EA Enrollment Form, and (iii) expressly excludes any other agency, department, commission, board, office, or other component of the branch of government, even if Customer belongs to such branch of Government (subject to (i) and (ii) above). The EA begins on the Effective Date and continues through the three (3) year anniversary of the day immediately prior to the Effective Date, subject to the termination provisions described in this Agreement (the "Term") and, for United States federal government Customers, subject to FAR 52.232-18 (Availability of Funds) and FAR 52.232-19 (Availability of Funds for the Next Fiscal Year). For additional information on the EA, refer to the current version of the EA program guide document, posted in the Adobe Volume Licensing section of the Adobe website ("EA Program Guide"). Participation in the Government EA is regional. Orders cannot be placed outside of the region in which the Government EA is established.

**1.2 EA Product, CLP Point Values and License.** For a current and complete list of Adobe Software products and services available through EA ("EA Product"), along with the applicable Cumulative Licensing Program ("CLP") point values for qualifying EA Product purchases that would be applied to Customer's active CLP membership ("CLP Membership"), if applicable, Customer should consult with its selected Reseller and/or refer to the EA Program Guide. If Customer has an active CLP Membership at the time it makes a purchase under Customer's EA, Customer shall receive points towards its CLP Membership in accordance with the CLP point values as further described in the EA Program Guide; Customer shall not receive any CLP points if Customer does not have an active CLP

Membership at the time such order is placed under this Agreement. All EA Product CLP point values are consistent worldwide. Use of the EA Product licensed under the EA is subject to the applicable Adobe End User License Agreement ("EULA") as may be modified by this Agreement. As such, all EA Product purchased under this Agreement shall be deployed on a per-Computer basis solely for use on Computers (as defined in the applicable EULA) within Customer's Enterprise and shall be subject to the restrictions set forth in the applicable EULA. To the extent of any conflict or inconsistency between a term contained in any EA Product EULA or the EA Program Guide and a term contained in this Agreement, the term contained in this Agreement shall prevail.

**1.3 EA Discount Level & Tier and EA Product Pricing.** The EA applies the same EA Discount Level and EA Discount Tier to all of Customer's and its participating Affiliates' qualified EA Product purchases during the Term. For Customers with an active CLP Membership at the commencement of this Agreement, the EA Discount Level shall be based on the then-current CLP Discount Level achieved by the Customer upon the Effective Date of this Agreement (e.g. if Customer's then-current CLP Discount Level is Level 2, then Customer's EA Discount Level would be Level 2). Customer's EA Discount Tier within such EA Discount Level shall be based on the aggregate quantity of EA support and maintenance units (herein "Enterprise Maintenance and Support") in the initial order made under the Agreement. If Customer has an active CLP Membership, Customer shall provide its CLP Membership number as part of the Agreement where requested. If Customer does not have an active CLP Membership in place at the time of the Agreement Effective Date, the EA Discount level will be set at Level 1 and the EA Discount Tier shall be based on the aggregate quantity of Enterprise Maintenance and Support units in the Customer's initial order made to the Reseller under the Agreement. Subject to Customer's compliance with the terms and conditions of this Agreement, Customer's EA Discount Level and EA Discount Tier shall be applied to all EA Product orders for the duration of the Term, and the CLP points accumulated with each EA Product order shall be added to Customer's active CLP Membership, if any. More detailed information about EA Discount Levels and EA Discount Tiers is set forth in the EA Program Guide. All EA Product license fees and Enterprise Maintenance and Support fees to be paid by the Customer are, however, determined solely by the Reseller. Adobe does not set the pricing that Customer is charged and Adobe cannot guarantee any specific pricing. Resellers operate as independent distributors and are not agents or affiliates of Adobe, as a result, Customer is responsible for informing any Reseller of its applicable EA Discount Level, EA Discount Tier and of any then-current active CLP Membership. Customer is free to negotiate any EA Product license fees directly with its Reseller. Matters such as price, delivery and payment terms shall be established by and between Customer and Reseller.

### 2. Participation.

**2.1 Government Entity.** Participation is contingent upon Customer (and each Affiliate) being a "government entity", which means: either (a) a federal, central or national agency, department, commission, board, office, council, or authority (executive, legislative, or judicial); or (b) a municipality, special district, city, county, or state governmental agency, department, commission, board, office, council, or authority, or any other agency in the executive, legislative, or judicial branch of state or local government that is created by the constitution or a statute of the governing state, including the district, regional, and state administrative offices or (c) a public agency, or organization created and/or funded by federal, state, or local governments and authorized to conduct the business of governing or supporting citizens, businesses, or other governmental entities. For the avoidance of doubt, private "for profit" companies, non-profit organizations, trade or industry associations, and labor unions are not included. Also excluded are private organizations that conduct work on behalf of or with government agencies. Customer represents to Adobe that it and its Affiliates are government entities.

**2.2 Affiliates.** "Affiliate" means any government entity that is subject to the same organizational, political, and regulatory schemes as the government entity that is the Customer. For example, where a state government is the Customer, counties, boroughs, and/or municipalities shall be considered "Affiliates" for the purposes of this EA Agreement to the extent that such Affiliates are independent subdivisions, sub-agencies, sub-departments, sub-commissions, sub-boards, sub-offices, sub-agencies, sub-authorities, or other sub-components of Customer such that the Customer retains budgetary oversight over such Affiliate entity. Subject to the terms and conditions in this Agreement, Affiliates that are listed in Exhibit A as part of the Enterprise are permitted to use the EA Product in the same manner as the Customer hereunder, and any references to "Customer" hereunder as it pertains to such use shall be deemed to mean and include such Affiliates. Customer shall ensure that only Affiliates listed as part of the Enterprise in Exhibit A shall be permitted to use the EA Product and Customer shall ensure that any such Affiliates complies with all the terms and conditions applicable to the Customer under this Agreement and Customer shall promptly reimburse Adobe and the applicable Reseller for all amounts owed and/or damages resulting from an Affiliate's failure to comply. Customer also agrees to use best efforts to ensure that it and its Affiliates comply with all terms hereunder.

**2.3 EA Agreement and EA Product Serial Numbers.** Customer will be assigned a number for this Agreement ("EA Agreement Number"), which number must be referenced on any EA Product orders to the Reseller. The Customer will be provided software serial numbers for purchased software where each serial number issued to Customer references a single EA Product defined by version, language, and platform, except for EA Product available in both Macintosh® and Windows® versions for which Customer will receive a single serial number for both platforms, even when only one platform is licensed, provided, however, with respect to each software license, Customer shall only be permitted to use the platform for which it has acquired a license. Customer may use the same serial number for all validly licensed installations of given EA Product; new serial numbers are issued for upgrades.

**2.4 Confidentiality.** The EA Agreement Number and EA Product serial numbers are confidential, except as stated in Section 2.3 and Section 3. Customer shall treat EA Agreement Number and EA Product serial numbers as confidential and not share or disclose such numbers to any third party.

**2.5 Licensing Website.** Adobe shall provide Customer with access to the Adobe Licensing Website ("LWS") (<http://licensing.adobe.com>) allowing Customer with access to pertinent information about their EA Agreement including expiration dates, comprehensive order details, LWS account information and EA Product serial numbers. The Customer designated program administrator ("Program Administrator") for new Customers will receive a communication containing instructions on setting up their LWS account login and password providing them access to LWS for management of their EA Agreement.

### **3. Ordering and Fulfillment.**

**3.1 Ordering.** Customer shall place the initial order for EA Product licenses, any Prior Version Upgrades (as defined below in Section 3.2) licenses, any Upsell Licenses (as defined below), and all corresponding Enterprise Maintenance and Support for the first year of the Term with the Reseller that Customer has selected within thirty (30) days of the Effective Date of this Agreement. For purposes herein, "Upsell License" shall mean conversion of a lower edition license into a higher edition license of a product within the same EA product family (e.g. conversion of an Acrobat X Standard license into an Acrobat X Professional license); provided, however, at the time of such purchase, the lower edition license must be on the then-current latest version of such product. Upon the purchase of such Upsell License, the higher edition product license shall replace the lower level edition, and the Customer shall cease to use such lower level edition and uninstall, delete, destroy and remove any copies of such lower level edition product license. In the event such lower edition license is not the then-current latest version release of such product, the Customer must also purchase a Prior Version Upgrade license to such lower edition license in order to purchase such Upsell License.

**3.2 Minimums.** (a) Except to the extent otherwise described in the EA Program Guide, as a condition of the EA Agreement, Customer must purchase a minimum of one hundred (100) units of qualified EA Product licenses which may be any combination of new licenses, Prior Version Upgrade licenses, and Upsell licenses available within the EA program. (b) All older versions of such EA Product within the Enterprise ("Prior Version(s)") must be upgraded to the most current version of such EA Product by purchasing upgrade licenses for all such Prior Version(s) ("Prior Version Upgrades") in the Customer's initial order to the Reseller. (c) Throughout the Term of this Agreement, Customer must purchase and maintain (on an annual basis) Enterprise Maintenance and Support for all EA Product in the Enterprise, including all Prior Versions that have been upgraded to the then-current version and any Upsell Licenses. (d) Customer's initial order of Enterprise Maintenance and Support must meet or exceed the minimum value for the applicable EA Discount Tier as indicated on the EA Enrollment Form. If Customer does not order sufficient Enterprise Maintenance and Support and/or EA Product from the designated Reseller within thirty (30) days of the Effective Date of this Agreement, Adobe may terminate or suspend that Customer from the EA under this Agreement. (e) Customer shall ensure that all EA Product purchases include Customer's EA Agreement Number and any additional information required by the Reseller and/or Adobe in order for the Reseller to accept such order.

**3.3 Electronic Software Delivery (ESD) and Media.** Adobe offers ESD for selected EA Product to Customers and participating Affiliates for no additional fee. Customer and participating Affiliates may download (via the LWS) EA Product for which they are currently licensed. Each license includes the right to print one hard copy version of the applicable electronic user documentation. Customer and its participating Affiliates are not permitted to have more media than EA



licenses. Customer and its participating Affiliates may order hard media from the Reseller.

**3.4 Returns.** Subject to permitted return criteria as specified in the EA Program Guide, Customer must request any return of EA Product purchases made under the EA Agreement through the same Reseller that placed the original order for such EA Product with Adobe. Subject to any applicable warranty rights, requests must be made to the Reseller within thirty (30) days of Customer's original EA Product order date, and Adobe must approve all return requests as permitted pursuant to the EA Program Guide before any return is valid. If the return is approved, Customer's CLP point totals, if any, will be adjusted in the next accumulated CLP point review process. Customer or Affiliate must submit a signed letter of destruction with each EA Product return in a form requested by Adobe. For more information on qualifying returns please consult the EA Program Guide.

#### **4. True-Up Reports.**

Customer shall ensure that it maintains systems and/or procedures sufficient to ensure a complete and accurate record of (i) the number of copies of EA Product installed and/or in use by the Enterprise, and (ii) for Customer's enrolling on an Enterprise-Wide basis (which shall mean 100% coverage throughout its Enterprise with EA Product within an EA product family for which the Enterprise-Wide program is made available pursuant to the EA Program Guide), the total number of Computers in the Enterprise ("Deployment Count"), and (iii) any other information or records related to the Customer and its Affiliates' use of the EA Product and compliance with the terms and conditions of this Agreement. Customer shall retain such records for at least two years after termination or expiration of this Agreement. Customer will provide reports for all EA Product for each of the EA programs for which it is enrolled that provide an accurate record of Customer's then-current Deployment Count (and for Enterprise-Wide EAs, the then-current Computer count) to Adobe as of each annual anniversary date of the Effective Date of this Agreement (herein "True-Up Report(s)") in the form as attached as Exhibit B. True-Up Reports shall be delivered to Adobe (to the contact(s) specified on Exhibit B) and the Reseller no later than five (5) days from the applicable anniversary date of the Effective Date of this Agreement. For the purposes of clarity, with respect to each EA, the total quantity of Enterprise Maintenance and Support units purchased in the Customer's initial order to the Reseller shall equal, as of the date Customer makes such initial order: (i) the total quantity of EA Product licenses to which Customer is entitled (which total shall comprise of and include existing quantities of licenses purchased prior to the Customer's initial order hereunder and any new licenses being purchased as part of the initial order, and (ii) for Customer's enrolling on an Enterprise Wide basis, the total number of Computers contained in the Customer's Enterprise. The Customer hereby warrants and represents that, upon making the initial order hereunder, that it will have purchased a unit of Enterprise Maintenance and Support for each EA Product license to which Customer is entitled upon making such initial order, and that Customer has purchased a license for each and every Computer in its Enterprise upon making such initial order. Notwithstanding anything to the contrary, Customer's obligations related to delivery of all required True-Up Report(s) and making all required True-Up Orders (and payment for such orders) shall survive the expiration or termination of this Agreement.

#### **5. True-Ups.**

5.1 If, during the Term, with respect to each EA program for which Customer is enrolled, Customer makes additional deployments of the

EA Product in the Enterprise beyond the quantities previously purchased, then Customer shall track the number of such new EA Product deployments and report any such change to Adobe in the True-Up Report for the current year. Additionally, during the Term, whether or not such additional deployments of the EA Product have been made, Customer shall place a purchase order with its selected Reseller by the due date of the applicable True-Up Report and the purchase order must reflect (a) if applicable, the license fees for the number of new EA Product deployments for which payment has not been previously made and all related annual Enterprise Maintenance and Support fees for such new EA Product licenses identified on the current year True-Up Report and (b) all related annual Enterprise Maintenance and Support fees for the existing previously purchased EA Product licenses (herein "True-Up Order").

5.2 If, during the Term, Customer experiences a reduction of EA Product deployments in the Enterprise resulting in a negative True-Up result, notwithstanding anything to the contrary, Customer shall not be entitled to a credit or refund from either Adobe or Reseller, and the total EA Product entitlement for the Enterprise (as reflected on the applicable True-Up Report) shall not be reduced to reflect the negative true-up result and no reduction shall be made to the quantity of the then-licensed EA Product or to the required corresponding Enterprise Maintenance and Support units.

5.3 If Customer wishes to enroll on an Enterprise Wide basis in any product family in the Enterprise-Wide program pursuant to the EA Program Guide, then Customer must purchase an EA Product license for each Computer in its Enterprise (100% coverage).

5.3.1 With respect to each family of products for which Customer is enrolled on an Enterprise Wide basis, if, during the Term, additional Computers are purchased or acquired on behalf of the Enterprise beyond the quantity of Computers in its Enterprise as of the Effective Date of this Agreement, or beyond the quantities specified in the True-Up Report for the immediately preceding year, then Customer shall report any such change to Adobe in the True-Up Report for the current year. Additionally, during the Term, whether or not additional Computers have been purchased or acquired, Customer shall then place a purchase order with its designated Reseller by the due date of the applicable True-Up Report and the purchase order must reflect (a) if applicable, the EA Product license fees for the number of new Computers in the Enterprise for which payment has not been previously made so that Customer has thereafter purchased a product license (within the applicable product family) for each Computer in its Enterprise and all related annual Enterprise Maintenance and Support fees for such new Software licenses identified on the current year True-Up Report and (b) all related annual Enterprise Maintenance and Support fees for the existing previously purchased EA Product licenses (herein "True-Up Order").

5.3.2 If, during the Term, the Customer's Enterprise experiences a reduction of Computers resulting in a negative True-Up result, notwithstanding anything to the contrary, Customer shall not be entitled to a credit or refund from either Adobe or Reseller, and the total Software entitlement for the Enterprise (as reflected on the applicable True-Up Report) shall not be reduced to reflect the negative true-up result and no reduction shall be made to the quantity of the then-licensed Software or to the required corresponding Enterprise Maintenance and Support units.

#### **6. End of EA Term.**

At the end of the Term, Customer's eligibility to participate in the EA shall automatically expire, and any EA Product licenses (including EA

Product licenses for Enterprise Wide enrollments), up to the aggregate number of EA Product licenses purchased (whether initially on the Effective Date of this Agreement and, as applicable, through annual True-Up Orders) shall automatically survive as perpetual licenses ("Surviving Licenses"), subject to compliance with the applicable EULA, to be operated and used for Customer's internal business purposes. Such Surviving Licenses shall be governed by and used in accordance with the applicable EULA accompanying the EA Product.

## 7. Enterprise Maintenance and Support.

**7.1 General.** Enterprise Maintenance and Support for support and maintenance for the EA Product shall be provided in annual increments as set forth in Adobe's applicable Enterprise Maintenance and Support terms and conditions that are available at: [http://www.images.adobe.com/www.adobe.com/content/dam/Adobe/en/volume-licensing/pdfs/ea\\_ms\\_tc\\_ue.pdf](http://www.images.adobe.com/www.adobe.com/content/dam/Adobe/en/volume-licensing/pdfs/ea_ms_tc_ue.pdf), provided, however, that Customer is obligated to purchase Enterprise Maintenance and Support for all EA Product licenses throughout the Term. If Customer has a then current-CLP Membership at the time of any Enterprise Maintenance and Support purchases hereunder, CLP points under such CLP Membership will be provided based on the value of Enterprise Maintenance and Support purchases. The number of units of Enterprise Maintenance and Support shall correspond to the number of units of EA Product licenses included in the EA hereunder and may not exceed the number of EA licenses purchased (whether under this Agreement or prior to the Effective Date of this Agreement) for EA Product. Customer agrees that any and all upgrades to EA Product received under Enterprise Maintenance and Support are for replacement of the copies of EA Product previously licensed to Customer and such upgrades shall not constitute an increase of EA Product license entitlement. Customer understands that the annual Enterprise Maintenance and Support costs are non-refundable, even if Adobe discontinues the covered EA Product or if this Agreement is terminated before the then-current annual Enterprise Maintenance and Support term anniversary date. Customer further understands and acknowledges that Customer shall not receive any reimbursement or credit of any portion of Enterprise Maintenance and Support fees paid by Customer in the event that such Enterprise Maintenance and Support subscription terminates before the Enterprise Maintenance and Support coverage is otherwise due to expire due to a terminating event. Such terminating events may include, but not be limited to, the following events: (i) if Adobe discontinues the covered Software before Customer's Enterprise Maintenance and Support is due to expire, (ii) if this Agreement is terminated before the three year anniversary date and before the date that Customer's Enterprise Maintenance and Support is due to expire, or (iii) if the Customer terminates this Agreement at its convenience or as a result of a stop work order, or (iv) if any other event causes termination of Enterprise Support coverage before the Enterprise Maintenance and Support coverage is otherwise due to expire. Customer expressly acknowledges that such conditions are permissible under all applicable laws and regulations.

**7.2 Enterprise Advantage Support Option.** In the event Customer elects to purchase annual Enterprise Advantage Support, which shall be at the option of the Customer, such Enterprise Advantage Support shall be provided in annual increments as set forth in Adobe's applicable Enterprise Advantage Support terms and conditions that are available at:

[http://www.images.adobe.com/www.adobe.com/content/dam/Adobe/en/volume-licensing/pdfs/EA\\_adv\\_support\\_t\\_c.pdf](http://www.images.adobe.com/www.adobe.com/content/dam/Adobe/en/volume-licensing/pdfs/EA_adv_support_t_c.pdf)

## 8. Miscellaneous.

**8.1 Assignment.** In light of the unique and Customer-specific nature of this Agreement (and the associated benefits granted hereunder), Customer may not assign or transfer this Agreement or Customer's rights to use the EA Product, by operation of law or otherwise, without Adobe's prior written approval. In the event of any conflict between this Agreement and any other contract between Adobe and Customer (such as the applicable EULA) or the contract terms between Customer and Reseller, the terms of this Agreement shall govern.

Adobe's rights and obligations, in whole or in part, under this Agreement may be assigned by Adobe. Any attempted assignment in violation of this Section shall be null and void.

**8.2 Termination.** This Agreement may be terminated by the non-breaching party for a material, uncured breach by the other party, provided that the party alleging breach notifies the other party and the party so notified shall have thirty (30) days to cure said breach. Notwithstanding the foregoing, Adobe may immediately terminate this Agreement, upon written notice, for any breach of Adobe's intellectual property rights. If Adobe terminates the Agreement hereunder, notwithstanding anything to the contrary, Customer and any of its Affiliates shall immediately cease use of the EA Product, delete the EA Product from all computer systems and IT equipment on which it resides, and return to Adobe, or its Reseller, any media containing the EA Product as well as any related materials. Upon any such termination, Customer shall make all payments due to Reseller, including but not limited to True Up payments for EA Product deployments for which Customer has not yet paid. This Agreement may be terminated by a United States federal government Customer pursuant to FAR 52.249-1 (Termination for Convenience of the Government).

**8.3 License Compliance.** To ensure that Customer's and/or Affiliates' installation and deployment is consistent with the license entitlements and complies with the terms of this Agreement, Adobe or its representatives may conduct an audit of Customer's and/or Affiliates' EA Product installation/deployment not more than once per year on thirty (30) days' written notice. Such audit will require Customer or Affiliates to provide an unedited accurate report of all EA Product installed by Customer and/or Affiliates and all valid purchase documentation for all EA Product within thirty (30) days of request. If the audit findings demonstrate non-conformity with the EA Product licenses, Customer shall purchase the necessary licenses within fifteen (15) days of being so notified. If underpaid fees are in excess of ten percent (10%) of the value of the fees paid under this Agreement, then Customer shall pay such underpaid fees and Adobe's reasonable costs of conducting the verification. This section 8.3 shall survive termination or expiration of the Agreement for a period of two (2) years. The foregoing shall not in any way be construed to limit any other rights and/or remedies that Adobe may have under law or equity.

**8.4 Use of Information.** Adobe may use information about Customer or Affiliates for purposes of administering the EA and for fulfilling its obligations under the Agreement. Such information may be used among Adobe entities worldwide and among Customer's Resellers worldwide. This use includes, but is not limited to, the following: (a) sharing necessary program information of any Customer with its Reseller, including EA Agreement number and End User ID, (b) sharing information about a Customer with its Affiliates, or vice-versa, and (c) use of the name and contact details including, phone email address and other contact details of a Customer or Affiliate designated licensing contact to send program related

communications to such licensing contacts including, but not limited to, notices of upgrades, program changes, and notice of discontinuance of SKUs.

**8.5 Governing Law and Venue.** If Customer is a resident of the United States, Canada or Mexico, this Agreement shall be governed by and interpreted in all respects by the statutes and laws of the United States of America and State of California, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. If Customer is an entity of the United States federal government, Customer agrees that Adobe shall have standing and the right to assert any breach of contract claim arising out of this Agreement under the Contracts Disputes Act of 1978 ("Disputes Act"). Adobe shall also have the right to bring such claim through the Adobe authorized reseller fulfilling such order, by Adobe bringing an indirect appeal on Adobe's own behalf, or by permitting Adobe to bring an appeal in the authorized Reseller's name, in accordance with the Disputes Act. If Customer is a resident of Japan, this Agreement shall be governed by and interpreted in all respects by the laws of Japan, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within Japan between Japanese residents. If Customer is a resident of a member state of the Association of Southeast Asian Nations, mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C. or the Republic of Korea, this Agreement shall be governed by and interpreted in all respects by the laws of Singapore, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within Singapore between Singapore residents. If Customer is a resident of Germany, this Agreement shall be governed by and interpreted in all respects by the laws of Germany, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within Germany between German residents. If Customer is a resident of France, this Agreement shall be governed by and interpreted in all respects by the laws of France, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within France between French residents. If Customer is a resident of Australia, New Zealand, India, or Sri Lanka, this Agreement shall be governed by and interpreted in all respects by the laws of England and Wales without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within England and Wales between residents of England and Wales. If Customer is a resident of any other country, this Agreement shall be governed by and interpreted in all respects by the laws of the Republic of Ireland without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within the Republic of Ireland between residents of the Republic of Ireland.

If Customer is a resident of the United States, Canada or Mexico, all disputes arising under this Agreement will be brought in Superior Court of the State of California or the Federal District Court of San Jose in Santa Clara County, as permitted by law. If Customer is a resident of Japan, all disputes arising under this Agreement will be brought in Tokyo District Court in Japan. If Customer is a resident of Germany, all disputes arising under this Agreement will be brought in the courts of Frankfurt/Main in Germany. If Customer is a resident of France, all disputes arising under this Agreement will be brought in the Tribunal

of Paris in France. If Customer is a resident of Australia, New Zealand, India, or Sri Lanka, all disputes arising under this Agreement will be brought in the Courts of London, England. If Customer is a resident of any other country, all disputes arising under this Agreement will be brought in the Courts of Ireland in Dublin, Ireland. When Singapore law applies, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference in this section. There shall be one arbitrator, selected jointly by the parties. If the arbitrator is not selected within thirty (30) days of the written demand by a party to submit to arbitration, the Chairman of the SIAC shall make the selection. The language of the arbitration shall be English. Notwithstanding any provision in this Agreement, Adobe or Customer may request any judicial, administrative, or other authority in any other jurisdiction to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, prior to the institution of legal or arbitration proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies.

#### **8.6 General.**

**8.6.1** No modification will be valid or binding unless in writing and signed by the parties. The parties are independent contractors, and this Agreement will not be construed to imply that either party is the agent, or venturer of the other. If any provision is held unenforceable, this Agreement will continue in full force and effect without said provision and will be interpreted to reflect the parties' original intent. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. To the extent of any inconsistency between the terms of this Agreement, or any other supplemental agreement or documents, including any purchase order submitted by Customer, the terms of this Agreement shall prevail. This Agreement (including the Exhibits hereto, EA Program Guide and applicable EULAs) represents the entire agreement between the parties on the subject matter of this Agreement.

**8.6.2 Notice to U.S. Federal Government End Users (Commercial Items):** The EA Product and Documentation, and related Enterprise Maintenance and Support provided under this Agreement are "Commercial Item(s)," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," and services related thereto, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Federal Government End Users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement and the EULAs. Unpublished rights are reserved under the laws of the United States- Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110-2704, USA.

IN WITNESS WHEREOF, these terms and conditions, together with the attachment(s), are hereby executed as follows:

“Adobe Systems”

Customer

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Contracting Officer Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Instructions for sending signed original Agreements to Adobe:**

**Please return your signed original Agreement per the appropriate instructions below. Your Agreement will be processed once your signed Agreement is received and accepted by Adobe. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).**

For Customers located in the United States, Canada and Mexico only please use <u>one</u> of the following methods to return the signed original Agreement to Adobe:		
Mailing Address	Email	FAX
<i>Mail <u>two</u> signed Agreement originals to:</i>  Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Coordinators	<i>Scan and email signed Agreement to:</i>  *Email: <a href="mailto:cCOORDIN@adobe.com">cCOORDIN@adobe.com</a>  * Note: This email address is for receiving signed agreements only, all other correspondence is not read and no replies are sent from this address. If you have further questions, please contact your Adobe Account Manager or <a href="#">Adobe Customer Service</a> .	<i>FAX signed Agreement to:</i>  FAX: 408-537-4568

For Customers located in all other countries, please send two (2) signed originals of the Agreement by mail or courier to:	
Adobe Systems Software Ireland Limited 4-6 Riverwalk Citywest Business Campus Dublin 24, Ireland Attention: Contract Coordinators	<i>On receipt of the two originals, Adobe will return one original of the fully signed Agreement to the address indicated by you below:</i>

**EXHIBIT B**  
**EA True Up Report**

Submit original Report to Adobe and Reseller per the information below.

**EA Agreement Number:** \_\_\_\_\_

**Customer Name:** \_\_\_\_\_

**EA Agreement Effective Date:** \_\_\_\_\_

**Date of Deployment Count:** \_\_\_\_\_

Report Current EA Product Deployment Count for each EA in which Customer is enrolled

Enter the current EA Product License Total being reported for the Enterprise.

<u>Adobe Product Name</u>	<u>Total EA Product Installations/licenses upon commencement of EA*</u>	<u>Total EA Product Installations (on 1<sup>st</sup> Anniversary)</u>	<u>Total EA Product Installations (on 2<sup>nd</sup> Anniversary)</u>	<u>Total EA Product Installations (on 3<sup>rd</sup> Anniversary)</u>

\* which shall equal the total quantity of Enterprise Maintenance and Support units purchased pursuant to the Customer's initial order to the Reseller

For Enterprise Wide (100% coverage) EA Agreements only. Report Current Computer Count for each such EA:

Enter the total number of Computers being reported for the Enterprise.

<u>Total Computers upon commencement of EA*</u>	<u>Total Computers (on 1<sup>st</sup> Anniversary)</u>	<u>Total Computers (on 2<sup>nd</sup> Anniversary)</u>	<u>Total Computers (on 3<sup>rd</sup> Anniversary)</u>

\* which shall equal the total quantity of Enterprise Maintenance and Support units purchased pursuant to the Customer's initial order to the Reseller

**By signing below, you certify that the above information is correct.**

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Instructions For Sending EA True Up Form To Adobe

Please return your signed original EA True Up form per the appropriate instructions below. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).

**For Customers located in the United States, Canada and Mexico only please use one of the following methods to return the signed original Agreement to Adobe:**

<b>Mailing Address</b>	<b>Email</b>	<b>FAX</b>
<b><i>Mail <u>two</u> signed Agreement originals to:</i></b>  Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Coordinators	<b><i>Scan and email signed Agreement to:</i></b>  <b>*Email:</b> <a href="mailto:ccoordin@adobe.com">ccoordin@adobe.com</a>  <i>*Please note: This email address is intended for receipt of signed Agreements only. If you have further questions, please contact your Adobe Account Manager or <a href="#">Adobe Customer Service</a>.</i>	<b><i>FAX signed Agreement to:</i></b>  <b>FAX:</b> 408-537-4568

**For Customers located in all other countries, please send two (2) signed originals of the Agreement by mail or courier to:**

Adobe Systems Software Ireland Limited 4-6 Riverwalk Citywest Business Campus Dublin 24, Ireland Attention: Contract Coordinators	<b><i>On receipt of the two originals, Adobe will return one original of the fully signed Agreement to the address indicated by you below:</i></b>
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**PCMG, Inc.**

14120 Newbrook Drive, Suite 100 - Chantilly, VA 20151

Duns #: 12-936-5420

Tax ID #: 33-0964088

**PRICE QUOTATION****ACCOUNT MANAGER****Margaret Pickles**

T: (800) 625-5468 x38075

F: (310) 630-6575

[margaret.pickles@pcmg.com](mailto:margaret.pickles@pcmg.com)**BILL TO**

Michelle Cantone

Fort Bend County

500 Liberty Street

Richmond, TX 77469

**QUOTE TOTAL:** \$40,404.00**QUOTE NO:** 5120274**ATTN:** Michelle Cantone**ACCOUNT NO:** 10797892**PROJECT/REF:** Acrobat Pro**QUOTE DATE:** 26-Sep-13**QUOTE EXPIRES:** 16-Oct-13

LN	QTY	MFR	MFR NO.	DESCRIPTION	CONTRACT	QUOTE PRICE	EXT. PRICE
1	150	ADOBE	2g1-3275-C2-82AQ21A00	Adobe Acrobat Professional 11 Multiple Platforms Upgrade License Deferred - EA Program 1 User, Level 2 100-249 CLP (CLP # Required) 65194882AQ21A00	DIR-SDD-2504	\$114.40	\$17,160.00
2	50	ADOBE	210-3275-C2-07AQ21A00	Adobe Acrobat Professional 11 Multiple Platforms License Deferred - EA Program 1 User, Level 2 100-249 CLP (CLP # Required) 65194807AQ21A00	DIR-SDD-2504	\$256.88	\$12,844.00
3	200	ADOBE	2m1-3275-C2-28AQ21A12	Adobe Acrobat Professional Multiple Platforms M&S EA Program 1Y - EA Program 12 Months 1 User, Level 2 100-249 CLP (CLP # Required) 65196228AQ21A12	DIR-SDD-2504	\$52.00	\$10,400.00
VIA:							<b>DELIVER TO:</b>
						<b>SUBTOTAL:</b>	\$40,404.00
						<b>TAX:</b>	\$0.00
						<b>FREIGHT:</b>	\$0.00
						<b>TOTAL:</b>	<b>\$40,404.00</b>

**ORDERING INSTRUCTIONS / SPECIAL NOTES**Please make your purchase order out to 'PCMG, Inc.' (i.e. *not* 'PCM', 'PC Mall', or 'Macmall').

P.O. must include the quote number (i.e. S123456), part numbers, a signature, and payment terms (Net 30).

Please \*e-mail\* ([margaret.pickles@pcmg.com](mailto:margaret.pickles@pcmg.com)) or fax (310-630-6575) purchase order to 'Attn: Margaret Pickles'. E-mail is preferred.

Software licenses: purchase orders must include an \*e-mail address\* and an end-user name, or order may be delayed.

**PLEASE REMIT PAYMENT TO:**

PCMG, Inc.

File 55327

Los Angeles, CA 90074-5327

Prices are subject to change without notice.

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
  
**CARAHSOFT TECHNOLOGY CORP.**

**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 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Carahsoft Technology Corp. (hereinafter “Vendor”), with its principal place of business at 12369 Sunrise Valley Drive, Suite D2, Reston, Virginia 20191.

**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-200A, on June 25, 2013, for Software Reseller and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-200A shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-200A, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-200A, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then 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 products available through the Adobe Desktop CLP volume licensing program 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, at no additional cost, related services associated directly with the sales of licensing, such as related maintenance/warranty/support for new and previously purchased licenses, training, installation/de-installation/implementation support, and software advisement to DIR and/or DIR Customers for the Adobe Desktop CLP volume licensing programs 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**

#### **A. Publisher Discount Level**

Publisher Discount Level is defined as based on the discount established in the Agreement between DIR and Publishers.

#### **B. Customer Discount**

All discounts to the Customer for products included in Section 3 of this Contract shall be: i) the discount established in the Agreement between DIR and Publishers, or ii) the percentage discount off then-current list prices from the Publishers based on Vendor's corporate volume from distribution sources, or iii) the discount as specified in Appendix C, Pricing Index, whichever is greater.

#### **C. Customer Price**

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

$$\text{Customer Price} = \text{Publisher Discount Level} - \text{Customer Discount}$$

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

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas

law to sell said products and services to eligible Customers, 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. This Contract shall be amended within ten (10) business days to reflect the lower price.

**D. DIR Administrative Fee**

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

**E. 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 delivery, Customer will be responsible for any charges for expedited delivery.

**F. 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).

**G. Travel Expense Reimbursement**

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

**H. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the Publisher Discount Level, but DIR discounts shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**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 half of one percent (0.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.

**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:

Robin Abbott, Manager  
Contract and Vendor Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759

If sent to the Vendor:

Robert Moore  
Carahsoft Technology Corp.  
12369 Sunrise Valley Drive, Suite D2  
Reston, Virginia 20191  
Phone: (703) 871-8504  
Facsimile: (703) 871-8505  
Email: [Robert.Moore@carahsoft.com](mailto:Robert.Moore@carahsoft.com)

**7. Software License and Service Agreements**

**A. Software License Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the publishers' Software License Agreement set forth in the *Publishers agreement with DIR*.

2) Compliance with the applicable 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.**

## **8. 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.

4. “Third Party IP” means the Intellectual Property Rights of any third party not a party to this Contract, and which 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 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 confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

**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.

**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.

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

**A. Appendix A, Section 10. Contract Enforcement, B. Termination, 7) Transitional Support Upon Termination or Expiration** is hereby added as follows:

**7) Transitional Support Upon Termination or Expiration**

Upon the date of contract termination or expiration, Vendor will provide transitional use of Vendor's Software Tracking Database to all DIR Customers that have purchased software under this Contract. To assure continuity of records, DIR Customers (upon request) that have purchased under this Contract will be provided access to Vendor's website to receive from Vendor a transferable, electronic record of its software license tracking information for a period not less than the prior twelve months, in a commercially available format. If the file download is available on Vendor's website, clear instructions should be posted for DIR Customers along with a contact name, telephone number and email address for questions. Vendor shall also



provide DIR a complete copy of the entire DIR Customer database at the end of the 90-day transition period, in a commercially available format.

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

**Carahsoft Technology Corp.**

**Authorized By:**   /Signature on File/  

**Name:**   Cortney Steiner  

**Title:**   VP Sales, Adobe  

**Date:**   08/22/13  

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

**Authorized By:**   /Signature on File/  

**Name:**   Karen Robinson  

**Title:**   Executive Director  

**Date:**   08/29/13  

**Office of General Counsel:**   /Signature on File/  08/29/13

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

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### **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.

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- B. Compliance Check** – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. 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 Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United

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States law or regulation which conflicts with the Contract term or condition.

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full 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. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

**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 Order Fulfiller shall survive expiration or termination of the Contract.

**F. Choice of Law**

The laws of the State of Texas 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 of Texas 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 of Texas or Texas Department of Information Resources.

**5. 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 of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters

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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 thirty (30) 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 of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

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

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

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, including all necessary hardware, software and technology services.

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

### **6. Contract Fulfillment and Promotion**

#### **A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote 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.



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### **Standard Terms and Conditions For Product and Related Services Contracts**

#### **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 Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Filler 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 Filler from participating in other procurement opportunities offered through DIR.

##### **2) Changes in Order Filler 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 the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Filler information listed in Section 6.B.1.a above.

##### **3) Order Filler Pricing to Customer**

Order Filler pricing to the Customer shall comply with the Customer price as stated within Section 4 of the Contract. 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 Filler 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.

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### **Standard Terms and Conditions For Product and Related Services Contracts**

#### **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 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, Contract pricing, 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 (ICT) 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 uniform with the pricing as stated in Section 4 of the Contract.

##### **4) Website Changes**

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

##### **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties 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

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

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 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**

Upon 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. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. 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. DIR shall bear no cost for

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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.

**7. Purchase Orders, Invoices, and Payments**

**A. 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.

**B. 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.

**C. 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) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

**8. Contract Administration**

**A. Contract Administrators**

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

**1) State Contract Administrator**

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

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**2) Vendor Contract Administrator**

Vendor shall provide a dedicated Contract Administrator 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 Administrator if the assigned Contract Administrator is not, in the 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 month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, manufacturer's suggested retail price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, 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 their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR Administrative Fee**

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon thirty (30) days written

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notice to Vendor without the need for a formal contract amendment.

b) Vendor shall reference the DIR Contract number 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 within any rolling twelve (12) month period may, at DIR's discretion, result in 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, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, 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

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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) days of receipt.

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

**D. Contract Administration Notification**

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

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

**9. Vendor Responsibilities**

**A. Indemnification**

**1) 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 AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or

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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 REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**2) 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

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

**3) Independent Contractor**

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

**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



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COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. 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, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**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 of Texas 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 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) 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

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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) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
- (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;
- (ix) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (x) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xi) have identified all current or former, within the last five years, employees of the State of Texas 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;
- (xii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiii) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate; and
- (xiv) 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.

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

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g, privacy and security requirements).

#### **D. Ability to Conduct Business in Texas**

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

#### **E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be 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 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract

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to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **H. Confidentiality**

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

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

#### **I. Security of Premises, Equipment, Data and Personnel**

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

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

##### **1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

##### **2) Workers' Compensation Insurance**

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

#### **3) Business Automobile Liability Insurance**

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

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

#### **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 of Texas 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 of Texas 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.

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**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**

a) 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.

b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

**U. Drug Free Workplace Policy**

The contractor 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 the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**10. Contract Enforcement**

**A. Enforcement of Contract and Dispute Resolution**

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

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**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 *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

**3) Termination for Convenience**

DIR may terminate the Contract, in whole or in part, by giving the other party thirty



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(30) calendar days written notice. 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.

#### **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.

### **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,

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

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.

**11. Notification**

**A. Notices**

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

**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. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**12. Captions**

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