STATE OF TEXAS §
§
COUNTY OF FORT BEND §

ADDENDUM TO NWN CORPORATION'S AGREEMENT

THIS ADDENDUM ("Addendum") is made and entered into by and between Fort Bend County ("County"), a body corporate and politic under the laws of the State of Texas, and NWN Corporation ("NWN"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WITNESSETH

THAT, WHEREAS, the parties have executed and accepted NWN's Proposal Quote Sheet; Cisco Collaboration System Implementation Statement of Work; Mutare Software End User License Agreement; Akkadian labs End-User License Agreement; Singlewire Informacast Software License Agreement; ISI Telemanagement Solutions, LLC Infortel Select Hosted Services Agreement – Reseller Sale; SecureLogix Master Product and Services Agreement; and Zoom International's Terms and Conditions; (hereinafter collectively referred to as the "Agreement"), and attached hereto as Exhibit "A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Cooperative Purchasing**. NWN shall provide product and/or services in accordance with DIR Contract Number DIR-TSO-4192, incorporated by reference as if set forth herein verbatim and attached as Exhibit "B."

2. **Term**. This Agreement will become effective upon execution by both parties, and will continue until NWN fulfills its phased professional services system implementation obligations defined in Exhibit A to this Addendum and titled Cisco Collaboration System Implementation Statement of Work dated November 7, 2019 (ie. (i) Initiate Phase, (ii) Access, Plan and Design Phase, (iii) Prepare Phase, (iv) Execute Phase and the (v) Transition Phase)). This Agreement shall not automatically renew.

3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoices; the County will make an annual payment to NWN or the assignee of NWN in the amount of $490,830.62 for five years. The first payment will be made within 60 days of execution of this Agreement; the remaining four annual payments will be made on or before January 20th of each remaining year. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall

thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.

Fort Bend County established a special fund or account, Lease Purchase Agreement - 2020 ("the Interest and Sinking Fund"), to pay the interest and principal concerning the County's obligations for the acquisition and lease of new phone systems from NWN. This Interest and Sinking Fund will be kept apart and separate from other County funds. Any ad valorem taxes levied and collected for and on account of the above obligation of the County will be deposited as collected to the credit of the Interest and Sinking Fund. During each year while any of the County's obligations are outstanding and unpaid, the amount of ad valorem taxes will be ascertained to pay the interest on the obligation as such becomes due and to provide a sinking fund to pay the principal (including mandatory sinking fund redemption payments if any). This Interest and Sinking Fund is not included in the Maintenance and Operations budget of the County.

4. **Limit of Appropriation.** NWN clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Two Million, Four Hundred Fifty-Four Thousand, One Hundred Fifty-Three and 12/100 ($2,454,153.12), specifically allocated to fully discharge any and all liabilities County may incur over the five year term. NWN does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that NWN may become entitled to and the total maximum sum that County may become liable to pay to NWN shall not under any conditions, circumstances, or interpretations thereof exceed Two Million, Four Hundred Fifty-Four Thousand, One Hundred Fifty-Three and 12/100 ($2,454,153.12) over the five year term.

5. **Confidential Information.** NWN acknowledges that it and its employees, or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by NWN or its employees, or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by NWN shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by NWN) publicly known or is contained

in a publicly available document; (b) is rightfully in NWN's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of NWN who can be shown to have had no access to the Confidential Information.

NWN agrees to hold Confidential Information in strict confidence, using at least the same degree of care that NWN uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. NWN shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, NWN shall advise County immediately in the event NWN learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and NWN will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or NWN against any such person. NWN agrees that, except as directed by County, NWN will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, NWN will promptly turn over to County all documents, papers, and other matter in NWN's possession which embody Confidential Information.

NWN acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. NWN acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

NWN in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

The terms and conditions of the Agreement are not proprietary or confidential information.

6. **Indemnity**. The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to

indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless NWN for any reason are hereby deleted. This Section will be incorporated as a Rider of Appendix D – Master Lease Agreement of DIR Contract No. DIR-TSO-4192.

NWN shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of NWN, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of NWN or any of NWN's agents, servants or employees.

7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by NWN in any way associated with the Agreement. This provision will be incorporated as a Rider of Appendix D – Master Lease Agreement of DIR Contract No. DIR-TSO-4192.

8. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.

9. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. This provision will be incorporated as a Rider of Appendix D – Master Lease Agreement of DIR Contract No. DIR-TSO-4192.

10. **Dispute Resolution**.

10.1. **Demand**. The parties will attempt to resolve any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("**Dispute**"), on a confidential basis, subject to the Texas Open Meetings Act, according to the following process, which either party may start by delivering to the other party a written notice describing the dispute and the amount involved ("**Demand**").

10.2. **Dispute Resolution**. After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after this meeting, either party may start mandatory nonbinding mediation through a mediation process as is mutually acceptable to the parties. The mediator will be jointly selected by the parties. If the parties fail to resolve the dispute through non-binding mediation, either party may assert their respective rights and remedies

in a state court of competent jurisdiction in Fort Bend County, Texas. Nothing in this section shall prevent a party from seeking necessary injunctive relief during the dispute.

10.3. **Injunctive Relief**. Notwithstanding the other provisions of this Section 10, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the Dispute Resolution provisions of this Section 10 and in accordance with Texas laws.

11. **Infringement Assurance.** Subject to § 10.A.3 of Appendix A (Standard Terms and Conditions For Product and Related Services) and § 16 of Appendix D of DIR Contract No. DIR-TSO-4192, NWN will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of NWN's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and NWN's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties. NWN will pass through any indemnification rights and warranties with respect to the products made available for pass through by any third party manufacturer or supplier.

12. **Insurance**. Prior to commencement of the Services under this Agreement, NWN shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. NWN shall provide certified copies of insurance endorsements and/or policies if requested by County. NWN shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. NWN shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

(a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than $1,000,000 per injury by accident, $1,000,000 per injury by disease, and $1,000,000 per bodily injury by disease.

(b). Commercial general liability insurance with a limit of not less than $1,000,000 each occurrence and $2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and

products/completed operations arising out of the business operations of the policyholder.

(c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than $1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

(d). Professional Liability insurance with limits not less than $1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of NWN shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, NWN warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

The County is self-insured. Any provisions in the Agreement requiring the County to maintain insurance coverage are hereby deleted. This Section will be incorporated as a Rider of Appendix D – Master Lease Agreement of DIR Contract No. DIR-TSO-4192.

13. **Use of Customer Name**. NWN may use County's name without County's prior written consent only in any NWN's customer lists, any other used must be approved in advance by County.

14. **Performance Warranty.** NWN warrants to County that NWN has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and NWN will apply that skill and knowledge with care and diligence to ensure that the services provided hereunder will be performed and delivered in accordance with the highest professional standards.

15. **No Waiver of Jury Trial.** The County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references to waiver of jury trial are hereby deleted. This Section will be incorporated as a Rider of Appendix D – Master Lease Agreement of DIR Contract No. DIR-TSO-4192.

16. **Termination**.

16.1 Non-appropriation of Funds. In compliance with Article XI, Section 7 of the Texas Constitution, the County may terminate the Agreement and/or purchase orders without penalty if the County delivers written notice of termination to NWN no less than ten (10) days prior to expiration of the County's then current fiscal year. The notice must certify that the County Commissioners for Fort Bend County, Texas have been unable to obtain appropriate funds for payment of the subsequent fiscal year. The notice shall further certify that the Commissioners have used their best efforts to secure the appropriate funds. Upon delivery and acceptance of the above-described notice, the County shall be permitted to terminate the Agreement and/or purchase order without penalty at the conclusion of the then current fiscal year. .

16.2. Termination for Default. Subject to the procedures listed in § 10 of this Addendum, the County may terminate the whole or any part of this Agreement for cause in the following circumstances:

(a). If NWN fails to timely perform services pursuant to this Agreement or any extension thereof granted by the County in writing;

(b). If NWN materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

16.3. If, after termination, it is determined for any reason whatsoever that NWN was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

16.4. Upon termination of this Agreement, County shall compensate NWN in accordance with § 3, above, for those services which were provided under this Agreement and/or equipment accepted prior to its termination and which have not been previously invoiced to County. NWN's final invoice for said services will be presented to and paid by County in the same manner set forth in § 3 above.

16.5. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to NWN.

17. **Personnel.** NWN represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that NWN shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of NWN shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of NWN or agent of NWN who, in the opinion of County, is incompetent or by his conduct becomes detrimental to proving Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

18. **Ownership and Reuse of Documents**. All documents, data, reports, research, graphic presentation materials, etc., developed by NWN as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under § 3 for work performed. NWN shall promptly furnish all such data and material to County on request.

Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code.

19. **Compliance with Laws**. NWN shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, NWN shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

20. **Certain State Law Requirements for Contracts:**

The contents of this Section are required by Texas Law and are included by County regardless of content.

a. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, NWN verifies NWN does not boycott Israel and will not boycott Israel during the term of this Agreement.

b. Texas Government Code Section 2251.152 Acknowledgment: By signature below, NWN represents pursuant to Section 2252.152 of the Texas Government Code, that NWN is not listed on the website of the Comptroller of the State of

Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153

21. **Human Trafficking**. BY ACCEPTANCE OF CONTRACT, NWN ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

22. **Modifications**. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

23. **Conflict**. If there is a conflict between this Addendum and the Agreement, the provisions of this Addendum shall prevail.

24. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

25. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

26. **Severability**. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY	NWN CORPORATION
	Stephen Lonon
KP George County Judge	Authorized Agent- Signature
	Stephen Lonon
Date	Authorized Agent- Printed Name
ATTEST:	VP of Sales Title
	02/24/2020
Laura Richard, County Clerk	Date

Reviewed:

Information Technology Department

EXHIBIT A: NWN's Proposal Quote Sheet, Cisco Collaboration System Implementation Statement of Work, Mutare Software End User License Agreement, Akkadian labs End-User License Agreement, Singlewire Informacast Software License Agreement, ISI Telemanagement Solutions, LLC Infortel Select Hosted Services Agreement – Reseller Sale, SecureLogix Master Product and Services Agreement, and Zoom International's Terms and Conditions.

EXHIBIT B: DIR Contract Number DIR-TSO-4192.

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of $_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

_____

Robert E. Sturdivant, County Auditor

EXHIBIT A

Exhibit A

PROPOSAL QUOTE SHEET

2520 Whitehall Park Drive
Suite 250
Charlotte, NC 28273

704-496-6961 Phone
704-496-6901 Fax

Cisco CSR 11 Implementation - Greenfield Install

Client:	Fort Bend County	**Issue Date:**	11/15/2019
Client Address 1:	500 Liberty St	**Opportunity #:**	OP125436
Client Address 2:	.	**Account Exec:**	Marc Friedhoff
Client City, State, Zip:	Richmond, TX 77469-3500		mfriedhoff@nwnit.com
Attn:	Charles King		281-433-6999
Phone:	281-341-4584	**Contract**	DIR-TSO-4192
email:	charles.king@fortbendcountytx.gov	**Version:**	11.00

Product Number	Description	Qty	List Price	Unit Price	Extended Price
Section 1 - Hardware (Customer Owned OR NWN Owned [aaS]) and Software (CUSTOMER OWNED ONLY)					
BE7H-M5-K9	BUSINESS ED 7000H M5 APPL SYST EXPORT RESTR SW	2	$53,737.00	$17,195.84	$ 34,391.68
VMW-VS6-FND-K9	EMBEDDED LICS UC VIRT LICS FOUNDATION 6.X 2-SOCKET	2	$2,499.00	$799.68	$ 1,599.36
ATA191-K9	2PORT ANALOG TELEPHONE ADAPTER CPNT	44	$326.00	$104.32	$ 4,590.08
VG310	VG310 MODULAR 24 FXS PORT VOICEPERP OVER IP GATEWAY	2	$6,170.00	$1,974.40	$ 3,948.80
VG320	VG320 MODULAR 48 FXS PORT VOICEPERP OVER IP GATEWAY	1	$12,300.01	$3,936.00	$ 3,936.00
ISR4331-V/K9	ISR 4331 UC BNDL PVDM4-32 UC PERP LICS CUBEE10	2	$5,835.50	$1,867.36	$ 3,734.72
MEM-4300-4GU8G	4G TO 8G DRAM UPGRADE (4G+4G) MEM FOR CISCO ISR 4330 4350	2	$1,500.00	$480.00	$ 960.00
MEM-FLSH-4U8G	UPG 4G TO 8G FLASH MEMORY FOR FLSH ISR 4320 4330 4350	2	$1,000.00	$320.00	$ 640.00
PVDM4-32U256	UPG PVDM4 32CH TO 256CH FACTORYCPNT	2	$8,600.00	$2,752.00	$ 5,504.00
CUBE-T-STD	CUBE-T-STD	400	$95.00	$30.40	$ 12,160.00
A-FLEX-PUBLICSECT	Flex Public Sector	1	$0.00	$0.00	$ -
A-FLEX-EAPL1	EntW On-Premises Calling Tier 1 (1)	1048	$660.00	$430.65	$ 451,321.20
A-FLEX-CC	Flex Contact Center	1	$0.00	$0.00	$ -
A-FLEX-PJXPC	Flex CC On-Premises UCCX Premium Concurrent Agent	11	$3,600.00	$2,349.00	$ 25,839.00
A-FLEX-PJXSC	Flex CC On-Premises UCCX Standard Concurrent Agent	40	$2,700.00	$1,761.75	$ 70,470.00
Flex Trade-In Credit	Flex Trade-In Credit	1	($172,920.00)	($172,920.00)	$ (172,920.00)
Sheriff				$0.00	$ -
BE7M-M5-K9	Cisco Business Edition 7000M (M5) Appliance, Export Restr SW	1	$32,286.99	$10,331.84	$ 10,331.84
VMW-VS6-FND-K9	Embedded License, Cisco UC Virt. Foundation 6.x (2-socket)	1	$2,499.00	$799.68	$ 799.68
ISR4351-V/K9	Cisco ISR 4351 UC Bundle, PVDM4-64, UC License, CUBEE25	1	$14,143.10	$4,525.79	$ 4,525.79
MEM-4300-4GU8G	4G TO 8G DRAM UPGRADE (4G+4G) MEM FOR CISCO ISR 4330 4350	1	$1,500.00	$480.00	$ 480.00
MEM-FLSH-4U8G	UPG 4G TO 8G FLASH MEMORY FOR FLSH ISR 4320 4330 4350	1	$1,000.00	$320.00	$ 320.00
PVDM4-64U256	UPG PVDM4 64CH TO 256CH FACTORYCPNT	1	$7,000.00	$2,240.00	$ 2,240.00
CUBE-T-STD	CUBE - 1 Standard Trunk Session License	200	$95.00	$30.40	$ 6,080.00
ATA191-K9	2-Port Analog Telephone Adapter	5	$326.00	$104.32	$ 521.60
VG310	VG310 MODULAR 24 FXS PORT VOICEPERP OVER IP GATEWAY	2	$6,170.00	$1,974.40	$ 3,948.80
A-FLEX-EAPL1	EntW On-Premises Calling Tier 1 (1)	683	$660.00	$430.65	$ 294,133.95
				$0.00	$ -
Flex Trade-In Credit	Flex Trade-In Credit	1	($112,695.00)	($112,695.00)	$ (112,695.00)
Phones					

Exhibit A

PROPOSAL QUOTE SHEET

Product Number	Description	Qty	List Price	Unit Price	Extended Price
CP-8832-K9=	IP CONFERENCE PHONE 8832 PERP BUSINESS CLASS CONFERENCE STATION	80	$1,595.00	$510.40	$ 40,832.00
CP-8832-POE	Cisco IP Conference Phone 8832 PoE Accessories for Worldwide	80	$125.00	$40.00	$ 3,200.00
CP-7841-K9=	IP PHONE 7841 CHARCOAL STANDARDPERP HANDSET 4-LINE 3.5IN DISPLAY POE	104	$365.00	$116.80	$ 12,147.20
CP-8851-K9=	UNIFIED IP PHONE 8851 CHARCOAL PERP WIDEBAND AUDIO	2459	$615.00	$196.80	$ 483,931.20
CP-8800-A-KEM=	8800 SERIES AUDIO KEM 28 BUTTONCPNT	310	$565.00	$180.80	$ 56,048.00
CP-8821-K9-BUN	WRLS IP PHONE 8821 WORLD MODE PERP W/ BATTERY POWER ADAPTER	60	$885.00	$283.20	$ 16,992.00
CP-DSKCH-8821-BUN	DESKTOP CHARGER FOR WRLS IP CPNT PHONE 8821 W/ POWER ADAPTER	60	$227.00	$72.64	$ 4,358.40
CP-BATT-8821=	8821 Extended Battery	60	$100.00	$32.00	$ 1,920.00
CP-7800-WMK=	SPARE WALLMOUNT KIT FOR UC MNT PHONE 7800 SERIES	18	$87.00	$27.84	$ 501.12
CP-8800-WMK=	WALL MOUNT KIT FOR IP PHONE CPNT 8800 SERIES	24	$87.00	$27.84	$ 668.16
				$0.00	$ -
Akkadian Labs				$0.00	$ -
				$0.00	$ -
T2-APM-UBL-LIC	APM User Based License Tier 2	2000	$14.00	$11.27	$ 22,540.00
				$0.00	$ -
T2-APM-DBL-LIC	APM Device Based License Tier 2	575	$7.00	$5.64	$ 3,243.00
				$0.00	$ -
Akkadian Labs - Maint				$0.00	$ -
				$0.00	$ -
T2-APM-UBL-MNT-5YR	APM UBL Maintenance Tier 2 - 5 Year	2000	$11.20	$10.96	$ 21,920.00
				$0.00	$ -
T2-APM-DBL-MNT-5YR	APM DBL Maintenance Tier 2 - 5 Year	575	$5.60	$5.48	$ 3,151.00
				$0.00	$ -
Akkadian Labs - Deployment Service				$0.00	$ -
				$0.00	$ -
RDS-4HR	Remote Deployment Service - 4 Hours	2	$900.00	$880.43	$ 1,760.86
	Software Remote Deployment - 4 Hours			$0.00	$ -
				$0.00	$ -
				$0.00	$ -
Core Switching				$0.00	$ -
C9500-48Y4C-A	Catalyst 9500 48-port x 1/10/25G + 4-port 40/100G, Advantage	2	$23,500.00	$7,520.00	$ 15,040.00
C9K-PWR-650WAC-R/2	650W AC Config 4 Power Supply front to back cooling	2	$2,100.00	$672.00	$ 1,344.00
QSFP-H40G-CU3M=	40GBASE-CR4 Passive Copper Cable, 3m	2	$277.00	$88.64	$ 177.28
SFP-10G-SR-S=	10GBASE-SR SFP Module, Enterprise-Class	10	$728.00	$232.96	$ 2,329.60
				$0.00	$ -
				$0.00	$ -
Training Credits				$0.00	$ -
TRN-CLC-001	100 Training Credit. Expires in 1 yr. Team Captain is required	2	$10,000.00	$0.00	$ -
				$0.00	$ -
SecureLogix				$0.00	$ -
ETM-APP-XS-SW	Securelogix : ETM UTA or SIPApplication SoftwareBundle, Extra Small (1-500 Sessions). Price perdata center. Includes ETMManagement Server, UsageManager and PerformanceManager Applications.Does not include Oraclelicense. Session licensessold separately.	3	$4,995.00	$3,746.25	$ 11,238.75
SLC-SESSION-1K	Securelogix : SecureLogix Session License (1-1000 Concurrent Sessions), Price Per Session. Includes Voice Firewall and Voice IPS. Perpetual license.	200	$59.95	$44.96	$ 8,992.00
SVC-IMPLEMENTATION-	Securelogix : Implementation services hourly rate	34	$225.00	$253.13	$ 8,606.42

Exhibit A

PROPOSAL QUOTE SHEET

Product Number	Description	Qty	List Price	Unit Price	Extended Price
ETM-TRNG-EL-ESOO	Securelogix : Per-user one year subscription for the ETM System Overview and Operation course series on the SecureLogix E-Learning Portal.	2	$1,595.00	$0.00	$ -
STD-WARRANTY-PKG	Securelogix : Standard Product Warranty Package included with all purchases. Does not include technical support or maintenance releases.	1	$0.00	$0.00	$ -
SVC-ESSV-ETM	Securelogix : Essential management, monitoring, and administration of the installed ETM System. One (1) Year Service Contract for 1-250 Sessions	5	$18,000.00	$17,000.00	$ 85,000.00
Mutare					
4007	Reinstalling Mutare application software on a new server.	1	$2,500.00	$2,375.00	$ 2,375.00
6223	Cisco Integration	1	$1,500.00	$1,425.00	$ 1,425.00
Zoom					
ZQM-CR	ZOOM Call Recording (with contact center integration)	20	$450.00	$385.71	$ 7,714.20
ZQM-SC	ZOOM Screen Capture	20	$210.00	$180.00	$ 3,600.00
MNT	Maintenance	5	$1,800.00	$972.00	$ 4,860.00
PCI-OSDE	PCI On Server Data Encryption Implementation	1	$1,125.00	$937.50	$ 937.50
PCI-SSLI	PCI SSL Implementation	1	$1,125.00	$937.50	$ 937.50
ZQM-IMPL	ZOOM QM Suite Remote Implementation	1	$7,500.00	$6,250.00	$ 6,250.00
TR-CR	ZOOM CallREC User Training	1	$1,050.00	$875.00	$ 875.00
				$0.00	$ -
Infortel Select				$0.00	$ -
V4-18-051810-60P	Infortel Select Cloud Pro Recurring Prepaid Fee - 2,500 to 2,900 Users - 60 Month Term - sold in 100 user increments	2600	$20.63	$18.57	$ 48,282.00
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
Spare Voice Gateway				$0.00	$ -
VG310	VG310 MODULAR 24 FXS PORT VOICEPERP OVER IP GATEWAY	1	$6,170.00	$1,974.40	$ 1,974.40
				$0.00	$ -
250 Initial Licenses				$0.00	$ -
A-FLEX-PUBLICSECT	Flex Public Sector	1	$0.00	$0.00	$ -
A-FLEX-EAPL1	EntW On-Premises Calling Tier 1 (1)	250	$660.00	$430.65	$ 107,662.50
A-FLEX-CC	Flex Contact Center	1	$0.00	$0.00	$ -
A-FLEX-PJXPC	Flex CC On-Premises UCCX Premium Concurrent Agent	1	$3,600.00	$2,349.00	$ 2,349.00
A-FLEX-PJXSC	Flex CC On-Premises UCCX Standard Concurrent Agent	4	$2,700.00	$1,761.75	$ 7,047.00
Flex Trade-In Credit	Flex Trade-In Credit	1	($41,250.00)	($41,250.00)	$ (41,250.00)
Partial Credit from SO225497	Partial Credit from SO225497	1	($10,107.80)	($10,107.80)	$ (10,107.80)
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
			Section 1 Hardware & Software Subtotal		$ 1,607,733.79
Section 2 - Annual Manufacturing Maintenance OR Software as a Service (SaaS) - [Mircosoft / VMware / Citrix]					
IF SELLING aaS, ALL ITEMS IN THIS SECTION MUST BE ANNUAL PRICING				$0.00	$ -
CON-SNTP-BE79M5KH	SNTC-24X7X4 Cisco Business Edition 7000H (M5) Applia	2	$3,841.55	$2,957.99	$ 5,915.98
CON-ECMU-VMWVS6FN	SWSS UPGRADES Embedded License, Cisco UC Virt. Foundat	2	$1,500.00	$1,155.00	$ 2,310.00

Exhibit A

PROPOSAL QUOTE SHEET

Product Number	Description	Qty	List Price	Unit Price	Extended Price
CON-SNT-VG310ICV	SNTC-8X5XNBD Cisco VG310 - Modular 24 FXS Port Voice	2	2,375.00	$1,828.75	$ 3,657.50
CON-SNTP-VG320ICV	SNTC-24X7X4 Cisco VG320 - Modular 48 FXS Port Voice	1	7,868.70	$6,058.90	$ 6,058.90
CON-SNTP-ISR4331V	CCW ONLY SMARTNET 24X7X4 ISR SVCS 4331 UC BNDL PVDM4-32	1	$5,215.20	$4,015.70	$ 4,015.70
CON-ECMU-CUBETSTD	CON-ECMU-CUBETSTD	200	$85.00	$65.45	$ 13,090.00
CON-SNTP-ISR4331V	CCW ONLY SMARTNET 24X7X4 ISR SVCS 4331 UC BNDL PVDM4-32	1	$5,215.20	$4,015.70	$ 4,015.70
CON-ECMU-CUBETSTD	CON-ECMU-CUBETSTD	200	$85.00	$65.45	$ 13,090.00
				$0.00	$ -
Sheriff				$0.00	$ -
CON-SNTP-BE7MM5K9	SNTC-24X7X4 Cisco Business Edition 7000M (M5) Applia	1	$3,843.75	$2,959.69	$ 2,959.69
CON-ECMU-VMWVS6FN	SWSS UPGRADES Embedded License, Cisco UC Virt. Foundat	1	$1,500.00	$1,155.00	$ 1,155.00
CON-SNTP-ISR4351V	SNTC-24X7X4 Cisco ISR 4351 UC Bundle, PVDM4-64, UC L	1	$11,425.30	$8,797.48	$ 8,797.48
CON-ECMU-CUBETSTD	SWSS UPGRADES CUBE Standard Trunk Single Session - 1 S	200	$85.00	$65.45	$ 13,090.00
CON-SNT-VG310ICV	SNTC-8X5XNBD Cisco VG310 - Modular 24 FXS Port Voice	2	2,375.00	$1,828.75	$ 3,657.50
				$0.00	$ -
				$0.00	$ -
Core Switching				$0.00	$ -
CON-SNTP-C9504YA4	SNTC-24X7X4 Catalyst 9500 48-port 25/100G only, Adva 60 Month	2	$13,535.00	$10,421.95	$ 20,843.90
C9500-DNA-A-5Y	Cisco Catalyst 9500 DNA Advantage 5 Year License	2	$20,170.00	$15,530.90	$ 31,061.80
				$0.00	$ -
Redundant VG				$0.00	$ -
CON-SNT-VG310ICV	SNTC-8X5XNBD Cisco VG310 - Modular 24 FXS Port Voice	1	2,375.00	$1,828.75	$ 1,828.75
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
			*Section 2 **Annual** Maintenance & SaaS Subtotal*		$ 135,547.90
Section 3 - Professional Services					
NWN Professional Services, as defined in the related Statement of Work Proposal					$ 600,540.00
NBlock	Pre-paid funds on account for Product or Services purchases				$ 53,300.37
Section 4 - Optional Products & Services					
38350-13	PLANTRONICS, INC. : Electronic Hook Switch Cable for remote desk phone call control	320	$44.45	$48.32	$ 15,462.40
AR3103	NetShelter SX 12U 600mm x 1070mm Enclosure with Sides Black	2	$1,125.00	$801.53	$ 1,603.06
AP7900B	APC SWITCHED RACK PDU AP7900B - POWER DISTRIBUTION UNIT	4	$788.00	$545.99	$ 2,183.96
SMX200LV	APC Smart-UPS X 2000VA Rack/Tower LCD 100-127V	1	$1,775.00	$1,107.04	$ 1,107.04
IPTA-IC250	InformaCast Advanced Notification - Endpoint Licensing - 250 License Bundle	2	$6,187.50	$5,568.75	$ 11,137.50
IPTA-M5Y-B	5 Year Maintenance Subscription - Per End Point License - Tier B (Qty 250 - 950 Endpoints)	500	$30.78	$30.16	$ 15,080.00
IPTA-PI-PG	InformaCast Paging Gateway Plugin (One Per InformaCast Server)	2	$622.00	$559.80	$ 1,119.60
IPTA-PG-APL2	InformaCast Paging Gateway Appliance 2	15	$625.00	$562.50	$ 8,437.50
	Amphenol Cables with patch panel	6	$200.00	$150.00	$ 900.00
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
				$0.00	$ -
	Subtotal, Optional Items:				***$ 57,031.06***

Exhibit A

PROPOSAL QUOTE SHEET

Product Number	Description	Qty	List Price	Unit Price	Extended Price
Annual Managed Services/nCare Option:					
	Note: a signed nCare contract is required to establish new services				$ -
Subtotals					
				Hardware and Software Subtotal:	$ 1,607,733.79
				Manufacturer's Maintenance Subtotal:	$ 135,547.90
				nCare Managed Services Subtotal:	$ -
				nCare Enablement Fee Subtotal:	$ -
				Professional Services Subtotal:	$ 653,840.37
				Optional Products & Services Subtotal:	$ 57,031.06
				Total Project Investment	***$ 2,454,153.12***
				Estimated Taxes	***$ -***
				Estimated Shipping	***$ -***
Signature: _____				***Estimated Tax on Shipping (TX Only)***	***$0.00***
Print Name: _____					
Title: _____					
Date: _____					
				Total Project Investment including Taxes & Shipping	**$ 2,454,153.12**

Terms & Conditions

This quote is valid for 30 days from date of issue. Applicable taxes & freight charges will be applied to the final invoice. All other Terms and Conditions are included in the Master Services Agreement or Proposal document. NWN will invoice customer for hardware, software and maintenance upon shipment from Original Equipment Manufacturer.

Exhibit A

Helping Customers Solve Business Problems through Technology

Cisco Collaboration System Implementation

Statement of Work

Prepared for:

Fort Bend County

Date:
November 7, 2019
Prepared by:
Marc Friedhoff
Hinesh Patel
NWN Address:
4802 North Sam Houston Pkwy W #500,
Houston, TX 77086
Phone:
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Statement of Confidentiality

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Statement of Work

Project Overview

Fort Bend County has engaged NWN to propose a Statement of Work for the completion of the Professional Services required for the implementation of a Cisco Collaboration System to support all users on the following locations:

- Jane Long Building
- Public Transportation
- Forty-seven (47) remote locations
- Sheriff's Office (SO)

The Cisco Collaboration System in conjunction with the software, hardware and licensing included in this proposal will allow Fort Bend County to extend the reach of their Cisco Unified Communications system to provide voice and data services for all the users at these locations. A high level representation of the proposed system is provided under Attachment #1 of this document.

The scope of this project includes:

- Network and Unified Communications System configuration review.
- Staging and configuration of the new Voice Gateways and Survivable Remote Telephony System (SRST) Routers which include:
    - Jane Long Building – Cisco 4331 Cisco Unified Border Element (CUBE) for 200 SIP Sessions
        - Cisco VG310
    - Public Transportation – Cisco 4331 Cisco Unified Border Element (CUBE)/SRST for 200 SIP Sessions and up to 50 SRST phones
    - Sheriff's Office – Cisco 4351 Cisco Unified Border Element (CUBE)/SRST for 200 SIP Sessions and up to 750 SRST phones
- Configuration of the Cisco Collaboration System release 12.x to support the implementation of Cisco Unified Communications in the customer's new locations. The configuration of the Collaboration System for Fort Bend County will include the following services and components:
    - (4) Cisco Unified Communications Manager Servers
        - (1) Publisher
        - (3) Subscribers
    - (2) Cisco Unity Connection Servers
    - (2) Cisco Unified Presence or IM&P Servers
    - (2) Cisco Unified Contact Center Express Servers
    - (1) Cisco Social Miner Server
    - (2) Cisco Emergency Responder Servers
    - (1) Pair of Cisco Expressway Core and Expressway Edge (Medium Density) Servers
    - (2) Cisco Unified Attendant Console Applications
        - This will not be server based, but rather loaded onto a local PC
    - (2) InformaCast Paging Servers
    - (1) Akkadian Provisioning Manager Server
    - (1) Mutare Server
    - (1) Zoom Call Recording Server
    - (1) SecureLogix Server
    - (1) Infortel Select Call Accounting Server
    - (2) Cisco ISR 4331 Series Voice Gateways [Jane Long Building and Public Transportation]
    - (1) Cisco ISR 4351 Series Voice Gateway [SO]

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- (5) Cisco VG310 Gateways [2 at FBC and 2 at SO with 1 Spare]
- (1) Cisco VG320 Gateway [FBC]
- (49) Cisco Analog Telephone Adapters (ATA) [40 at FBC and 4 at the SO; 4 additional spares for FBC and 1 additional spare for the SO]
- (15) Paging Gateway Devices [All at FBC; 13 to be deployed and 2 spare]
- (88) Cisco 7841 IP Phones will be deployed [(48) at FBC and (40) at SO]
  - An additional (16) will be spared [(12) at FBC and (4) at SO]
  - A total of (104) Cisco 7841 IP Phones will be purchased
- (2,330) Cisco 8851 IP Phones will be deployed [(1,846) at FBC and (484) at SO]
  - An additional (129) 8851 IP Phones will be spared [(79) at FBC and (50) at SO]
  - A total of (2,459) Cisco 8851 IP Phones will be purchased
- (295) Key Expansion Modules for the Cisco 8851 IP Phones will be deployed [(277) at FBC and (18) at SO]
  - An additional (15) Key Expansion Modules will be spared [(13) at FBC and (2) at SO]
  - A total of (310) Key Expansion Modules will be purchased
- (58) Cisco 8821 Wireless Phones will be deployed [All at FBC]
  - An additional (2) will be spared [All at FBC]
  - A total of (60) Cisco 8821 Wireless Phones will be purchased
- (73) Cisco 8832 IP Conference Phones will be deployed [(64) at FBC and (9) at SO]
  - An additional (7) will be spared [(6) at FBC and (1) at SO]
  - A total of (80) Cisco 8832 IP Conference Phones will be purchased
- (1,981) Cisco FLEX EA Licenses
  - Includes up to (990) Common Area device licenses
  - Includes up to (396) Analog licenses
  - Includes up to (2,500) SRST Licenses
  - Include up to (2,500) CER Licenses

- Configuration of the Cisco Collaboration System release 12.x to support the implementation of Cisco Unified Communications at the customer's new locations. The configuration of the Collaboration System for Fort Bend County Sheriff's Office will not be a standalone cluster, but rather the Sheriff's Office will integrate into the Fort Bend County cluster.
- Integration of up to ten (10) existing overhead paging controllers for Fort Bend County and one (1) existing overhead paging controller for the Sheriff's Office using ATA's.
  - As ATA's will be used it is assumed there are paging adapters in place already to allow RJ11 FSX connection to the paging systems
- Deployment and physical installation of the new Cisco equipment and on their designated locations.
- Provide Fort Bend County's staff with instructions and procedures for the installation and configuration of Cisco Jabber Desktop on the end users' desktop or mobile devices.
- Testing and validation of all functionality required on each location.
- SIP Trunk Integration to existing Avaya Environment
  - Fort Bend County will be responsible for the Avaya side configuration
  - It is assumed Avaya is using standards based SIP for this connectivity to be possible
- Up to (17) total cutovers for Fort Bend County
  - Initially will cut over will be for the IT department within Jane Long
  - Second cutover will be for the rest of Jane Long
  - Third Cutover will be for a small site
  - Justice Center Building will be cutover in up to six (6) separate cutovers [this can be adjusted due to trials]
  - Remainder of the small sites will be bundled together to cutover in an additional eight (8) cutovers
- Up to (5) total cutovers for the Sheriff's Office
  - (5) Departmental cutovers will be provided
- System migration and turn-up.
- System documentation and technical handoff.

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NWN will provide project management to include oversight of all services in this Scope of Work (SOW). The NWN project manager will interface with the local phone companies and other contractors/vendors associated with the completion of this project during each site rollout and provide status updates to the Customer's IT team throughout the project via regular status update meetings.

Project success measures

CUSTOMER SUCCESS PLAN	
Business Unit(s):	Fort Bend County
Processes:	The existing Avaya system is end of life and Fort Bend is looking to migrate to a new environment.
Results:	This project will allow Fort Bend County to migrate to an IP based UC environment and allow for the enablement of new features in the future. Currently the County is looking for like for like functionality with the addition of Instant Messaging and Presence as well as softphone functionality and VPN-less connectivity from outside the environment for their UC soft clients.

Targets:	• Successful migration of service from their existing telephony and contact center environment to provide like for like functionality.
	• Addition of Instant Messaging and Presence for all users
	• Addition of VPN-less connectivity from outside the LAN/WAN for UC soft clients for Fort Bend County.
	• Addition of Akkadian Provisioning Manager
	• Addition of SecureLogix
	• Centralized SIP trunking at (3) locations
	• SRST for Public Transportation and the Sheriff's Office
	• E911 enablement for all locations
	• Migration of existing Mutare integration to Cisco and virtualization of the platform
	• Implementation of Zoom Call recording for (20) users and Screen Recording for (20) users
	• Deployment of Infortel Select
	• SIP Integration with existing Avaya environment
	• Up to 17 total cutovers for Fort Bend County
	  ○ Initially will cut over the IT department at Jane Long
	  ○ Second cutover will be for the remainder of the Jane Long building to fine tune the cutover process
	  ○ Third Cutover will be for a small site
	  ○ Justice Center Building will be cutover in up to six (6) separate cutovers
	  ○ Remainder of the small sites will be bundled together to cutover in an additional eight (8) cutovers
	• Up to 5 total cutovers for the Sheriff's Office
	  ○ (5) Departmental Cutovers will be provided

Scope Summary

As part of this project NWN will procure and register all the users' licenses included on the Bill of Material (BOM) for this project. These licenses and the associated end-user devices will be used to provisioned users/phones on the new customer's locations as follows:

- Justice Center Building:
  - (486) Cisco Users and Common Area Devices
- Jane Long Building:

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- (100) Cisco Users and Common Area Devices

- Public Transportation and forty-seven (47) additional small sites
  - (570) Cisco Users and Common Area Devices
- Total Phones to be deployed for Fort Bend County
  - (48) Cisco 7841 IP Phones
  - (1,846) Cisco 8851 IP Phones
  - (277) Cisco Key Expansion Modules
  - (64) Cisco 8832 Conference Phones
  - (58) Cisco 8821 Wireless Phones
  - (40) Cisco ATA191 Analog to IP Adapters
- Sheriff's Office
  - (40) Cisco 7841 IP Phones
  - (484) Cisco 8851 IP Phones
  - (18) Expansion Modules
  - (9) Cisco 8832 Conference Phones
  - (4) Cisco ATA191 Analog to IP Adapter

Fort Bend County and Sheriff's Office

Each of the (1,981) [1,298 at FBC and 683 at the SO] Phone Users will receive a Cisco Unity Connection Voicemail box. Jabber Desktop for Instant Messaging and Presence or Jabber Mobile will also be provisioned as part of this project. NWN will install Jabber on up to ten (10) devices, it is the customers' responsibility to install the remainder of the soft/mobile clients. NWN will not be responsible for the installation and deployment of the Unified Communications clients; instead, NWN will provide Fort Bend County's staff with instructions and procedures for the installation and configuration of Cisco Jabber Desktop on the end users' desktop or mobile devices.

PSTN connectivity will be provided by three (3) SIP Trunks that will be installed at the customer's three (3) main site with no PRI or POTS lines being terminated at the remote location Voice Gateways for 911 and SRST dialing.

NWN will work with Fort Bend County to configure three (3) new SIP trunks on the Cisco Voice Gateways prior to system cutover to validate functionality via test numbers provided by the carrier (AT&T).

In addition, up to ten (10) sites will be configured to connect to the existing over-head paging system via ATA FXS ports to allow access to the paging system from the Cisco Unified Communications System.

NWN will provide four (4) end-user training sessions for up to 15-users per session. These sessions will cover the basic feature/functionality and use of the new system (Phone and Voicemail).

At the conclusion of the project NWN will document the installation for Fort Bend County and complete the technical handoff, which will entail the review of the system documentation and administrative knowledge transfer on the ongoing operation and management of the new system

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Project Management

An NWN Project Manager will be assigned to this project, utilizing the NWN project methodology *(see Appendix B)*, to ensure the successful delivery of this initiative as defined in this scope. The following outlines the roles and responsibilities of the NWN Project Manager:

- Act as a single point-of-contact between Customer and NWN
- Ensure thorough project communication with project stakeholders and team members
- Develop & maintain detailed project plan, task plan, schedule & communications plan
- Prepare, distribute & communicate regular status, action item & related project reports
- Manage project scope and respond to change requests
- Define and manage the escalation process
- Conduct project kickoff, status, milestone and review/closure meetings
- Review all Project Documentation and Deliverables
- Oversee knowledge transfer



Initiate Phase

The initiate phase of the project is critical to establishing a firm foundation for the launch and delivery of the project. Activities in this phase of the project include:

- Internal kickoff meeting – this meeting involves the NWN Sales Team and the NWN Implementation Team. At this meeting, the entire NWN team is made aware of the Customer's expectations that were set during the Sales process to ensure all communication is translated to the Implementation Team for the on-site work effort.
- External kickoff meeting – this meeting involves the NWN Team and the Customer's Team and usually takes place at the Customer's site. During this meeting, all aspects of the project will be reviewed and established. This includes, but is not limited to: logistics management, roles and responsibilities of all project team members, draft schedule, task plan and work breakdown structure (WBS), communications plan and design and implementation approaches.
- Scheduling for Design, weekly and status meeting – Initial timeline will be set for overall project. NWN and client will work together to identify resources for project and coordinate schedules to complete the Design and weekly meetings.
- Create project plan package – the NWN Project Manager will work with the overall team to create a project plan package that includes the detailed WBS, schedule, communications plan, project documents and protocols.

Deliverables:

- Kick off meetings
- Schedule for design and status meetings

Assess, Plan and Design Phase

Activities in this phase of the project include:

- Unified Communications System Design Meeting - After the kick-off meeting, NWN and the customer's team will hold a System design meeting to discuss the findings from the network configuration review and the technical aspects of the Unified Communications System configuration. NWN expects the Client will come prepared with documentation and resources necessary to cover all topics. These topics will include:
    - IP Addressing and VLAN Layout
    - Quality of Service (QoS) and security best practices
    - User database review

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- Auto-Attendants and specialized voice-mail options
- Dial Plan
- Discussion of downtime and risks

- Develop Detailed Design Document - At the end of this Design meeting, NWN has gathered enough information to create a design document for the installation of the equipment. The design document will include configuration parameters specific to this deployment and any key technical decisions made during design. The design will conform to Cisco and NWN guidelines and recommendations and the completed design document will be submitted for customer approval prior to proceeding with the install.
- Functionality testing procedures – NWN and the customer will prepare a testing document that is the basis for verifying the in scope functionality of this solution. This will be used during the Execute Phase of the project.
- Design Acceptance – NWN will conduct a design review and acceptance session with the customer to review the design details prior to initiating any production implementation or changes. The customer's acceptance of the design is the approval to move forward in the project.

Deliverables:

- Design meeting
- Test Plan
- Detailed design document

Prepare Phase

Activities in this phase of the project include:

- License planning and registration – NWN will review the existing licensing and register all the new licensing necessary for the support of these implementations.
- LAN/WAN QoS Implementation and Configuration – Based on best practices and recommendations for the support of Cisco Unified Communications NWN will provide Cisco best practices to the customer. Such recommendations are the customer responsibility to implement on the existing LAN Switches.
- Equipment Staging and Configuration – NWN will stage and configure all the components of the new Cisco Collaboration System. The staging and configuration of the new equipment will be performed at the local NWN staging facility and will include:
  - Inventorying all the equipment.
  - Equipment burn-in to validate proper operation and process any necessary replacements.
  - Staging and configuration of the new equipment for Fort Bend County which includes:
    - (1) Cisco BE7K High Density Server – Jane Long Building
      - (1) Cisco Unified Communications Manager (CUCM) Publisher [7,500 User OVA]
      - (1) CUCM Subscriber (TFTP and MoH) [7,500 User OVA]
      - (1) Cisco Emergency Responder (CER) Server [12,000 User OVA]
      - (1) Instant Messaging and Presence (IMP) Server [5,000 User OVA]
      - (1) Unity Connection Server [10,000 User with Large vDisk OVA]
      - (1) Expressway Core Server [Medium OVA]
      - (1) Expressway Edge Server (Needs UCS NIC to be on the DMZ) [Medium OVA]
      - (1) Unified Contact Center Express (UCCX) Primary Server [400 User OVA]
      - (1) InformaCast Paging Server
      - (1) Social Miner [Small Deployment OVA]
    - (1) Cisco BE7K High Density Server – Sheriff's Office
      - (1) CUCM Subscriber (TFTP and MoH) [7,500 User OVA]
      - (1) Cisco Emergency Responder (CER) Server [12,000 User OVA]
      - (1) Instant Messaging and Presence (IMP) Server [5,000 User OVA]
      - (1) Unity Connection Server [10,000 User with Large vDisk OVA]
      - storage location)

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- (1) InformaCast Paging Server
- (1) SecureLogix Server
- (1) Mutare Server
- (1) Zoom Call Recording Server (All recordings will be offloaded nightly to a customer provided SAN)
- (1) Infortel Select Call Accounting Server

- (1) Cisco BE7K Medium Density Server – Public Transportation
  - (1) CUCM Subscriber (TFTP and MoH) [7,500 User OVA]
  - (1) Akkadian Provisioning Manager Server
  - (1) Unified Contact Center Express (UCCX) Secondary Server [300 User OVA]
- (1) Cisco ISR 4331Router – Jane Long Building
- (1) Cisco ISR 4331Router – Public Transportation
  - SRST for up to (50) Users
- (1) Cisco ISR 4351Router – Sheriff's Office
  - SRST for up to (750) devices
- (4) Cisco VG310 Analog Gateways
- (1) VG320 Analog Gateway
- (44) Cisco ATA's
- (2,549) Cisco Unified IP Phones

- Pre-production integration – NWN will configure, test and integrate the in scope solution to the point of production impacting cutover or placement into service. NWN will validate the functionality of the system to the point possible prior to integrating the solution into the customer's production systems.

Deliverables:

- Licenses procurement and registration
- Equipment staged at NWN location

Execute Phase

Activities in this phase of the project include:

- System Configuration – After staging all the Unified Communications equipment NWN will complete the base system configuration, which will include:
  - Cisco Unified Communications Manager and Unity Connection:
    - Complete the site-specific configuration required to support the new sites on the Communications Manager:
      - CUCM System, Call Routing, Media Resources, Devices and Users Configuration.
      - Bulk Administration Tool Templates and files.
      - Cisco Unified Mobility (Single Number Reach) Configuration.
      - In preparation to the deployment of the Cisco IP Phones on the users' desk NWN will add all of the Communications Manager configuration required to support these phones, create all the necessary BAT (Bulk Administration Tool) Phone Templates, develop BAT (Bulk Administration Tool) Files and load them into the Communications Manager.
    - Complete the site-specific configuration required to support the new sites on the Unity Connection (Voicemail) System.
    - Unified Messaging / Voicemail Subscribers.
    - NWN will configure Cisco Unity Connection to support the implementation of the users on each site.
    - NWN will configure up to (10) Auto Attendant using the customer's Cisco Unity Connection Server for Fort Bend County and up to five (5) Auto Attendants for the Sheriff's Office.

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- Fort Bend County will use these as templates to configure the remainder of the Auto Attendants.
- NWN will show Fort Bend County how to record announcements, and Fort Bend County will work with their resource to record the announcements and place them in the correct Auto Attendant script locations.

- Cisco Instant Messaging and Presence:
  - Complete the site-specific configuration required to support the new sites on the Instant Messaging and Presence System.
- Cisco Expressway Core and Expressway Edge for Fort Bend County:
  - Complete configuration required to allow for Mobile Remote Access (MRA) for Jabber soft clients.
  - Work with the local security resource to provide information required by Customer to configure their firewall for secure firewall traversal.
- Cisco Emergency Responder:
  - Complete the site-specific configuration required to support the new sites for E911
- Cisco Contact Center Express for Fort Bend County:
  - NWN will configure five (5) Basic Queues
    - Up to 3 Menu options wide and 6 layers deep
  - NWN will configure twenty (20) skills
  - NWN will configure ten (10) Supervisors
  - NWN will configure fifty-six (56) concurrent Agents and a total of one-hundred and eighteen (118) Agents.
  - NWN will configure five (5) Finesse wallboards on customer supplied PC's.
  - NWN will configure Chat for up to 5 CCX queues.
    - Fort Bend County will be responsible for the web integration of chat and are responsible for the firewall configuration to allow external communication with the agents
- Zoom Call Recording
  - Zoom will configure 20 voice recording users (Jabber users can be configured as well)
  - Zoom will configure 20 screen recording users
- Mutare
  - Mutare will migrate the existing application from Avaya to Cisco and re-host their application on the BE7000.
  - NWN will load the OVA template, and Mutare will configure and migrate the database for their application.
- SecureLogix
  - SecureLogix will configure 200 SIP Sessions that allows bursting over 200 in times of emergency
- Integration with CoreDial via a SIP trunk
  - NWN will configure the SIP trunk on the CUCM
- Infortel Select
  - NWN will work with ISI to deploy and integrate the Infortel Select Call Accounting platform
- Akkadian Provisioning Manager
  - NWN will work with Akkadian to install and deploy Provisioning Manager on the BE7000 servers
- Configuration of Cisco Attendant Console 12.x Standard (Server-less) on the customer's existing Cisco Collaboration System 12.x. This new Attendant Console will support (1) Attendant Console client for Fort Bend County and one (1) Attendant Console for the Sheriff's Office.
- NWN will execute the system acceptance and test plan to guarantee full functionality of the new system prior to the date of the system migration/turn-up.

- Equipment Deployment and Installation – NWN will work with the customer on the installation of all the new Cisco Equipment and Phones on their designated location. NWN will deploy all servers, voice gateways, and phones. NWN will remove all Avaya Phones as part of this engagement. It will be Fort Bend County's responsibility to store all deliveries

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of Cisco Phones in a secure location until the time of deployment, and also to provide a secure location to store all removed Avaya phones until which time Cisco collects the phones.

- Network, PSTN and Analog Connections – NWN will provide the customer with requirements for all network connections. It is the customer's responsibility to provide any necessary cables, connections, panels and labor associated with bringing PSTN, network or internal analog cabling to the equipment. All connections must be identified prior to the start of the project. NWN does not provide cabling services of any kind. NWN will work with Fort Bend County during their PRI to SIP Conversion. The Cisco Equipment will not terminate any PRI lines, but will be configured for SIP and will perform SIP testing with AT&T provided test numbers prior to cutting the system over.
- Standard Configuration Features – NWN will configure the features listed below. Features *NOT* explicitly listed are beyond the Scope of this project and will require a change order.
    1. Multiple line appearances on phone
    2. Fast Transfer: Blind or Consult
    3. Busy Lamp Field
    4. Call Forward: <Busy, No Answer> Voicemail
    5. Call Forward: <All> Restricted Access
    6. Standard Ring-Tones
    7. I-Divert (active/inactive)
    8. Call Waiting (Yes/No)
    9. Internal Caller ID
    10. External Caller ID (as supported by carrier)
    11. Last Number Redial
    12. Corporate Directory (LDAP)
    13. Station Speed Dial with configuration changes from IP phone
    14. Call Park
    15. ConferenceNow
    16. Hold
    17. Call Detail Records (enabled/disabled)
    18. Out of Box Music On Hold
    19. Unified Mobility (Single-number-reach)
- Training
    - End user training – Up to (3) 1-hr session will be held with the staff for Fort Bend County. This session will cover basic phone and voicemail operation and site-specific dialing rules.
    - End user training – (1) 1.5-hr session will be held with the staff for the Sheriff's Office. This session will cover basic phone and voicemail operation and site-specific dialing rules.
    - Agent training – Up to (5) 1.5-hour sessions will be held.
    - Supervisor training – Up to (2) 1.5 hours sessions will be held.
- Production readiness acceptance – NWN will review the production cutover and implementation with the customer to verify that the solution is functioning in their environment as presented in this scope and the detailed design from the earlier Gate Review.
- Production implementation – NWN will turn up the system and migrate users as per the previously agreed upon schedule.

Deliverables:

- Equipment delivery and installation
- Production implementation of the solution
- Day-one support

Transition Phase

SOW document

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Activities in this phase of the project include:

- Day 2 Support for Fort Bend County – NWN will remain on site for up to (17) cutovers with up to (4) hrs each to help address and diagnose any problems that arise during the Unified Communications deployment within the scope of this project. NWN will troubleshoot configuration and integration issues arising from this project. First Day Support does not include additional Moves, Adds, or Changes. NWN and the Client will formalize a detailed list of open items. Open items within the scope of this project will be addressed and resolved. Open items deferred due to Client availability will require a change order to complete.
- Day 2 Support for the Sheriff's Office – NWN will remain on site for up to (5) cutovers with up to (4) hrs each to help address and diagnose any problems that arise during the Unified Communications deployment within the scope of this project. NWN will troubleshoot configuration and integration issues arising from this project. First Day Support does not include additional Moves, Adds, or Changes. NWN and the Client will formalize a detailed list of open items. Open items within the scope of this project will be addressed and resolved. Open items deferred due to Client availability will require a change order to complete.
- Knowledge Transfer – NWN's technical team on the project will conduct a solution orientation session and knowledge transfer with the customer's designated staff. System Configuration Overview will consist of:
    - Configuration review
    - Technical deliverables review

Note - Technical Hand-Off is NOT intended to replace formalized training.

- Project closure meeting – NWN will conduct a project review, acceptance and closure meeting to close out the project. This will include a review of the scope for completion, BOM deliverables, final documents and customer acceptance and survey documents.

Deliverables:

- Knowledge transfer sessions
- Maintenance contract activation and related documents
- Project closure meeting

Out of Scope

Any area not specifically presented in the Scope section of this proposal is considered outside the scope of this project. Changes to the scope as detailed in this proposal require an estimate review and must be approved by mutual agreement. Additional (or lower) charges may apply to incorporate the requested changes. Changes will not become effective until agreed upon in writing by both the Client and NWN.

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Customer requirements & assumptions

Technical/Operational Requirements/Assumptions:

General Assumptions:

1. This Proposal is only valid for 30 days. At the end of the 30 period, NWN will need to refresh the pricing in this proposal before the Customer decides to execute this contract.
2. The work effort in this proposal assumes a continuous work effort that is established at the beginning of the project based on a project plan. If delays occur in the installation process due to Customer related issues, then a change order will need to address any additional costs that arise due to this delay.
3. NWN is not responsible for configuration changes on any equipment not specifically stated in the above Statement of Work.
4. All business-impacting activities on this project are already budgeted as afterhours activities. All non-business impacting activities will occur during normal business hours (M-F, 9-5). If there is any out of scope after-hours work that needs to occur, then additional charges will apply.
5. Customer must provide access along with safety, security & emergency protocols for NWN staff for all the appropriate areas in the facility in order to complete the work effort included in this proposal.
6. Customer is responsible for all environmental concerns in each network closet that NWN will install new equipment. If equipment problems arise due to excessive heat or water in the network closets, then the Customer is responsible for all equipment replacement costs.
7. Customer must provide free and clear access to the network equipment racks in each network closet.
8. Customer must provide a work area large enough for receipt of all new equipment for this project.
9. Customer must provide outside phone and Internet access for all NWN staff when onsite.
10. Customer must provide a dedicated point of contact for the entirety of this project. This Contact must be available during major steps in the installation process. If the Customer contact is not available during the process and schedules slide due to Customer unavailability, then Customer costs may arise to the delayed schedule.
11. Customer and NWN will mutually agree upon downtime prior to any installation and ensure this downtime is scheduled in advance so the Customer can make appropriate preparations at the facility.
12. Customer must obtain all necessary work permits.
13. Customer must provide adequate parking for the NWN project team at no additional charge to NWN.
14. Customer's responsible for removal of shipping packaging once all the equipment is received at the Customer site.
15. Customer will install and configure any upgrades and/or maintenance patches to existing hardware such as voice gateways, analog interface devices, etc… that may be required.
16. NWN is not responsible for any unknown hardware or software that may not be compatible with Unified Communications version 12.x.
17. Client will ensure LAN Infrastructure is in place and configured to support Cisco Unified Communications. In the event NWN is asked to assist the client with LAN configurations, a Change Order will be issued for additional services
18. Customer is responsible for all switch, router, and firewall configuration work effort to establish proper connectivity required for the successful completion of this project unless otherwise noted in this SOW.
19. The customer will ensure that there is a valid Software Maintenance contracts in place with Cisco that would allow them access to Technical Support.
20. Any software, hardware or licensing not explicitly provided and listed in the Quote required for the project will be supplied by the customer.
21. Customer will provide all user information by filling out the NWN end user database gathering spreadsheet.
22. The customer is responsible for providing the technical information required to integrate the overhead paging units. This information includes and is not limited to the model name/number, what kind of port is required (FXO/FXS) and zone information. The Cisco voice gateways do not have sound amplification capability. If an external amplifier is required it is the responsibility of the customer to provide the additional hardware.

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23. Customer will be responsible for the configuration of the QoS on existing LAN/WAN network to support Unified Communications based on Cisco/NWN's best practices and recommendations.
24. NWN assumes the customer has PoE to support all deployed devices.
25. NWN assumes the existing customer environment can support standards based SIP trunks and all interconnections to the existing environment will be done over SIP trunks as opposed to T1/PRI.
26. NWN assumes the customer will configure their existing environment for SIP interconnectivity with the new Cisco UC environment and has appropriate licensing to support required trunks.
27. NWN will not be migrating customer from PRI to SIP, it is assumed that the Customer will have centralized SIP from their PSTN provider at the time of deployment for at the following locations:
    - Jane Long Building – 200 SIP Sessions
    - Public Transportation – 200 SIP Sessions
    - Sheriff's Office – 200 SIP Sessions
28. Customer will provide training room equipped with a PoE switch and fifteen (15) phones to allow the training of 15 simultaneous users; Customer will be responsible for configuration of PoE switch and deployment of training phones.
29. NWN will provide a database gathering document for E911 locations, it is the Customers responsibility to accurately fill out the appropriate information and to work with their SIP provider to properly update their E911 (ALI) database.
30. Each E911 zone requires a unique DID that cannot be used for anything other than E911, NWN assumes the Customer will provide all required DID's to accommodate all E911 zones.
31. Customer will provide remote resources for E911 and SRST testing.
32. Customer will install all wall-mount kits.
33. Customer will provide Exchange resource with knowledge of FBC and SO Exchange environments.
34. NWN will not migrate information from existing environment; NWN will provide database collection documents to the Customer and it is the Customers responsibility to gather all information requested and fill out the database collection documents.
35. Contact Center Call Recording software, configuration, and integration will not be required.
36. Standard UCCX reports will be provided for the Contact Center. Custom reports are not included.
37. Customer will be responsible for the web integration of chat and are responsible for the firewall configuration to allow external communication with the Contact Center agents.
38. Integration to Infortel Select will not be required for CCX.
    - CUIC Stock Reports: https://www.cisco.com/c/en/us/td/docs/voice_ip_comm/cust_contact/contact_center/pcce/pcce_11_5_1/maintenance/Guide/PCCE_BK_P84C50C8_00_pcce-reporting-guide-11-5/PCCE_BK_P84C50C8_00_pcce-reporting-guide-11-5_chapter_011000.pdf
39. Database/SQL dips, CRM and other third-party integrations are not required.
40. Voice and Chat Only Contact Center is required; Omni-channel for email and SMS is not required.
41. Outbound Queues and Robocall functionality are not required to be created in CCX. NWN will integrate with the existing Coredial IVR via SIP trunk. Management and integration from Coredial will be provided by the Customer/Coredial.
42. Courtesy Callback is not required for the Contact Center.
43. Customer will provide Emergency Response Location (ERL) spreadsheet and all information requested for CER configuration. ERL's will be defined by IP Subnet. Separate and Unique DID's will be required for each ERL.
44. It will be the Customers responsibility to store all deliveries of Cisco Phones in a secure location until the time of deployment, and also to provide a secure location to store all removed Avaya phones until which time Cisco collects the phones.
45. Customer will mount any Analog termination blocks and cross connect analog lines to block. NWN is only responsible for the configuration of the Voice Gateways.
46. Customer will install any racks or cabinets required.
47. Customer will install any wall-mounts for phones.
48. Customer will assist NWN in mounting the UPS in a cabinet.

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49. Customer will mount PDU's to cabinets.
50. Customer will install any cabinets and racks required.
51. Customer will mount and cross connect patch panels and Analog wiring.
52. Fort Bend County will provide all Windows, OS, and Database licensing for Mutare, Infortel Select, and SecuireLogix as required for deployment of these applications.
53. Cisco Unified Communications Applications require direct access to Cisco's smart portal via the internet.
54. Customer will create a new Voice VLAN in Public Transportation in anticipation of that VLAN moving to the Office of Emergency Management when it is built so that server, application, and device IP addresses do not have to change.
55. NWN cannot guarantee the performance/operation of the Cisco 8821 Wireless Phones on a Wireless Network not provided/configured by the NWN services team. Details in regards to the best practices and recommendations for the deployment of wireless phones can be found on the Deployment Guide on the URL below: http://www.cisco.com/c/dam/en/us/td/docs/voice_ip_comm/cuipph/7925g/7_0/english/deployment/guide/7925dply.pdf
56. Customer will supply PC and configure it with the appropriate resources, operating system, and settings as defined below for the Contact Center Wallboards: https://www.cisco.com/c/en/us/td/docs/voice_ip_comm/cust_contact/contact_center/crs/express_compatibility/matrix/uccxcompat11_6_2.html#Hardware_and_Virtualization

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Project Financials

NWN is pleased to present the following pricing summary for this project.

Initiate Phase	$6,516.52
Assess, Plan and Design Phase	$64,821.06
Prepare Phase	$183,651.57
Prepare Phase to be billed in 3 installments of $61,217.19 each	
Execute Phase	$311,771.69
Execute Phase to be billed in 19 installments of $15,588.58 each and 1 installment of $15,588.67	
Transition Phase	$33,779.15
Total Professional Services Fixed Price	**$600,540.00**

This Statement of Work ("**SOW**") is entered into and effective as of the date last executed below (the "**SOW Effective Date**") and is subject to the terms and conditions of that certain NWN Professional Services Addendum to Master Agreement dated [insert date] (the "**Master Agreement**") between the parties. .

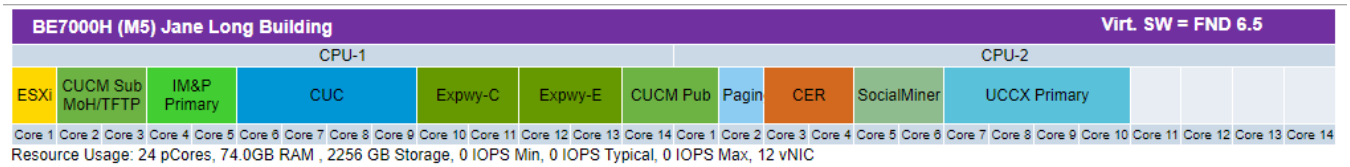
Accepted and Agreed by:

Customer	**NWN Corporation, Inc.**
Signature	*Signature*
Name	*Name*
Title	*Title*
Date	*Date*

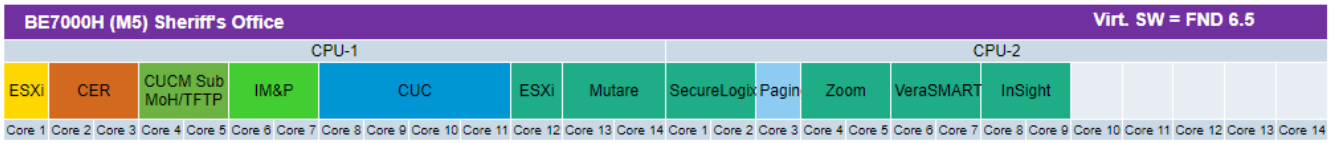
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Attachment 1. System Diagram / Virtualization Layout

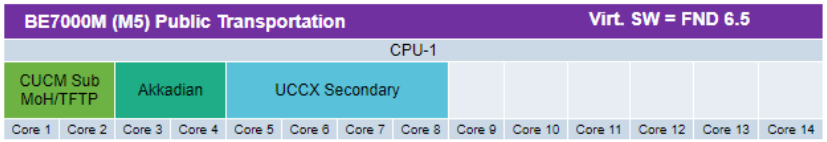
Virtualization Layout



Resource Usage: 24 pCores, 74.0GB RAM , 2256 GB Storage, 0 IOPS Min, 0 IOPS Typical, 0 IOPS Max, 12 vNIC



Resource Usage: 23 pCores, 90.0GB RAM , 2928 GB Storage, 1445 IOPS Min, 1635 IOPS Typical, 1650 IOPS Max, 13 vNIC



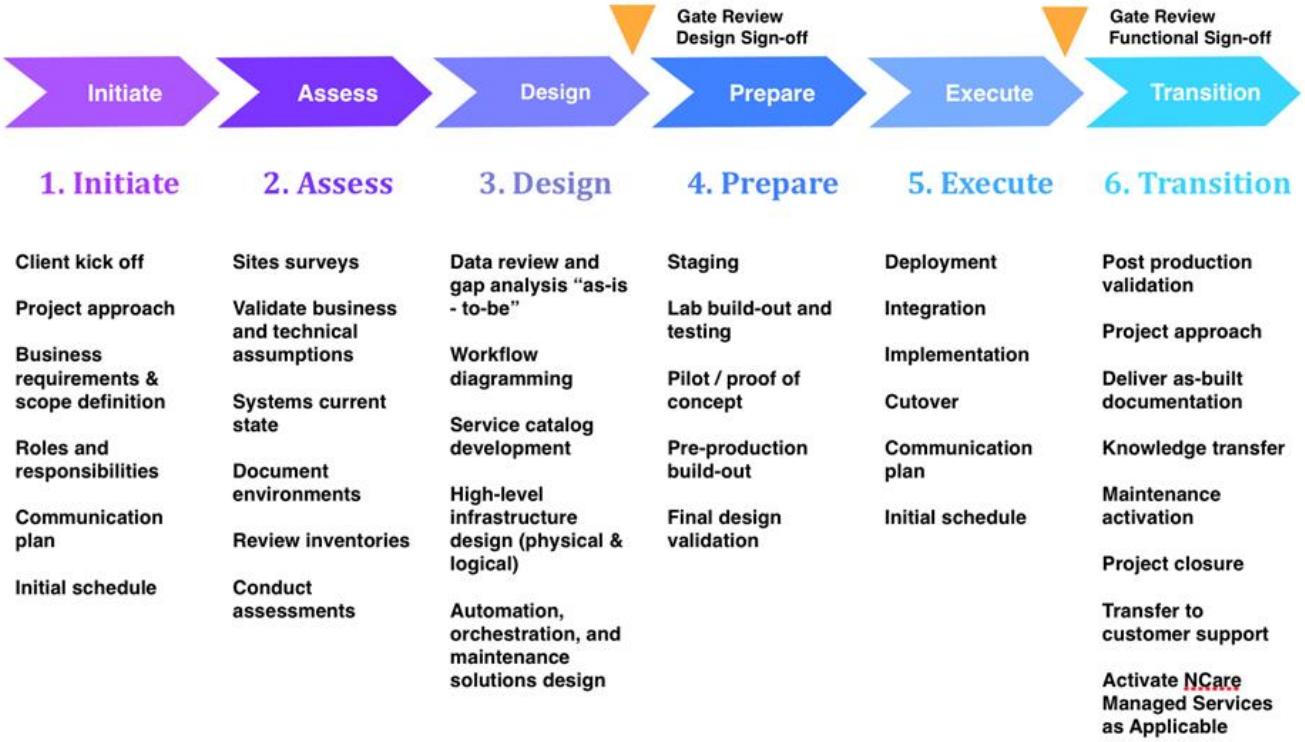
Resource Usage: 8 pCores, 36.0GB RAM , 512 GB Storage, 10 IOPS Min, 100 IOPS Typical, 100 IOPS Max, 3 vNIC

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Attachment 2: Project Delivery Methodology

NWN approaches our customer engagements using a unique integrated methodology. Our solutions matrix allows us to provide engagements and delivered technologies. This approach engages the customer at the point of need for the particular project: at points along the solution lifecycle from business requirements analysis and identification, project concept and definition, assessments, designs, development, implementation and integration to on-going support.



Project Management Methodology

An NWN Project Manager will be assigned to this project and, utilizing the NWN project methodology, is responsible for ensuring the successful delivery of this initiative as defined in this scope. The NWN Project Manager will provide timely communications, status updates, project timelines and tasks, team activity coordination and issues management and escalation to the project sponsor. The NWN Project Manager will use the appropriate tools necessary to complete the project successfully based on the scope of work for the project.

Project Change Request

In the event of changes that occur during the project the NWN PM will process a Project Change Request (PCR) to identify the needed change and effects it will have on the project along with funding that may be needed to complete the change. This PCR will be reviewed and agreed to by NWN and client prior to the change being implemented. A sample PCR is included as Attachment 2.

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Project Deliverable/Milestone Acceptance

As phases are completed the Project Deliverables Acceptance document will be revised and discussed during status meetings. Percent complete will be documented and initialed by the client so that recognition for progress can be acknowledged throughout the project. Each project deliverable/milestone, requires mutual acceptance in the form of an executed Milestone/Delivery Acceptance (MA) Form, Attachment 3. This will initiate a billing event while authorizing the projects team to proceed through the agreed upon project plan. At the end of the project, the last MA form will be signed by the project sponsor indicating that the project is complete.

Customer Survey and Publicity Release

At the conclusion of this engagement, you will be solicited directly via phone by a member of the post-delivery team or asked to complete a Customer Satisfaction survey and Publicity Release Form (Attachments 4 and 5). We look forward to gaining a more detailed understanding of your experience and sharing our experience. This feedback is greatly appreciated and valued by the NWN team.

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Attachment 3. Project Change Request (PCR)

Customer:	
NWN Project Manager:	
Customer Sponsor:	
Date:	

CHANGE REQUEST DETAIL

Project #:	Change #:
Requestor:	
Description of Change:	
Date of request:	Date needed:

CHANGE ASSESSMENT

Impacts on schedule, risk, assumptions, resources:	
Impacts on technology, design, deliverables:	
Impacts on project budget (Total $ value of Change):	
SKU #, Description, NRC Value:	
SKU #, Description, MRC Value:	

Quote is Valid for 30 days from Document Date.

CHANGE APPROVALS

SIGNATURES		
☐ Approve ☐ Deny	Project Manager	
☐ Approve ☐ Deny	Project Sponsor	

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Attachment 4. Milestone/Acceptance (MA) Form

Client:	
Project:	Fort Bend County
NWN Project Manager:	
Client Sponsor:	
Date:	

PURPOSE/INTRODUCTION

This document indicates the acceptance by the stated Project Sponsor of the presented and defined key project milestone. The Project Sponsor's acceptance of this item signifies that you understand, approve and validate that this item conforms to all project objectives and deliverables. The Project Sponsor's acceptance further signifies that the Project Manager has authorization process invoicing for the completed milestone and move forward in the project per the approved Schedule. Failure to respond within five (5) business days will constitute acceptance in accordance with the Statement of Work.

MILESTONE AND INVOICING INFORMATION

Project Phase(s)	Status	Date Completed
	Complete	

MILESTONE ACCEPTANCE

Please indicate your approval and acceptance of this item in the space provided below:

Accepted by: _____

Client Date

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NWN Project Manager Date

Attachment 5. Customer Satisfaction Survey

Customer:

Survey Date:

Project Name & Code:

◯ Survey completed in person

Project Start Date:

◯ Survey completed via email

Project End Date:

NWN is dedicated to providing its Customers with the highest quality of service. To help us in this effort, please take a few minutes to provide feedback on our services.

Satisfaction Criteria	5 = Very Satisfied 1= Very Unsatisfied 5 4 3 2 1	Comments *(particularly for any scores below "4")*
1. Rate the quality of the stated deliverables		
2. How well did the engagement meet the expected project schedule?		
3. How well did the project cost meet the expected budget?		
4. How well did the delivered solution meet the stated scope?		
5. How well were risks and issues communicated?		
6. Rate the level of teamwork displayed by the project team.		
7. Rate the value of the engagement.		
8. Rate your overall experience with NWN.		
	Yes ***No***	
9. Are you willing to serve as a reference?		
10. Would you use NWN again?		
11. Would you support NWN in the creation of a **case study*** based on this project?		**Note:** If you answered yes to this question, please complete the attached Publicity Release Form.

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** A case study consists of a high-level overview of the project in a format that can be shared with other Customers seeking similar consulting services. The study may contain a description of your business, the business challenge faced by you before the project, the solution implemented, the project approach, and the business results.*

Tell us what you liked most about the service we provided:	**What can we do to improve on the service we provided?**	**Any general comments:**

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Attachment 6. NWN Publicity Release Form

Thank you for allowing NWN to share some information about our work for you with others. Check the formats below that are acceptable to your organization:

☐ Written hardcopy and/or electronic format

☐ Video

☐ In presentations

☐ NWN website(s)
☐ Other (specify below)

Authorized for use:

☐ My Name

☐ My Title

☐ My Company's Logo

"Working Together" Case Study Description

Upon completion of a project, many of our Customers allow us to publish a case study. A case study consists of a high-level, one to two-page overview of the project in a format that can be shared with other Customers seeking similar consulting services. The study may contain a description of your business, the business challenge faced by you before the project, the solution implemented, the project approach, and the business results.

Authorization and Release Information

- I understand my information as outlined above may be used in connection with publicizing and promoting NWN Corporation.
- I agree that I will make no monetary or other claim against NWN for the use of what is provided.
- I understand that I can provide input on the finished product. I will have final approval on the product(s) and upon my request NWN will stop using some or all of what is mentioned above.

Signature:	_____	Date:	_____
Printed Name:	_____	Company	_____
Email:	_____	Address:	_____
Telephone:	_____	City, State, Zip:	_____

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Attachment 7. Zoom Call Recording SOW

The project scope consists of:

- The delivery of the following WFO products:
  - Call recording
  - Screen capture
  - Live monitoring of calls and screens
  - HTTPS access to ZOOM WFO UI
  - On server data encryption for media files (AES 128 or AES 256)
- ZOOM products will be implemented using Cisco active recording method with Built-in Bridge.
- ZOOM products will be integrated with the UCCX contact center platform of the customer to capture call attached data
- ZOOM products will also be deployed in new Production environment
- As a part of the project scope, ZOOM International also delivers:
  - Technical installation and configuration of ZOOM products
  - Project and product documentation
  - Post-implementation testing documentation and support
  - Go-live support
  - Project management services
  - End user product Training
  - Technical knowledge transfer to Customer's 12.x administrators

Explicitly out of scope are the following items:

- Hardware preparation and delivery
- EPIC and Network configuration and changes
- Installation of ZOOM products on end-user/agent stations
- Secure Real Time Protocol (SRTP)
- Secure JTAPI
- Multiple CUCM JTAPI connections
- Finesse Gadget Configuration
- Servers and OS hardening
- Security audits
- Any third-party software delivery, installation, configuration and integration, apart from embedded and In-scope third party software delivered as a part of the ZOOM ISO Image.

1.1 Project Deliverables

- SoW
- Project Information File
- Network diagram of installed components
- Professional Services - Installation of WFO application suite in two data centers.
- Training/Consulting – via WebEx
- ZOOM WFO Quality Management Suite
- WFO License components: CallRec, ScreenRec, LiveMon,
- PCI Components: HTTP, APR for EPIC, Media file encryption (AES128 or AES 256)
- Product Manuals
- Pre-installation verification, Post installation acceptance test

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Project Requisites

The deliverables listed below are *not* the responsibility of ZOOM International to provide. They may form milestones in the project and if incomplete or not-up-to specification, may delay the process and require change management with associated costs.

ZOOM International reserves the right to charge, based on time spent and materials used, for any additional work over and above the service package pricing that may result from work required to address service prerequisites or other requirements that are not met by the Installation Partner and/or Customer.

1.2 Infrastructure Preparation

1.2.1 Host Servers

The servers described in this document will be supplied, installed, tested and staged with the described Operating System (OS) release and version.

The OS Installation can alternatively be done by ZOOM International, under the condition that the Customer will be able to provide the necessary remote access and access rights.

1.2.2 Storage

External storage will be provided and tested as defined in this document. If storage is not available as per the project schedule, the system implementation will continue, however, ZOOM International will not be responsible should the correct configuration of storage fall out of the project scope.

1.2.3 Backup Systems

Backup management systems will be presented as single or multiple file systems that may be mounted on the database (DB) servers and the ZOOM server. Files written to this file system will be backed up by a system external to and not controlled by ZOOM International.

1.2.4 Network Infrastructure

Network connectivity between the PBX/Switch, endpoints and ZOOM product software will be configured as required for ZOOM products to operate.[1]

1.2.5 Voice Platform

1. Software versions are current and within support
2. All latest provided hotfixes are applied
3. Versions are compliant with ZOOM product requirements[2].
4. Configuration of the Voice platform is outside the realm of ZOOM International engineering

[1] See *ZOOM Deployment guide* for network port requirements

[2] Specific recording methods have specific requirements. Refer to *ZOOM Deployment* guide for recording method requirements.

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1.2.6 Operational Requirements

Technical resources need to be made available throughout the project to cover all requirements of the following disciplines:

1. Networking
2. Desktop (agent stations for both software and hardware)
3. Server and storage
4. Functional testing

1.2.7 Delivery Requirements

Agreement on the delivery methods (listed below) is required.

1. Unsupervised secure remote access via:
   1.1. VPN
   1.2. SSH Port Forward
   1.3. TeamViewer
   1.4. RDP
2. Supervised secure remote access via Webex:
   2.1. Sessions available within 15 minutes of request
   2.2. Sessions available during agreed maintenance windows
3. Local Access to ZOOM products' servers is available for all agreed onsite days
   - Root access, admin rights and privileges will be provided to ZOOM International's implementation team for all ZOOM product servers.

1.2.8 Agent workstation requirement

The following table contains the hardware requirements for agents' desktops/workstations.

Component	Minimal Requirement
Processor	Dual-core CPU, 2GHz or faster
RAM	2 GB or more
Disk Space	150 MB available
Supported Operating Systems	• Windows 7 • Windows 8.1 • Windows 10
Supported Browser	• Internet Explorer 11 – latest available version supported • Mozilla Firefox – latest available version supported • Google Chrome – latest available version supported
Other required applications:	• Microsoft .NET Framework 3.5 SP1 or, • Microsoft .NET Framework 4.0 or, • Microsoft .NET Framework 4.6 • Microsoft Windows Installer 3.1 or later • Java A Java version (1.8) is required for Live Monitoring • Adobe Flash is required for playback of media in browsers which do not support HTML5 and if you use Advanced Player in Call Recording Web UI.

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1.2.9 Ports Usage

This section presents a list of the TCP and She UDP ports that ZOOM products use for communication with external applications or devices. The ports are defaults and local administrators can change most of them.

ZOOM Products Server Ports

Source	Destination	Port	UDP or TCP	Purpose
SSH client	QM Suite server	22	TCP	Remote shell access
Workstation	QM Suite web UI	80	TCP	Remote web access – http
Workstation	QM Suite web UI	443	TCP	Remote secure web access – https
SNMP client	QM Suite server	199	TCP	Monitoring
SNMP client	QM Suite server	161	UDP	Monitoring (SNMP requests)
SNMP client	QM Suite server	162	UDP	Monitoring (SNMP traps)
Workstation	QM Suite RabbitMQ	15672	TCP	RabbitMQ web UI
CIFS client	Windows file sharing server	445	TCP	Sharing windows network drives

Databases

Source	Destination	Port	UDP or TCP	Purpose
QM Suite server	PostgreSQL server	5432	TCP	PostgreSQL database
QM Suite server	Solr server	8983	TCP	Solr database

Cisco Active and Passive Recording

Source	Destination	Port	UDP or TCP	Purpose
QM Suite JTAPI	CUCM server	80	TCP	Download the JTAPI.JAR library
QM Suite JTAPI	CUCM server	2748	TCP	Connect with the CTI Manager
QM Suite JTAPI	CUCM server	8443	TCP	Download the JTAPI.JAR library
Phone	QM Suite active recorder	16384 - 18432	UDP	Forward the RTP stream using BIB (4 ports per concurrent call)

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Source	Destination	Port	UDP or TCP	Purpose
CUCM server	QM Suite active recorder	5060	TCP or UDP	SIP communication
Agent phone	QM Suite web UI	80	TCP	Prerecord service and request call lists
QM Suite web UI	Agent phone	80	TCP	Prerecord service and request device information

Cisco Unified Communications Manager TCP and UDP port usage

Integration modules

Source	Destination	Port	UDP or TCP	Purpose
QM Suite UCCX integration module	UCCX server	12028	TCP	UCCX integration

Other Services

Source	Destination	Port	UDP or TCP	Purpose
QM Suite web UI	LDAP server	389	TCP	Log in to web UI using LDAP verification
QM Suite web UI	LDAP server	636	TCP	Log in to web UI using LDAPS (over TLS or SSL) verification
QM Suite server	SMTP server	25	TCP	SMTP port used for emailing from QM Suite server

Live Monitoring, Automatic P&R ports

Source	Destination	Port	Purpose
Agent Desktop	WebUI	80/443	Web access, Live Monitoring, Automatic P&R API
Agent Desktop	Core, CM	30400, 30500, 30501	LM - download of configuration
Agent Desktop	Core	30600, 30601	LM – communication with Core
SLR Recorder	Core	4000-5000	LM - RTP transfer
Core	Agent Desktop	40000-40100	LM - RTP Transfer

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SCREEN RECORDING

Source	Destination	Port	Purpose
Agent Desktop	SRS module	7003	Registering client with server
Agent Desktop	Web uploader	8080	Uploading of recorded screens

1.3 Project Assumptions

The following items detail the base line of project requirement “norms” to minimize ambiguity.

1.3.1 System Integration

There is no proposed systems integration activity, support, API nor direct database access beyond that specified directly in **Section 0: High-Level Solution Design** and the standard functionality as described in the **Error! Reference source not found.**Products documentation. Therefore, the only system integration to be delivered within the project scope is **UCCX** integration, and optionally **LDAP integration**, if required.

1.3.2 Acceptance Testing

Acceptance testing is performed to verify the functionality of the solution as described in the **Solution Overview** and **High-Level Solution Design** sections.

The tests performed are detailed and logged at the component level in the **Error! Reference source not found.** stage. Presentation of a complete and successful PIT log marks the end of the engineering implementation effort.

Note: Any User Acceptance Testing (UAT) required by the customer on top of the mandatory Post-Implementation Testing has to be specified and planned by the customer/partner, and ZOOM International needs to be informed upfront. ZOOM International can provide assistance and support during the UAT testing. UAT scenarios or test cases and their planned delivery is out of the scope of ZOOM International’s delivery, however, ZOOM International can provide examples of UAT test scripts and guidance when planning the UAT execution.

1.3.3 Responsibility Matrix

The following table summarizes areas of responsibility within ZOOM International’s implementation project on the Cisco Platform.

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Discrete Project Stage	Responsible Party	
	ZOOM/NWN	Customer
Solution design based on collected business requirements	✓	
Preparation of project documentation (PIF, SoW, Plan, PIT)	✓	
Hardware specification based on solution design	✓	
Detailed design	✓	
Provision of server hardware according to the agreed solution design	✓	
Provision and base installation and configuration of OS from the ZOOM products install image provided by ZOOM International	✓	✓
Pre-installation check output file analysis with corrective actions if required	✓	
Network configuration changes (SPAN or RSPAN) if applicable		✓
Provisioning and testing the CUCM and UCCX configuration	✓	
Provisioning recording configuration in the CUCM and activating the recording profile on IP Phones	✓	
Verifying and troubleshooting the Cisco platform owned by Customer and all related systems excluding ZOOM products	✓	
Establishment of secure connectivity for a ZOOM engineer, providing required credentials.	✓	✓
Remote installation and configuration of ZOOM products as per agreed design and functionality within project constraints	✓	
Call data configuration as per specification: User column setup Advanced search User-attached data	✓	
Media Lifecycle Management program built to customer specification	✓	
Installation of client software where applicable (Screen recording client, Quality Manager compatible browsers)		✓
Configuration of EPIC integration with ZOOM Automated Pause and Resume API on ZOOM WFO server	✓	✓
User acceptance testing (UAT) performed as per customer acceptance tests document	✓	✓

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1.4 Functional Overview of ZOOM WFO In-scope Products

1.4.1 Call Recording

Call Recording is a multi-channel recording solution for contact centers and unified communications environments. The application offers numerous features including an intuitive web-based interface, advanced record organization, storage and archiving, sophisticated access control and record manipulation, comprehensive recording, and on-demand access to all recordings. Detailed technical description of this feature is provided in the ZOOM Products documentation.

1.4.2 Screen Capture

Screen Capture enables recording of agents' desktops during the customer interaction and the wrap-up. Being able to view the agent's entire workflow greatly enhances the quality evaluation capability of evaluators.

The ZOOM screen recording module provides businesses important insights into application(s) use and highlights any training or process issues related to the use of applications while agents are handling customer interactions. With screen recording, businesses can eliminate agent effort, reduce overall AHT and improve agent efficiency and productivity.

A detailed technical description of this feature is provided in the ZOOM Products documentation.

1.4.3 Live Monitoring

Live Monitoring is a tool, which allows contact center team leaders or managers to see a list of calls in progress. By selecting one of these calls, an authorized user can listen to them in real time.

Live Screen Monitoring enriches the live monitoring option by allowing the observation of agent action on the computer desktop. This feature enhances the evaluator's understanding of the interaction.

Furthermore, Live Monitoring enables the user to save the specific call and screen recordings selected for review or to send the recording by email to use them later, for example, for caching purposes.

The main features are:

- Live Call Monitoring
- Live Screen Monitoring
- Sorting live calls
- Saving live calls
- Emailing saved calls
- Adding tags and comments

1.4.4 Integration the Contact Center platform – UCCX

ZOOM Integration module provides capability to capture all data related to recorded calls and store the data to ZOOM Database in form of Call Attached Data.

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1.4.5 Attached Data and Advanced Search

All call-attached data listed within the Project Information Form (PIF) will be configured so that it can be stored and retrieved from the ZOOM products database with those specified as search parameters configured as such.

Following the initial configuration, changes to the attached and search data is considered an administrative task that can be carried out by the end user as required.

1.4.6 PCI/DSS compliance features

1.4.6.1 Secure Web access - HTTPS

ZOOM provides out-of-the box possibility to set-up HTTPS Web user access. It is possible to use an internal company Certificate authority or a commercial CA Certificate Authority such as Thawte or Verisign, to sign the SSL certificates necessary for the HTTPS configuration. Using these, or importing the self-signed certificate to client trusted stores, avoids browser warnings regarding 'untrustworthy' self-signed certificates.

1.4.6.2 Data encryption

Encryption is achieved using ZOOM inbuilt tool, the Key manager. The encryption of recorded audio files in storages will be done using either AES 128, or AES 256 cipher strength.

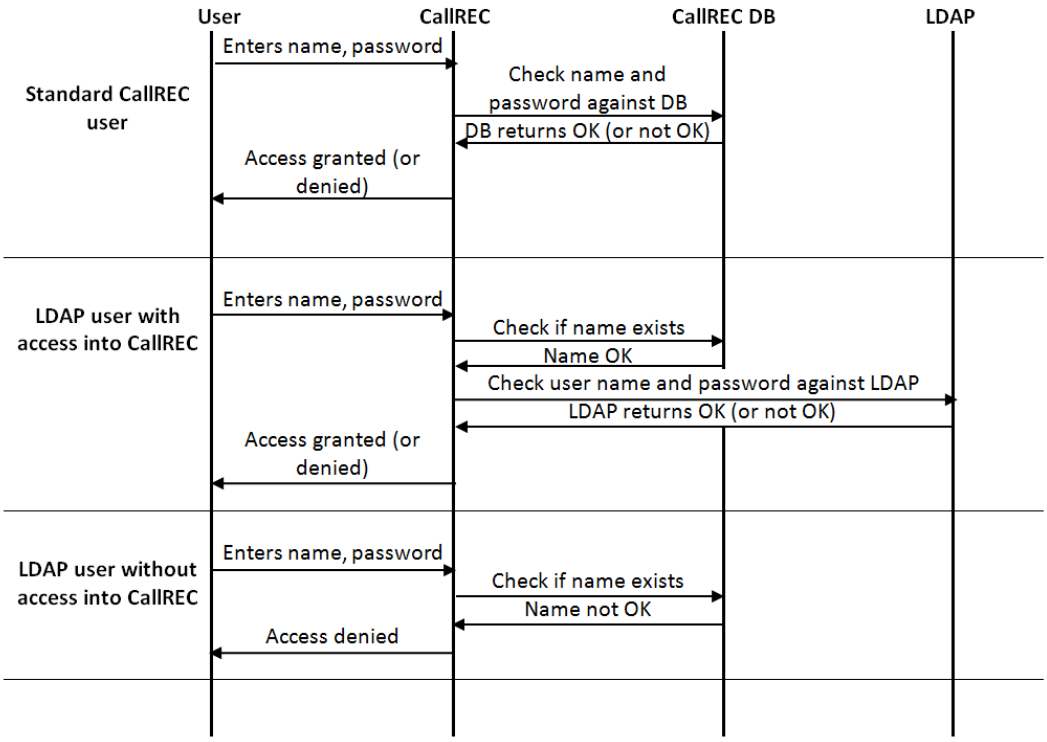
1.4.7 User management

1.4.7.1 Call recording UI LDAP integration – optional feature

LDAP integration can be used for the authentication of users in the ZOOM Call Recording UI. The access to the Call Recording UI is necessary only for users so that they can use both Live Call and Screen monitoring.

Once the LDAP is configured correctly and the LDAP directory is running, users are imported into Call Recording. The import process adds only the user names, emails, and passwords that are checked against the LDAP at every login. The following flowchart demonstrates the user authentication process.

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1.4.8 System Monitoring – Optional Feature

System Monitoring is an optional service for the customer. System Monitoring provides a combination of backend and front-end services that allow administrators to monitor both the operating system and ZOOM products services actively.

The backend is implemented as a list of configurable SNMP probes and extends that provide deep analysis of the system. On the front end, Call Recording uses the Nagios web UI to display the state of the system efficiently.

The monitoring can be implemented as part of the project scope and should be marked in the Project Information Form (PIF) prior to installation.

1.4.9 Exclusions

The following list provides an overview of ZOOM products functions, which **are not included** in the project scope:

- Video & Telepresence Recording
- Voice of the Customer
- E-learning
- Speech Analytics
- Manual Pause and Resume (call & screen recording)
- Performance Analytics

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- WFM

1.5 Capacity and Utilization

The solution will be delivered with a maximum capacity to record 20 concurrent calls and screens.

The maximum of 20 endpoints will be recorded.

100% of calls placed to and from contact center agents will be recorded.

100% of these calls will also be recorded with agents' screens.

Captured calls and screens will be made available for Quality Management purposes.

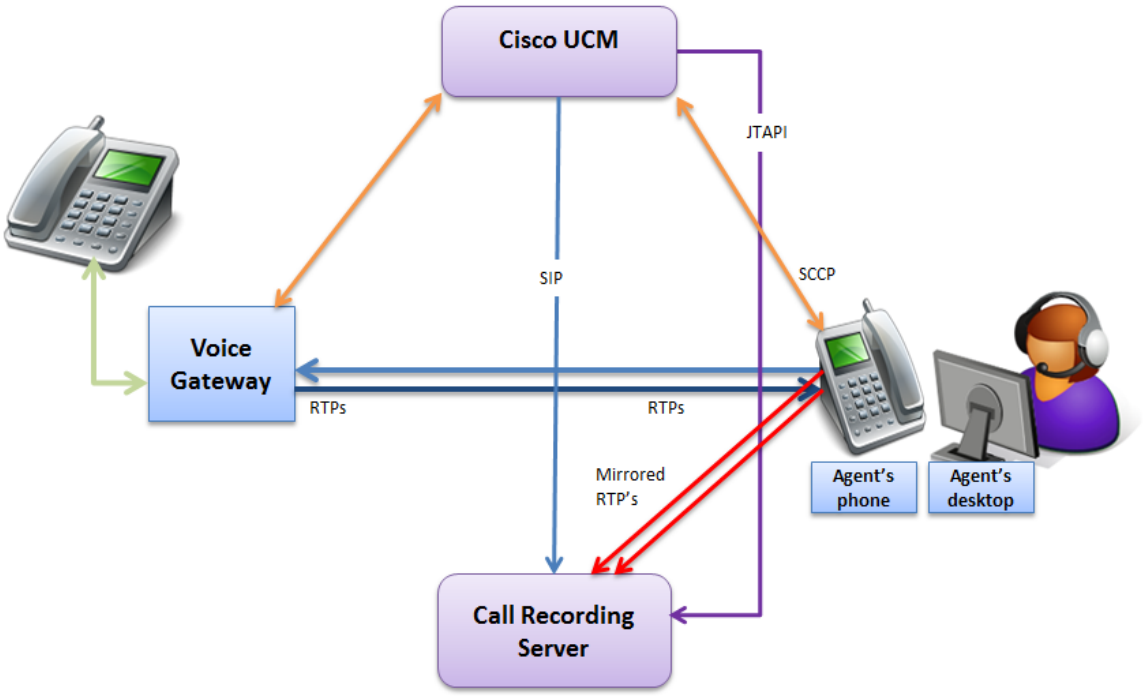
Load Information	
Recorded calls per day total	TBD
Recorded screen captures per day total	TBD
Average Handling Time – Calls [min]	TBD
Average Handling Time- Screens [min]	TBD
Max. concurrent calls	20
Max. concurrent screen captures	20

Required Retention Policy	
Retention policy for Calls on recording servers [days]	TBD
Retention policy for Screens on recording servers [days]	TBD
Retention policy for DB on recording servers [days]	TBD
Retention policy for Calls on Replay server [days]	N/A
Retention policy for Screens on Replay server [days]	N/A
Retention policy for DB on Replay server [days]	N/A

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1.6 ZOOM Architecture

1.6.1 Cisco Active Recording with JTAPI



The active recording captures the call data and calls stream through a direct connection with the PBX platform. This means that signaling information can't be lost. Active recording achieves close to 100% capture reliability. Additionally, other call data contained on the platform can be captured and stored in Call Recording.

Instead of monitoring the stream directly, as in Passive (SPAN) Recording, the CUCM controls active recording. It identifies the calls to be recorded based on recording profiles. When a call with a valid recording profile is detected, the voice stream is copied directly to the Call Recording recorder server. When the calls are decoded, they are immediately available within the Call Recording web-based user interface. Cisco also refers to this method as "phone-based media forking" or "device-based recording." Active recording through the CUCM does not require the SPAN port to monitor network traffic and identify VoIP traffic. However, it does require the configuration of system options in the CUCM. Please refer to the Cisco Unified Communications Manager Features and Services Guide for more details.

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In addition to active recording, the integration with UCCX can provide additional service-related information. For example Service, Agent, Skill Group, Caller Entered Digits, User Variables, and Wrap-up Data. This is provided through the CCX CTI protocol.

1.7 ZOOM Components Distribution

Cluster	Server	ZOOM WFO Components	Location
Recording Server	REC1	DB, WEB UI, TOOLS, CM, CORE, JTAPI, UCCX IM, SRC, Decoder, SLR	DC – RWD

1.8 Software Requirements

The OS for each server should be installed as according to the *Deployment Guide*. All servers for ZOOM products must be installed with CentOS 7.5, 64bit. CentOS is included in the ZOOM products ISO image. There must be no other applications installed on these servers without ZOOM International's consultation. Otherwise, this may result in out-of-scope (thus separately billable) activities.

1.9 Hardware Requirements

The solution will be deployed on a virtualized platform.

The distribution of resources is measured in:

- vCPU Cores
- GB RAM
- GB Storage

All resources are hard-reserved and broken down as follows.

1.9.1 Production Environment Hardware Sizing

WFO cluster	Resources		Hard Disk	
	vCPU	RAM	HDD1 System, DB Media (GB)	HDD2 Data (GB)
SRV1 (Recorder)	4	16	500GB	5 TB Network Share

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Note: * Storage is a loose estimate, as call averages have not been provided. Estimate is based on storing 12 months voice recordings and 12 month of screen and will require SAN, or drives must be sized for long term storage of MP3's and screens. Below are the generic averages used:

- Average Call Length: 180 seconds
- Average Concurrent calls: 20
- Average Handle Time: 270 seconds
- Calling Hours: 8 hrs/day, 7 days/week
- Total Daily Call Count: 2133

1.9.2 Virtual Machine Prerequisites and Requirements

General Guidelines

Virtualization Considerations:

- VMware ESX/ESXi 5.5 and later are supported
- CPU resources must be reserved for each machine (CPU frequency to be reserved, vCPUs to be mapped to physical cores).
- Memory resources must be reserved for each machine.
- Redundancy for virtual HDDs is provided at SAN level.
- VMware Tools must be installed on each machine and be up to date.
- Physical servers must have Intel CPU E5-26XX v2 2.5Ghz or higher
- Usage of VMXNET 3 network card type is strongly recommended (A corresponding vmxnet3 driver must be used by the network card(s) within the Linux system).
- Virtual Hard Drive controller: VMware Paravirtual
- Balloon Driver must be disabled.

Storage Considerations:

- Data Store will use low latency connection (Fiber Channel or iSCSI)
- RAID controller used for storage and VM HDDs has at least 512MB of cache
- Storage will consist of SAS 15k rpm or better performing HDDs
- I/O throughput is guaranteed (Average Disk sec/Read Write of less than 10ms)
- NAS/SAN with support of replication is required - customer can also potentially use archiving to S3 storage for older conversations

UC / Network Requirements

- IP Phones should support Built in Bridge for Network Based Recording.
- Sufficient network bandwidth should be provisioned for Call Recording RTP streams. Each call recording session requires two RTP streams between IP Phone and ZOOM Recording Server.
- QoS should be enabled on underlying network infrastructure to prioritize voice RTP streams.
- G.711 voice call is roughly 80 Kbps. For Dual RTP streams use 160 Kbps as bandwidth calculation estimate.
- Screen recording requires 200 Kbps (with moderate activity on agent desktop). Dual screens, Higher screen resolution and agent activity on PC will effect bandwidth requirments for screen recording.

Note: Thick provisioning of HDD is required for all HDD allocated to ZOOM server and for the attached storages.

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1.10 Throughput and Storage Estimates

Based on the inputs given to date and the high-level design, the following sizing information should be used for guidance in ensuring the suitability of the supporting infrastructure.

Please note that the following describes the design criteria for the solution. Should call volume, duration, location or any other criteria change, the solution may not support them.

Solution Delivery

1.11 ZOOM baseline methodology

Work on the project will begin with a formal startup, or kickoff. During kickoff, the individuals associated with the project along with their roles and responsibilities, the overall objective and overall schedule are formally identified. Subsequent to this conference call and during the remainder of the design process, a Detailed Design Document and project Implementation Plan is created or refined from the specification and information provided by Partner and/or Customer. This plan defines “precisely how the project is to be executed” and requires Customer’s acceptance prior to moving to implementation. The facilitator for the creation of that plan is the ZOOM PM.

During implementation, the project is implemented according to the plan. This process generates the results of the project ultimately confirmed via an acceptance test. Changes to the project are managed through a change management process.

1.11.1 Team roles

Project management

1. Provide a single point of contact for all project support issues within the scope of this project.
2. Conduct Kick-off meeting
3. Provide overall schedule and will maintain schedule through the life of the project.

Pre-sales engineer

1. Prepare Statement of Work and present it to all project team members.

Support engineer

1. Run the installation and configuration
2. Perform acceptance testing

Helpdesk

1. Gather all information required for installation (owns pre-install document)
2. Act as a point of contact after successful acceptance.
3. Provide general after-project support.

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1.12 Project stages

1.12.1 Detailed Design Stage

Based on the solution design as outlined in Section 0 and conversations with the customer, a detailed design document will be prepared by ZOOM International and delivered to the Partner and Customer for approval. ZOOM International will require that the Partner and Customer provide all required technical information needed to complete the detailed design.

The detailed project plan will be prepared and delivered for approval by the Customer and Partner.

1.12.2 Deployment Stage

The deployment process includes:

- Pre-implementation preparations and checks
- Production environment for ZOOM products
  - Installation
  - Configuration
  - Internal (Unit/SIT) testing
- Detailed steps of the deployment stage will be included in the detailed project plan.

1.12.3 Testing and Consultancy Stage

1.12.3.1 Post Implementation Testing / User Acceptance Testing

Post implementation testing is performed based on standard testing scenarios delivered by ZOOM International; alternatively, the Customer can also prepare and execute their own set of tests. Once testing is completed, Quality Management Consultancy can commence.

1.12.3.2 ZOOM Call Recording Training – 2 hr WebEx

The aim of Call Recording Consultancy in this project is to enable the customer's business and supervisor user community to navigate the features in the ZOOM Call Recording Web User Interface.

Subjects Discussed

- Supervisor Web Access to interface
- Search & Replay based upon Cisco Variables
- Search filter building and saving
- Demonstration on how to play back calls with multiple couples (hold/transfer)

Pre-requisites

- ZOOM Call Recording should be installed and operational. "Operational" means that a local user can play back phone calls made or handled by a local user where one party was a local user, and the other party was a member of the public.
- A significant number (at least 100) of calls should be available as historical data. The period covered should be at least five working days.
- ZOOM Call Recording should have been tested and proven operational using a remote connection to a client machine on the partners' side to ensure that all prerequisites for client machines have been met and that they will be able to playback calls.

SOW document

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- Participants in the ZOOM Call Recording project must either speak English or provide a translator for the purpose.
- Participants in the ZOOM Call Recording project must be available for all relevant sessions.
- Participants in the ZOOM Call Recording project must provide reliable and clear telephone and internet connections that can support a remote training session.

1.12.4 Go-live and Project Closure

Solution go-live is the main part of the project stage. The solution can be rolled out to the business users if required by the Customer, but on-off go-live is also possible and can be managed.

After the go-live, ZOOM International will provide Go-live support and deliver *As-built* documentation describing the actual final solution deployment.

1.13 On-Going Support

Upon completion of the project, support requests may be made directly to the Partner's technical support for escalation to ZOOM International when required. Fort Bend County does have the option to interact directly with ZOOM International for technical support.

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Attachment 8. Mutare SOW

Re-Installation of Application on New Windows Server

A request for a server re-installation of the Mutare software on a new virtual server has been made. In order to fulfill this request, there are requirements the customer or the customer's partner must complete before Mutare can perform the re-installation.

Customer or Business Partner Requirements:

- Provide a new Windows server in virtual environment
  - Server specifications are provided outside of this document
- Provide access to the old server to collect application specific settings and data
- Provide access to the new server for installation
  - VPN is preferred but web meetings are available
- Account required for the application to run on the new server (if applicable)
- Any Firewall changes required to allow network connectivity between server and other resources (voicemail, SMTP, etc.)
- Make necessary changes to voicemail system (if applicable)
  - Mutare to provide Tech Document outlining required work outside of this SOW
- Assist in pre-cutover testing

Mutare Requirements:

- Install the current application on the new, customer provided server
- Configure application and confirm database access
- Configure and test integration to the voicemail system
- Verify website is operational and accessible
- Test application to confirm functionality
- Ready system for cutover to production

Assumptions

- Installation and testing can be done during normal business hours
- Cutover to new server matches current support agreement* (8x5 or 24x7)

* If after-hours cutover is required, additional charge may be required

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Remote Access

Mutare must remotely access your application server for installation, configuration, and support. Mutare will support most any VPN Client your IT department may require. Mutare will then access the server via Terminal Services/Remote Desktop.

Alternative Remote Access Options: Some company IT departments do not allow remote access to company servers via VPN connection. If this is the case, Mutare can do limited installation and support tasks via web meeting software. Be aware that this type of remote access will delay support, installation and/or maintenance of your application.

Backups and Anti-Virus Software

Mutare's recommendations for backups and anti-virus software are:

- Backups
  - Mutare recommends regular VM snapshots/backups per your existing backup plan.
  - Mutare applications generally run on a SQL Server database. Mutare recommends a backup plan that includes the SQL Server databases.
- Anti-virus: You may install anti-virus software as required by your organization.

The Process of Engagement

A kickoff meeting includes all stakeholders required for planning and deployment. During this meeting the Mutare project manager will review the application scope, data requirements, VPN remote access, and the overall timeline for project implementation.

1. Mutare's project manager will work with the customer's team to confirm that the hardware and or virtual systems are installed if required.
2. Mutare install team will connect via the remote access that was agreed upon and will implement the system. This step is essential to move forward, and proper credentials need to be procured and provided to the Mutare project manager.
3. Mutare confirms full system operation. When Mutare finds the system is operating as designed, you are invited to confirm and test.

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Project Responsibilities

This project demands involvement by your team and any 3rd party implementation resources provided. Ultimate success is highly dependent on a team effort. To help achieve a smooth and successful implementation, it will be your responsibility to:

- Participate in the Mutare kickoff meeting or conference call to review the application in place with the Mutare operations team, and to ensure scope of work and integration logistics are understood and agreed upon prior to development. The Mutare project manager will set up the kickoff meeting or conference call.
- Review Mutare-provided forms, provide the proper system environment, establish a system contact, and meet target deployment dates as required.

Mutare services are performed and configured remotely and require remote access for application installation and support. Access to the CUSTOMER system will be provided by you via remote access WebShare, VPN, etc.

The table below summarizes the parties responsible for each aspect of the project. Each referenced exhibit contains detailed information regarding the applicable responsibilities.

Task	Reference	Primary Responsibility	Support Party
Remote Control Access		Customer	Mutare
Windows Server		Customer	Mutare
Review Application and Deployment		Mutare	Customer
Perform installation or work		Mutare	Customer
Support		Mutare	Mutare

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Mutare Responsibilities

- Project Management
  - Mutare will provide a single point of contact that will act as the project manager for the project.
  - The Mutare project manager will coordinate and oversee the installation and implementation.
  - The Mutare project manager will set up the initial kickoff meeting between the customer and the required Mutare personnel.

- Remote Access
  - Mutare will require remote access to the Mutare application server.
  - Preferred access is VPN with Remote Desktop (RDP) to the server.

- Installation
  - Mutare will install and/or configure the necessary software as outlined in this SOW during normal business hours.
  - If after hours cutover is required but is not outlined in this SOW, a change order will be required.

- Testing
  - Mutare will do initial testing of the application to confirm full functionality of the application before turning over to the customer for customer acceptance testing.

Customer Responsibilities

- Project Management
  - Customer will provide a single point of contact that will act as the project manager for the Mutare implementation.
  - The customer project manager will ensure that the necessary individuals are available to complete the necessary programming and network/firewall programming as required and outlined in the SOW.

- Remote Access
  - Customer will provide VPN access with Remote Desktop to the server.
  - If VPN is not allowed due to access policies, web meetings will be required. If web meetings will be utilized, customer must be able to provide the necessary web access when Mutare requests it.
    - *** Please be aware that web meetings will require a customer contact be available during the entire length of the web meeting.
    - *** This could also mean that the individual that provides access will have their PC tied up during the length of each meeting.

- Testing
  - The customer can test the application and/or modifications to ensure functionality meets the requirements as outlined in the SOW.

SOW document

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- If the customer discovers any bugs or issues during the testing period, they must be reported to Mutare by opening a ticket. To open a ticket, send an email with a full description of the problem to help@mutare.com.

- Project Sign Off
  - Once Training and Testing has been completed the customer must provide signoff on the application.

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a. IN NO EVENT WILL MUTARE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE MUTARE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. IN NO EVENT WILL MUTARE'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO MUTARE PURSUANT TO THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRIOR TO THE DATE CLAIM ACCRUED.

c. THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Compliance with Laws. The Licensee shall comply with all applicable laws, regulations, and rules, and complete all required undertakings required thereby, in connection with its use of the Software.

15. Miscellaneous.

a. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of Illinois in each case located in the City of Chicago, Cook County, Illinois, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or

other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

b. Mutare will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Mutare's reasonable control.

c. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section.

d. This Agreement, together with the Order Form, all annexes, schedules, and exhibits attached hereto, constitutes the sole and entire agreement between Licensee and Mutare with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

e. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Mutare's prior written consent, which consent Mutare may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Mutare's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this Section is void. Mutare may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

f. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

g. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

h. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

i. For purposes of this Agreement, (i) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Exhibit A

akkadian labs

Click-Through Version

Collaboration Inspired Software™

END-USER LICENSE AGREEMENT ("**EULA**")

For the Provisioning Manager Express™, Console Operator™, and/or Global Directory™ software products you have purchased ("**Software**").

IMPORTANT: PLEASE READ THE TERMS AND CONDITIONS OF THIS END-USER LICENSE EULA ("**EULA**") CAREFULLY BEFORE USING THE SOFTWARE. AKKADIAN LABS LLC ("**AKKADIAN**") IS WILLING TO LICENSE THE SOFTWARE TO YOU AS THE INDIVIDUAL, THE ORGANIZATION, OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE SOFTWARE (REFERRED TO AS "**YOU**" OR "**YOUR**") ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS EULA.

UPON AND AS OF THE EARLIEST DATE THAT (A) AKKADIAN SENDS AN EMAIL TO YOU CREDENTIALS TO LOG INTO AKKADIAN'S WEBSITE FROM WHERE THE SOFTWARE MAY BE DOWNLOADED, (B) YOU DOWNLOAD THE SOFTWARE, OR (C) YOU INSTALL THE SOFTWARE (THE "**EFFECTIVE DATE**"), YOU AGREE TO THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS EULA, DO NOT ATTEMPT TO DOWNLOAD OR INSTALL THE SOFTWARE, OR, IF INSTALLED, MAKE NO FURTHER USE OF THE SOFTWARE, AND NOTIFY IN WRITING AKKADIAN OR THE RESELLER FROM WHOM IT WAS ACQUIRED WITHIN THIRTY (30) DAYS OF PURCHASE, AND THE PURCHASE PRICE WILL BE REFUNDED.

IN CONSIDERATION OF YOUR CONTINUED COMPLIANCE WITH THIS EULA, AKKADIAN GRANTS YOU A LICENSE TO USE THE SOFTWARE, ASSOCIATED MEDIA ON WHICH IT IS PROVIDED (IF ANY), AND RELATED DOCUMENTATION ("**SOFTWARE**") AS INDICATED ON THE QUOTE OR PURCHASE ORDER.

1. EVALUATION LICENSE

1.1 Section 1 applies only if you have agreed to a limited time evaluation license of the Software ("**Evaluation License**"). The provisions of Sections 5, 6, 7, 9-14, and 16-18 shall apply with full effect to this Evaluation License.)

1.2 You have accepted an Evaluation License for the Software. You shall have the right to use the Software in the operating environment identified by Akkadian Labs and within the usage limitations agreed to by Akkadian Labs. You may use the Software solely for your own internal testing of the Software. No copies shall be made without Akkadian Labs prior written consent. Your use of the Software is limited to evaluation purposes for a period of thirty (30) days starting from the date you install the software (the "**Evaluation Period**") subject to any extension of that Evaluation Period by Akkadian Labs and as evidenced in writing. At the conclusion of the Evaluation Period you shall either (a) return the Software and all copies to Akkadian Labs or certify their complete deletion within your operating environment (including backup copies), or (b) advise Akkadian Labs in writing that you agree to enter into a license EULA and pay the appropriate license fee in which case Akkadian Labs shall provide you with a secure product key or other instructions which shall enable Customer to utilize the full functionality of the Software and you shall promptly apply such product key. You shall then be subject to all of the terms of this EULA and shall pay the license fee upon receipt of an invoice therefor. IN CONNECTION WITH THIS EVALUATION LICENSE AKKADIAN PROVIDES THE SOFTWARE "AS-IS," WITHOUT WARRANTIES OF ANY KIND, AND AKKADIAN SPECIFICALLY DISCLAIMS ALL IMPLIED, EXPRESS AND STATUTORY WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

2. LICENSE

2.1 Subject to your continued compliance with the terms and conditions of this EULA, Akkadian Labs grants you a nonexclusive and non-transferable right and license to use execute, store, and display the object code version of the Software and documentation only as follows:

Product	License/Installation Limitation
For Provisioning Manager Express™	On the purchased number of activations only up the number of User-Based Licenses or Device-Based Licenses set forth in the Purchase Order
For Console Operator™	One license per computer
For Global Directory™	On the purchased number of activations only up the number of directory number's licensed detailed on the purchase order.

or as otherwise designated on the quote or Purchase Order.

2.2 The license granted herein is perpetual until and unless terminated. All license payments are nonrefundable.

2.3 You may:

2.3.1 use the Software on the quantity and type of computers indicated on Akkadian Labs Order Form.

2.3.2 make one copy of the Software for archival purposes, or copy the Software onto the hard disk of your computer and retain the original for archival purposes;

2.3.3 use the Software on a network, provided that you have a licensed copy of the Software for each computer that can access the Software over that network; and,

2.3.4 make printed copies of electronic documentation for your internal use.

2.4 You shall not:

2.4.1 transfer, assign, convey, sublicense, rent, lease, or provide or permit access to the Software (or any portion thereof), either directly or indirectly, to another person or entity or unlicensed division, subsidiary, or affiliate (or to anyone other than the entity named as licensee as appearing on the software splash screen), and any transfer in violation hereof shall be of no power or effect;

2.4.2 distribute, sell, sublicense, rent, lease, use or provide or permit access to the Software (or any portion thereof) for any purposes other as expressly permitted under this EULA;

2.4.3 directly or indirectly reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover, modify or use the source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), or create derivative works from the Software, and any such derivative works or other modifications shall automatically be owned by Akkadian Labs upon creation;

2.4.4 utilize any equipment, device, software, or other means designed to circumvent or remove any form of product key or copy protection used by Akkadian Labs in connection with the Software,

or use the Software together with any authorization code, product key, serial number, or other copy protection device not supplied by Akkadian Labs or through an authorized reseller;

2.4.5 use the Software to develop or facilitate development of a product which is competitive with any Akkadian Labs product offerings;

2.4.6 post or otherwise publish electronic documentation of the Software for access outside the licensed organization;

2.4.7 use a previous version or copy of the Software after you have installed a replacement set or an upgraded version and, upon upgrading the Software, all copies of the prior version must be uninstalled or rendered unusable;

2.4.8 remove any product identification, proprietary, copyright or other notices contained in the Software;

2.4.9 provide any product key or login information to a third party unless expressly authorized by Akkadian Labs in writing in advance; or,

2.4.10 use the Software or product keys in any manner not expressly authorized by this EULA.

2.5 Transfer of Software. You may not transfer the Software to any third party without the written consent of Akkadian Labs and in any event you shall be required to uninstall the SOFTWARE from your systems before any such transfer.

3. TERMINATION

3.1 Akkadian Labs may terminate this License upon written notice to you in the event you breach any term or condition of this EULA and fail to remedy such breach within fifteen (15) days of the date of notice. Upon termination you shall have no right to keep or use the Software for any purpose and you shall return, delete or destroy all copies thereof and promptly certify the same to Akkadian Labs in writing. In the event Akkadian Labs terminates this EULA and the license for cause, there shall be no refund of any amounts paid to Akkadian Labs.

4. OWNERSHIP

4.1 The Software is licensed, not sold. The Software is owned by Akkadian Labs or its licensors and is protected by copyright as well as other intellectual property laws. Unauthorized reproduction or distribution of the Software is subject to civil and criminal penalties. Except as set forth in this EULA, no express or implied license or right of any kind is granted to you regarding the Software. Akkadian Labs reserves all rights not expressly granted herein. The Software is licensed as a single product. Its component parts may not be separated.

5. UPDATES

5.1 All updates and upgrades to the Software and related documentation delivered to you are subject to this EULA.

5.2 Your Implementation of Updates. You agree that all updates, corrections, and upgrades supplied by Akkadian Labs shall be installed in a reasonably timely manner. You acknowledge that failure to do so may render the Software unusable or nonconforming to the documentation provided by Akkadian Labs, and you agree to assume all risks arising such failure. Akkadian Labs may terminate Extended Maintenance of the Software if you fail to comply with this section.

6. MAINTENANCE

6.1 Initial Maintenance Period. Akkadian Labs requires that Software be purchased with an initial maintenance agreement. Accordingly, Akkadian Labs provides you for a period of twelve months (or, longer if

purchased and set forth in the quote or Purchase Order) following the purchase date (the "**Initial Maintenance Period**") the "**Maintenance Services**" as described below.

6.2 Extended Maintenance. You have the option to purchase Maintenance Services annually for an additional twelve month period commencing at the end of the Initial Maintenance Period, ("**Extended Maintenance**") from your reseller, or if you have no reseller, from Akkadian Labs, by paying the then applicable maintenance fee ("**Extended Maintenance Fee**"). The Extended Maintenance Fee is due and payable prior to the expiration of the then-current maintenance period purchased. If you purchase additional licenses during any Extended Maintenance period, you will pay, in addition to and along with the license fee for such additional license (and in addition to amounts provided above), the then-current maintenance fee for each such license, pro-rated for the remainder of the Extended Maintenance period. Akkadian Labs may suspend service and/or terminate the agreement for Extended Maintenance if you fail to pay the invoiced Extended Maintenance Fee within 30 days following the commencement of any period of Extended Maintenance.

6.3 Maintenance Services. Maintenance Services shall be provided as set forth in the Maintenance and Support Level Policy set forth in Exhibit A, which is attached hereto and incorporated herein. Akkadian Labs provides support the most recent prior version of the Software for twelve months after the release of the next version Notwithstanding anything to the contrary, Maintenance Services does not include on-site work. Akkadian Labs does, however, encourage and support on-line remote diagnosis of problems with your software using such third party software such as LogMe In, PC Anywhere; Laplink. All on-site work (including travel time) is billed as Other Charges at Akkadian Labs standard rates. Consulting or other services provided by Akkadian Labs at your request, which are not necessitated by defects in the Software, are not covered by Extended Maintenance, and you will pay Akkadian Labs, for such extra services, at Akkadian Labs' then current daily rate. Akkadian Labs reserves the right to modify the terms and conditions of the Support Level Policy by posting the updated Support Level Policy on its portal website and such updated version shall be effective (and incorporated herein) upon posting.

6.4 Akkadian Labs will have no obligation to support the following, pursuant to the terms of this EULA:

6.4.1 Software not covered by an active Extended Maintenance agreement and/or not in compliance with a valid license agreement. Akkadian Labs does not allow for partial coverage for licenses; if purchased, an Extended Maintenance agreement must cover all licenses purchased.

6.4.2 Software that is altered or modified other than as approved by Akkadian Labs or any portion of the Software incorporated with or into other software not specifically approved by Akkadian Labs.

6.4.3 Problems caused by misuse or misapplication of the Software.

6.4.4 Software installed on any computer hardware or in environments or in configurations not supported by Akkadian Labs.

Akkadian Labs, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to you.

7. REINSTATEMENT OF LAPSED MAINTENANCE

7.1 If your budget or other reason prevents you from continuing Extended Maintenance, the licensed Software will not be disabled at expiration of the Initial or Extended Maintenance period, but, as of the date of expiration, you will not have further access to updates, upgrades or support.

7.2 If you later choose to resume maintenance, you will be charged as follows:

7.2.1 The full amount of the next twelve months of Extended Maintenance;

7.2.2 Any time and costs for updating Software or for on-site visits; and,

7.2.3 A catch-up fee of 50% of the cumulative amount of Extended Maintenance that would have been paid if Extended Maintenance had been maintained (calculated on an annual basis).

The amounts set forth above cover the continuing development and evolution of the Software during your lapsed period. The fact that you did not avail yourself of telephone or other support services during the period the Software was covered by Extended Maintenance is no cause for adjustment. As part of re-establishing Extended Maintenance we will provide you with the updates to the Software.

7.3 Re-establishment of lapsed maintenance is permitted only once.

8. WARRANTY

8.1 Limited Warranty. Akkadian Labs warrants that for ninety (90) days from the Effective Date (the "**Warranty Period**") the unmodified Software will substantially perform functions described in documentation provided by Akkadian Labs when operated on the designated computer and operating system (the "**Warranty**"). Akkadian Labs does not warrant that: the Software will meet your requirements; the Software will operate in combinations you may select for use; the operation of Software will be uninterrupted or error-free, or all Software errors will be corrected. If you report within the Warranty Period the Software's non-conformance to this warranty, Akkadian Labs shall, at its option, correct the non-conformance, provide you with a reasonable procedure to circumvent the problem, or, upon return of Software to Akkadian Labs by you, refund the license fees paid. Akkadian Labs will replace any defective media without charge if it is returned to Akkadian Labs within the Warranty Period. These are your sole and exclusive remedies for any breach of warranty. The Warranty shall not apply in the event the Software has been altered, modified or converted by you or any third party, serviced by any unauthorized third party, or any non-conformance to the Warranty is related to any third party software or hardware. The above Warranty shall not apply: (i) if the Software is used with hardware or software not specified in the documentation; (ii) if any modifications are made to the Software by you or any third party; (iii) to defects in the Software that are due to accident, abuse or improper use by you or your contractors; or (iv) to any evaluation version or other Software provided on a no-charge or evaluation basis. Any replacement Software will be warranted for the remainder of the original Warranty Period.

8.2 Intellectual Property Infringement. If any alleged infringement of patent or copyright is asserted against you based upon your use of the Software, Akkadian Labs will indemnify you in the investigation of, preparation and defense against, or settlement of such claims, provided you shall provide Akkadian Labs notice of such claim within ten (10) days of the assertion; and Akkadian Labs shall have the exclusive right, if it chooses, to control and direct the investigation, defense, or settlement of such claims; and Akkadian Labs shall receive your complete cooperation and assistance. Akkadian Labs may at its sole discretion either purchase for you the right to use the Software so that it is not infringing or may substitute the Software with substantially equivalent programs and documentation or may direct you to return the Software and all related materials to Akkadian Labs and Akkadian Labs shall refund to you User a pro rata share of the Software license fee based upon a five(5) year straight line useful life from date of Software receipt as well as refund a pro rata share of any associated Maintenance fees paid based upon the remaining unused portion of the current term. Upon such return and refund, if any, neither party shall have any further obligation to the other regarding the Software under this EULA or otherwise..

8.3 Disclaimer of Other Warranties. AKKADIAN MAKE NO OTHER REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SOFTWARE OR CONTENT. AKKADIAN AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (I) THE USE OF THE SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (II) THE SOFTWARE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS; (III) ANY STORED CLIENT DATA WILL BE ACCURATE OR RELIABLE, (IV) ERRORS OR DEFECTS WILL BE CORRECTED; AND, (V) EXCEPT FOR EXPENDING COMMERCIALLY REASONABLE EFFORTS TO PROTECT AGAINST SUCH VIRUSES, THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. AKKADIAN SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. No employee, agent or representative of Akkadian has the authority to bind Akkadian to any oral representation or warranty concerning the Software. No reseller dealer, agent, or employee is authorized to make any modification, extension, or addition to this Warranty. The limited Warranty gives you specific legal rights. You may have others that vary from state to state.

9. LIMITATION OF LIABILITY

9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AKKADIAN OR ITS LICENSORS BE LIABLE TO YOU FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF AKKADIAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL AKKADIAN'S OR ITS LICENSORS' TOTAL LIABILITY (A) FOR ANY SOFTWARE COVERED UNDER THIS EULA EXCEED THE PURCHASE PRICE FOR THE SOFTWARE OR (B) FOR ANY SERVICES, EXCEED THE FEES PAID BY YOU FOR THE SERVICES (EXCLUDING MAINTENANCE AND SUPPORT SERVICES) WHICH DIRECTLY CAUSED THE DAMAGES ALLEGED. SOME STATES AND COUNTRIES, INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE LIMITATION OR EXCLUSION IN THIS SECTION MAY NOT APPLY TO YOU. The disclaimers and limitations set forth above in this Section will apply regardless of whether or not you accept the Software. The parties agree that the limitations specified in this Section will survive any expiration or termination of this EULA and apply even if any limited remedy specified in this EULA is found to have failed of its essential purpose. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

9.2 ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS EULA OR THE SOFTWARE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

10. CONFIDENTIAL INFORMATION

10.1 Portions of the Software not disclosed to the public and other non-public information provided to you by Akkadian Labs contains confidential information and trade secrets as defined according to applicable law (collectively, "**Proprietary Information**"). You agree to hold the Proprietary Information in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, disclose, or cause to be disclosed the Proprietary Information or utilize the Proprietary Information for any purpose whatsoever other than as expressly contemplated by this EULA. However, confidential information may be disclosed by the U.S. or other government agency or government entity if required by law subject to prior notice to Akkadian Labs. These obligations shall survive any termination of this EULA and, with respect to confidential information, continue for three (3) years thereafter and, with respect to trade secrets, continue for so long as such information constitutes a trade secret under applicable law.

11. RESTRICTED RIGHTS

11.1 Software delivered to the U.S. Defense Dept. are delivered with Restricted Rights and the following applies: "Restricted Rights Legend: Use, duplication or disclosure by the Government is subject to restrictions as currently set forth in subparagraph (c)(1)(ii) the Rights in Technical Data and Computer Software clause at 252.227-7013 (or any successor regulation). Software delivered to a U.S. Government Agency not within the Defense, Dept. are delivered with "Restricted Rights" as defined in Commercial Computer Software - Restricted Rights at FAR 52.227-19. You shall comply fully with all laws and regulations of the United States and other countries (Export Laws) to assure that neither the Software, nor any direct products thereof are (1) exported, directly or indirectly, in violation of Export Laws, or (2) are used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

12. THIRD-PARTY CODE

12.1 The Software may contain or be provided with components subject to the terms and conditions of "open source" or freeware software licenses ("**Open Source Software**"). To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this EULA with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

13. DISPUTE RESOLUTION

13.1 The exclusive means of resolving any dispute or claim arising out of or relating to this EULA (including any alleged breach thereof) or the Software shall be by binding non-appearance-based arbitration. In the event a party elects arbitration, such arbitration shall be initiated before a single arbitrator through an established alternative dispute resolution ("**ADR**") provider mutually agreed upon by the parties, or, if no agreement is reached within ten (10) days of a request for agreement, then according to the rules ("**Rules**") of the American Arbitration Association. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction. All aspects of the arbitration shall be treated as confidential, as provided in the Rules. Before making any disclosure permitted by the Rules, a party shall give written notice to the other party and afford such party a reasonable opportunity to protect its interests. Notwithstanding the foregoing, either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Software, disclosure of Akkadian Labs confidential information or trade secrets, or intellectual property infringement (for example, trademark, trade secret, copyright, or patent rights) without first engaging in the dispute resolution process described above. Any proceeding to enforce this arbitration agreement, including any proceeding to confirm, modify, or vacate an arbitration award, may be commenced in any court of competent jurisdiction. If you or Company pursue arbitration, the arbitration action must be initiated within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the relevant claim.

14. GOVERNING LAW

14.1 This License EULA will be governed by the Laws of the State of New York, USA. and you specifically acknowledge the exclusive jurisdiction and venue of the state and federal courts located in the City of New York, Borough of Manhattan, State of New York for any legal proceedings relating to this EULA. This agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

15. GENERAL

15.1 EULA sets forth the complete understanding of the parties regarding the terms and conditions applicable to the Software and supersedes any prior representations and agreements related to the subject matter, provided however, if this EULA is subject to FAR 52.212-4, then the terms of the scheduled agreement and the applicable order document shall take precedence. This EULA and all related actions shall be governed by New York law without reference to provisions concerning conflict of laws. The prevailing party in any dispute shall be entitled to its attorneys' fees as well as other costs. Akkadian Labs may audit your use of the Software. All terms of any customer purchase order or other ordering document shall be superseded by this EULA. If any provision of this EULA is not enforceable, all other provisions will remain in full force and effect. Titles and paragraph headings are for the convenience of reference and are not a part of this EULA. This EULA shall not be modified or amended except in writing signed by both parties. All notices that pertain to this EULA must be sent via registered or certified mail and will only be deemed received upon proof of delivery.

If you have any questions concerning this EULA, please contact Akkadian Labs LLC at 212-616-7899 option 1.

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EXHIBIT A

Maintenance and Support Level Policy

This Maintenance and Support Service Level Policy ("**SLA**") defines the maintenance and support services ("Maintenance and **Support Services**") which Akkadian Labs, LLC. ("**Akkadian Labs**") shall provide to the customer ("**Customer**") in accordance with an order from Customer for such Maintenance and Support Services for the licensed Akkadian Labs software ("**Software**"). This SLA is a part of the End-User License Agreement.

1. **TELEPHONE; EMAIL SUPPORT. AKKADIAN LABS WILL PROVIDE REASONABLE TELEPHONE AND EMAIL SUPPORT FOR PROBLEM DETERMINATION AND RESOLUTION FOR PROBLEMS ARISING DURING NORMAL OPERATION OF THE SOFTWARE. AKKADIAN LABS MAY REQUIRE THE CUSTOMER TO PROVIDE A WRITTEN ASSISTANCE REQUEST DESCRIBING THE PROBLEM.**

   A. Support Phone Number: 1-800-818-4128

   B. Support Email Address: support@akkadianlabs.com

2. **SUPPORT HOURS.**

   A. Customers with a standard support contract will receive assistance during Akkadian Labs normal working hours listed below:

      i) **Americas:** 9:00 a.m. to 5:00 p.m., Monday through Friday, Eastern Time. (Excluding bank and other public holidays)

3. **ON-SITE EMERGENCY SUPPORT. CUSTOMER MAY REQUEST AKKADIAN LABS TO PROVIDE ON-SITE EMERGENCY OPERATIONAL SUPPORT SERVICES AS A SEPARATE AND DISTINCT BILLABLE SERVICE.**

4. **MAINTENANCE UPDATES. THE MAINTENANCE AND SUPPORT SERVICES PURCHASED BY CUSTOMER, PURSUANT TO THE APPLICABLE ORDER, INCLUDE UPDATES TO MAJOR, MINOR, AND MAINTENANCE RELEASES AT NO ADDITIONAL COST.**

For the purposes of this SLA, (i) "maintenance releases" shall mean such bug fixes and/or platform updates that are designated as "maintenance releases" by Akkadian Labs; (ii) "minor releases" shall mean such bug fixes, platform updates, and/or minor product enhancements that are designated as "minor releases" by Akkadian Labs; and (iii) "major releases" shall mean such bug fixes, platform updates, and major product enhancements and/or new features that are designated as "major releases" by Akkadian Labs and which Akkadian Labs generally provides to its other customers at no charge.

To the extent applicable, all Support Services provided by Akkadian Labs to Customer (including all maintenance releases, minor releases, and major releases that may be provided to Customer by Akkadian Labs from time to time) shall be subject to the applicable license agreement between Akkadian Labs and Customer.

5. **PROBLEM DETERMINATION AND RESOLUTION. AKKADIAN LABS RESOURCES WILL BE ALLOCATED TO RESOLVE REPORTED PROBLEMS BASED ON THE SEVERITY LEVEL SET FORTH IN THE TABLE BELOW AND AKKADIAN LABS WILL USE COMMERCIALLY REASONABLE EFFORTS TO PROVIDE AN ACCEPTABLE RESOLUTION, WORKAROUND, OR A PLAN FOR THE PROVISION OF A RESOLUTION OR ACCEPTABLE WORKAROUND IN THE TIMEFRAME SET FORTH IN THE TABLE BELOW:**

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Severity Level	Definition	Acknowledgement*	Commitment
Critical	An error that causes a catastrophic failure substantially impacting Customer's business.	2 hours	Akkadian Labs and Customer will commit full-time resources for problem resolution, to obtain workaround, or reduce the severity of the error.
High	An error that causes Akkadian Labs product to fail without significant business impact. Causes a substantial reduction in protection.	8 hours	Akkadian Labs and Customer will commit full-time resources during normal business hours for problem resolution, to obtain workaround, or reduce the severity of the error.
Normal	An error that causes only minor impact on use of the product.	12 hours	Akkadian Labs and Customer will commit resources during normal business hours for problem resolution.

*Acknowledgement times are during Business Hours.

A. Acknowledgement. Once a problem has been reported, Customer will receive an acknowledgement via email or phone, as to the receipt of the problem as reported and a confirmation of the problem severity. Akkadian Labs will begin the process of problem determination and resolution at this point.

B. Status Updates. During the problem determination and resolution process, Customer may receive regular communications, via email or phone, as to the status of the problem determination and resolution.

C. Resolution. In response to the problem reported, Customer will receive, as appropriate, one of the following resolutions: an existing correction, a new correction, a viable workaround, or a plan on how the problem will be addressed.

D. Severity Re-classification. If Customer determines that a previously reported and in-progress issue's severity needs to be re-classified or escalated, Customer should issue a new call or email to the Technical Support Team.

6. **EXCLUSIONS. AKKADIAN LABS WILL HAVE NO OBLIGATION TO SUPPORT THE FOLLOWING, PURSUANT TO THE TERMS OF THIS AGREEMENT:**

A. Software not covered by an active support contract and/or not in compliance with a valid license agreement. Akkadian Labs does not allow for partial coverage for perpetual licenses; a support contract must cover all licenses purchased.

B. Software that is altered or modified other than as approved by Akkadian Labs or any portion of the Software incorporated with or into other software not specifically approved by Akkadian Labs.

C. Any Software that is not the current major release or immediately previous major release with most current minor update.

D. Problems caused by misuse or misapplication of the Software.

E. Software installed on any computer hardware/software configurations not supported by Akkadian Labs.

Akkadian Labs, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to Customer.

7. **CUSTOMER'S OBLIGATIONS FOR OPERATIONAL SUPPORT.**

A. Contact Person(s). Customer will designate up to two (2) contact person(s) (or such other replacement individuals as Customer may designate in writing) (each a "**Contact Person**"), who shall be the sole contacts for the coordination and receipt of the Support Services set forth in this SLA. Each Contact Person shall be knowledgeable about the Software. If Akkadian Labs is unable to contact any designated Contact Person through the specified means for a period of time and such contact would be helpful for performing the Support Services, Akkadian Labs may refuse to perform the Maintenance and Support Services until Akkadian Labs is able to contact a designated Contact Person, in which case the times for resolution set forth in Section 6 of this SLA will be suspended for such period of time.

B. Remote Access. For the purpose of problem determination and analysis, Customer will provide, as necessary and at Customer's discretion, the Technical Support Team with remote access capabilities into Customer's systems running the Software.

C. Supporting Data. Customer will provide reasonable supporting data to aid in the identification and resolution of the issue.

D. Installation. Customer will be responsible for installing any error correction, update or upgrade.

Exhibit A

END USER LICENSING AGREEMENT

SINGLEWIRE INFORMACAST® SOFTWARE LICENSE AGREEMENT

This Singlewire InformaCast Software License Agreement is made by and between You (as defined below) and Singlewire Software, LLC, a Wisconsin limited liability company (“SINGLEWIRE”).

The terms and conditions located at www.singlewire.com/terms (https://www.singlewire.com/terms) (the “Additional Terms”) and any applicable Order Forms for the Software are incorporated herein by this reference. This Software License Agreement, the Additional Terms and the Order Forms are referred to collectively herein as this “Agreement.”

Exhibit A

This Agreement constitutes a binding contract between You and SINGLEWIRE (together, the "Parties" and individually, each a "Party"). BY CLICKING THE "I ACCEPT" BUTTON, BY ACCEPTING THE TERMS OF THIS AGREEMENT THROUGH AN ORDER FORM THAT INCORPORATES THIS AGREEMENT, AND/OR BY USING THE SOFTWARE, YOU ARE ACCEPTING AND AGREEING TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, CLICK THE "DECLINE" BUTTON AND YOU MAY NOT USE THE SOFTWARE. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, AND "YOU" AND "YOUR" AS USED HEREIN SHALL REFER TO SUCH ENTITY.

IN THE EVENT OF A CONFLICT BETWEEN THE ADDITIONAL TERMS AND THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT WITH RESPECT TO THE SOFTWARE, THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT SHALL CONTROL. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU OR ON YOUR BEHALF, WHETHER IN A PURCHASE ORDER OR OTHERWISE, ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS, AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN BY SINGLEWIRE AND THEY ARE VOID.

1. CERTAIN DEFINITIONS. AS USED IN THIS AGREEMENT:

a. "You" and "Your" refer to any person or entity licensing the Software and Documentation being provided by SINGLEWIRE in conjunction with this Agreement.

b. "Software" means the Singlewire InformaCast software provided to You along with this Agreement, along with any upgrades, updates, fixes or plug-ins provided by SINGLEWIRE.

c. "Documentation" means the documentation relating to the Software provided to You by SINGLEWIRE.

d. "Endpoints" means devices capable of receiving Notifications including, but not limited to, mobile devices (*e.g.*, cellular telephones), Internet Protocol ("IP") speakers, IP phones, personal computers, audio paging interfaces and video displays.

e. "Harmful Code" means any program, routine or device designed to delete, disable, deactivate, interfere with, prevent access to, or otherwise harm any software, program, data, device, system or service, including without limitation, any 'time bomb', virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door.

f. "Licensed Location(s)" means the IP address or addresses identified in Your order for the Software.

g. "Notifications" means messages or other communications sent by You or others (not including SINGLEWIRE) using the Software.

h. "Notification Content" means all text, audio, imagery, video and other information or content set forth in a Notification or otherwise input by users (not including SINGLEWIRE) into the Software.

i. "Order Form" means SINGLEWIRE's quotation or ordering document specifying the Software to be provided to You hereunder, including any addenda and supplements thereto.

2. LICENSE.

Subject to the terms and conditions of this Agreement, SINGLEWIRE grants to You a non-exclusive, non-transferable, non-sublicenseable license to use the Software and related Documentation as set forth herein. As set forth in the applicable Order Form, such license shall either be perpetual or for a specified period of time. In either case, such license shall be subject to Your payment of the applicable license or subscription fee (as determined by SINGLEWIRE and set forth in the applicable Order Form) and Your receipt and use of an applicable license key from SINGLEWIRE.

Exhibit A

All rights not expressly granted under this Agreement are reserved by SINGLEWIRE and its licensors and/or suppliers (as applicable).

You may make and maintain a copy of the Software and Documentation for emergency and backup purposes. In addition, You may also make reasonable copies of the Documentation to support Your users. All permitted copies of Software and Documentation must (a) be exact copies of the originals as provided by SINGLEWIRE, and (b) include copyright or other proprietary notices as well as all notices concerning third-party rights and any restrictions on use, contained in the originals.

The foregoing license permits You to broadcast (communicate) messages to certain Endpoints. You are allowed to broadcast to those individual (unique) Endpoints included in Your Order Form up to the numbered Endpoints in the licensed quantity. All Endpoints that You may want to broadcast to must be covered by Your license quantity or they cannot be used for potential broadcasts. The Software may restrict Your ability to broadcast to endpoints beyond the number included in Your order as the license quantity. Additionally, if You utilize the CallAware feature, all Endpoints being monitored must be included in Your license quantity.

You acknowledge that SINGLEWIRE may have incorporated into the Software and/or Documentation intellectual property owned by third parties (collectively, "Third Party Intellectual Property"), and You agree that Your right to use the Software and Documentation containing Third Party Intellectual Property may be subject to the rights of such third parties and limited by additional licensing terms concerning such Third Party Intellectual Property. You acknowledge that the Software may include or use open source software. Such open source software is subject to the terms of the applicable open source license agreements and, to the extent not in conflict with such agreements, the terms and conditions of this Agreement. Please refer to the "Acknowledgments" section of the online version of the Documentation for the licensing information of Third Party Intellectual Property, including open source software.

You acknowledge that SINGLEWIRE and its licensors and/or suppliers (as applicable) retain all right, title and interest in and to the Software and Documentation and all copies thereof regardless of the form or media in or on which they may exist. You acknowledge and agree that You do not acquire any right, title or interest in or to any of the Software or Documentation, except as a licensee pursuant to the terms and conditions of this Agreement. You acknowledge and agree that portions of the Software, including without limitation the source code, constitute or contain trade secrets of SINGLEWIRE or its licensors, as applicable.

3. LICENSE RESTRICTIONS.

The Software and the Documentation may be used solely for Your internal business use at the Licensed Location(s). You acknowledge that changing Licensed Location(s) requires the issuance of new license keys from SINGLEWIRE. In the event You wish to change Licensed Location(s), You must first contact SINGLEWIRE to request such a key. In the event You are provided with a new or replacement license key in connection with one or more changed Licensed Location(s), You will not use (and, to the extent possible, destroy) the prior license key, and You will not use the Software at the replaced Licensed Location(s). Only Your officers, employees, and authorized contractors may use the Software and Documentation, in each case only as permitted in this Agreement. You will not, and will not permit others to: (a) use the Software other than as set forth in the Documentation or this Agreement; (b) copy the Software or Documentation, except as expressly permitted in this Agreement; (c) use the Software or Documentation other than as expressly permitted in this Agreement; (d) use the Software to store or transmit Harmful Code or any infringing, defamatory, libelous, obscene, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights or other rights; (e) modify, disassemble, reverse engineer, decompile, translate or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Software or the Documentation or any portions thereof (in each case, to the extent this restriction is permitted by law); (f) sell, assign, transfer, sublicense, lease, pledge, rent or otherwise share Your

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DOCS (HTTPS://SUPPORT.SINGLEWIRE.COM/STORAGE) REGISTER (HTTPS://SUPPORT.SINGLEWIRE.COM/REGISTER) SEARCH)

rights under this Agreement, or use the Software in a service bureau or time-sharing environment for more than one entity, not to exclude majority-owned subsidiaries (unless You have a separate written agreement with SINGLEWIRE); (g) create any derivative works based upon the Software or Documentation; (h) modify, obscure or remove any product identification or proprietary notices on the Software, the Documentation or copies thereof; (i) except as specified in the applicable Documentation, modify or incorporate the Software into or with other software, (j) bypass, breach or disable any usage limit, security device, copy control or digital rights management tool or other protection used in the Software (except to the extent permitted by applicable law); (k) access or use the Software or Documentation for the purposes of benchmarking or competitive analysis, or developing any competitive product or service; or (l) use the Software or Documentation in violation of any applicable law, regulation or rule.

4. MAINTENANCE AND UPGRADES.

The terms for SINGLEWIRE's software maintenance services and support services is found at www.singlewire.com/terms-m (/terms-m).

5. YOUR USE OF THE SOFTWARE.

A. You acknowledge and agree that:

i. All Notification Content is Your sole responsibility. You are solely responsible for the integrity and quality of the Notification Content.

ii. You will not send Notifications to phone numbers that are emergency numbers and other numbers that may not be called using an automated system under applicable law.

iii. You will not knowingly send any Notification Content which infringes the intellectual property rights of any party, is invasive of another's right to privacy, or violates any privacy laws, violates Your privacy policies or applicable rules or laws (including without limitation anything that would justify a complaint to the Federal Communications Commission).

iv. You will not use or permit the use of the Software: (i) to engage in any illegal, unethical, deceptive or misleading practices in connection with the use of the Software to send Notifications, but not limited to, creating a false identity or forged contact information or otherwise attempt to mislead others as to the identity of the sender or the origin of the message; (ii) in connection with any telemarketing, commercial messages, advertisements or solicitations, junk email, junk phone messages, spamming or any unsolicited messages (commercial or otherwise); or (iii) in any manner which violates or facilitates the violation of any law, statute, ordinance, rule or regulation, (without limitation the CAN-SPAM Act, the Telephone Consumer Protection Act, the Do-Not Call Implementation Act, the Health Insurance Portability and Accountability Act, laws governing export control, and any related rules or regulations).

B. Under no circumstances will SINGLEWIRE or any of its licensors or suppliers be responsible for any loss, damage or liability arising out of any Notification Content, including any mistakes or other errors contained in the Notification Content, the use or transmission of any Notification or Notification Content, or the failure of any Notification or Notification Content to reach its intended recipients.

C. You agree to maintain all security regarding Your Software account ID, password, and connectivity with the Software. You are responsible for all Notifications transmitted through the Software. If Your account ID or password is stolen or otherwise compromised, and used for malicious purposes, You are responsible for all Notifications sent using the stolen account information.

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SUPPORT (/SUPPORT) | REGISTER (HTTPS://SUPPORT.SINGLEWIRE.COM/REGISTER) | (/) (/SEARCH)

D. You acknowledge and agree that the Software is merely a passive conduit for the distribution and transmission of Notification Content by You and Your users. You agree that SINGLEWIRE has no obligation or liability for any loss, alteration, destruction, damage, corruption or recovery of any Notification Content or other data input into the Software or any computer system, and SINGLEWIRE or any of its service providers or suppliers will be responsible for any loss or access to the Notification Content or other data input into the Software, or any damage or liability arising out of the Notification Content or other data input into the Software, including any mistakes or errors contained in any Notification Content or other data input into the Software or the use or transmission of the Notification Content or other data input into the Software, any infringing Notification Content or other data input into the Software, or the failure of a Notification to reach its intended recipient(s).

6. TERM AND TERMINATION.

Subject to the terms of this Section 6, this Agreement shall begin upon the earlier of Your acceptance of this Agreement or Your use of the Software and shall continue until (the date on which this Agreement is terminated by SINGLEWIRE as permitted in this Agreement.

In the event the Software is licensed on a subscription basis, You may access and use the InformaCast "Advanced" functionality of the Software for so long as You pay the applicable subscription fees and the subscription term is maintained or until the Agreement is terminated (whichever occurs earlier). If You do not renew Your subscription in accordance with the terms and conditions of this Agreement, the Software will (a) revert to the InformaCast "Basic" functionality and Your use thereof shall be governed by a form of end user license agreement provided to You by Cisco Systems, Inc. or its successor or reseller, or (b) cease functioning if You are using the Software in connection with an unsupported version of Cisco Unified Communications Manager, as indicated in Software Documentation (release notes).

Upon the termination of this Agreement by SINGLEWIRE for any reason, Your use of the Software may be completely disabled. You acknowledge that the Software may include technological means of determining Your compliance with this Agreement, and disabling the Software in the event of Your breach or the termination of this Agreement. SINGLEWIRE may terminate this Agreement immediately, without judicial intervention or prior notice to You, if You fail to comply with any term of this Agreement. In the event of termination, You shall immediately cease using the Software and Documentation, and You shall (a) remove and destroy any copies of the software from memory and/or other storage in Your computer systems, and (b) at SINGLEWIRE's request, provide SINGLEWIRE with certification from an officer of Your organization that You have complied in full with this Section.

7. WARRANTIES AND LIMITATIONS OF LIABILITY.

Among other additional terms and conditions, SINGLEWIRE's limited warranty and its limitations of liability are found in the Additional Terms.

March 2018

Download PDF (https://s3.amazonaws.com/downloads.singlewire.com/InformaCastSoftwareLicenseAgreement2018Mar.pdf)

"Bells and paging are one of the most important things for schools... in my opinion, it's still the most critical,

Exhibit A

and so choosing the right system and the right partner is very important. The Singlewire system has fit the bill for us."

(/)

- David Massaro, Coordinator of Technology Services at Redlands Unified School District —

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Exhibit A

ISI Telemanagement Solutions, LLC
Infortel® Select Hosted Services Agreement – Reseller Sale

1. **SERVICES -** Reseller requests and ISI agrees to provide those services described on the Infortel® Select Hosted Services Proposal ("**Proposal**") for the benefit of the Reseller's customer (hereafter referred to as "**Customer**") identified in the Proposal in accordance with the terms and conditions contained this Infortel® Select Hosted Services Agreement ("**Agreement**") and the Proposal (collectively, "**Terms and Conditions**").

2. **PRICE -**

A. Monthly processing fees (the "**Processing Fees**") for data collection, processing and reporting services shall be in the amounts set forth in the Proposal, as may be adjusted pursuant to Section 3 below. The monthly Processing Fees will be paid by Reseller regardless of: (i) non-availability of services or data during any report period due to no fault of ISI, (ii) failure to process data which is submitted in a format which is not readable by ISI's system or equipment, (iii) failure of an on-site data collection hardware or software device ("**Device**") unless caused by ISI's negligence, or (iv) any other reason not caused directly or indirectly by ISI. Processing Fees will be invoiced to and payable by Reseller on a monthly basis and shall commence upon the Commencement Date (as defined in Section 3).

B. The one-time service activation fee shall be in the amount set forth in the Proposal, as may be adjusted pursuant to Section 3 below and shall be invoiced upon the Commencement Date.

C. Any applicable fees for optional services ("**Optional Service Fees**"), such as custom programming, initial database entry, periodic database updates, special handling, data restoration or rate tables, shall be in the amount set forth in the Proposal, as may be adjusted pursuant to Section 3 below, and shall be invoiced upon delivery of the applicable optional services.

D. If Customer reduces the number of stations below Customer's then-current station tier as a result of an office closure or office consolidation and Customer certifies such in writing to ISI's satisfaction, ISI shall revise Reseller's subsequent monthly Processing Fees based upon ISI's then-current pricing structure for the station tier commensurate with Customer's reduced station count.

E. Any services added to this Agreement after the Commencement Date (as defined below) (the "**Additional Services**"), and the billing therefor, shall commence on the "**Service Activation Date**" as set forth on the respective Proposal. The term during which the Additional Services will be provided shall run concurrently with the Term (as defined below).

F. All payments due under this Agreement shall be made from a bank located in the United States via ACH or bank wire transfer to a bank account designated by ISI Telemanagement Solutions, LLC. All payments hereunder shall be made in U.S. dollars. In the event that the due date of any is a Saturday, Sunday or national holiday, such payment may be paid on the following business day. Any payments that are not paid on the date such payments are due under this Agreement shall bear interest at the lower of the extent permitted by applicable law or the rate of one and one-half percent (1.5%) per month, calculated on the number of days such payment is delinquent.

3. **TERM -** The term of this Agreement, and the subscription term for the Software (as defined below) shall be for the period set forth in the Proposal ("**Initial Term**"), commencing on the Commencement Date. "**Commencement Date**" shall mean the first day of the calendar month immediately succeeding the 30th day after order submission to ISI. Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each renewed term shall be referred to as a "**Renewal Term"**), unless terminated as provided for below. The Initial Term and any Renewal Term(s) shall be collectively referred to as the "**Term**." Any Renewal Term shall be upon the terms and conditions set forth in the Infortel® Select Hosted Services Agreement referenced in the renewal Proposal or invoice and any fees for such Renewal Term shall be adjusted to ISI's then-current rates. No less than sixty (60) days prior to the termination of the Initial Term or any subsequent Renewal Term, ISI shall inform Reseller of ISI's rates for the forthcoming Renewal Term. Either party may terminate this Agreement effective as of the end of the Initial Term or any Renewal Term by giving the other party written notice of termination at least thirty (30) days prior to the expiration of the then-current Term.

4. **RESELLER RESPONSIBILITIES -** Reseller shall be responsible for, or ensure that Customer is responsible for:

A. Providing facilities (as mutually agreed to by Reseller and ISI) necessary to allow ISI to collect CDR generated by those Customer-premise telephone systems and other sources (each a "**Data Source**" and collectively, "**Data Sources**") identified in the Proposal. Typical facility requirements include, but are not limited to:

(i) Provisioning of Data Sources to generate CDR via an ISI-supported method and format.
(ii) Providing a secure location for hardware Device placement, equipped with 110 volt AC power and Data Source connectivity, should ISI be providing a hardware Device to Reseller.
(iii) Providing a suitable physical or virtual server environment for software Device installation should ISI be providing a software Device to Reseller.
(iv) Reliable IP network connectivity and network security rights to allow the Device and/or each Data Source to transport CDR to the ISI data center via the public internet using a secure FTP protocol.

B. Ensuring the continued flow of CDR in the format accepted by ISI at the time of initial activation or at any subsequent time during the Term. Reseller agrees to notify ISI of any Data Source modifications affecting CDR output. If the data generated by Dara Source is incorrect, incomplete or not in the format expected, Reseller agrees to pay ISI the then-current standard hourly rates for additional work required to correct, complete or otherwise repair the data for processing. In the event the Data Source is upgraded, replaced or otherwise modified such that the CDR interface, account profile or databases must be substantially reconfigured, Reseller agrees to pay ISI the then-current standard hourly rates for such additional work. However, if correction is not feasible due to missing or corrupt data or other condition rendering the CDR unusable, ISI shall not be obligated to perform any such additional work.

C. Facilitating suitable remote access for ISI to configure, maintain and troubleshoot any Device and on-site access by mutual arrangement in the event ISI must dispatch a technical representative for service or replacement.
D. Notifying the Local Exchange carrier, LD carrier, hosted VoIP provider, Centrex provider, Calling Card provider, or Cellular Phone carrier to supply ISI with a periodic CDR feed via a mutually agreed upon media and format, if Data Sources identified in the Proposal include carrier fees or off-premise hosted service providers.
E. Ensuring Customer assigns at least one (1) person to be trained by ISI and serve as the authorized point of contact for technical assistance requests.
F. Providing information for ISI's configuration of Infortel® Select services, including an inventory of trunk facilities, call rating specifications,initial extension/user/department information and periodic updates (as required) to reflect adds, moves, changes or deletions.
G. Ensuring CDR and other data is backed up and stored
H. Ensuring the Software and Device are used only as authorized in writing by ISI.
I. Returning any hardware Device and uninstalling and discontinuing use of any software Device, within thirty (30) days of the end of the Term.

5. **ISI RESPONSIBILITIES -** ISI shall be responsible for:
A. Providing a Device for applications in which CDR is to be collected from on-site telephone system equipment. However, if Reseller or Customer is providing the necessary hardware or a Device is not required for the collection of CDR, ISI will not provide the Device. The parties agree that, if the Device is provided by ISI, the Device shall at all times remain the property of ISI.
B. Monitoring and management of CDR collection from Data Sources identified in the Proposal via the Device, or Reseller- or Customer-provided hardware, carrier feed or other applicable method.
C. Processing raw CDR into reportable call history based upon Reseller specifications and current rate information.
D. Making report information available to Reseller or Customer based upon the service level set forth in the Proposal. Any special reports, processing or programming services requested by Reseller and performed by ISI beyond the scope described in the Statement of Work shall be billed separately and shall be subject to the terms and conditions of this Agreement.

6. **REPORT ACCURACY AND ACCEPTANCE -** Reseller shall notify ISI in writing within thirty (30) days after report generation of any errors or discrepancies. Failure of Reseller to make such timely notice shall constitute complete performance on the part of ISI and waiver of any and all claims by Reseller in connection with the subject report.

7. **CUSTOMER DATA-**
ISI agrees to keep confidential the data submitted by Reseller or Customer and any such data processed by ISI (collectively, "**Customer Data**"). ISI agrees not to make the Customer Data available to any third party unless (i) compelled to do so by law or order of a competent court with jurisdiction, (ii) permission of Reseller is first obtained, or (iii) required for ISI to render the prescribed services. Nothing in this Section 7 is intended to limit the parties' obligations set forth in the Authorized Reseller Sales Agreement with respect to Confidential Information (as defined in the Authorized Reseller Sales Agreement).

8. **PROPRIETARY RIGHTS; RESTRICTIONS -**
A. Reseller acknowledges that (i) the software provided by ISI to Reseller, or otherwise made accessible by ISI to Reseller or Customer, hereunder (including, without limitation, the software Device), and the software contained in the hardware Device, to the extent applicable (collectively, the "**Software**"), and (ii) the Software user manuals and instructions (collectively, the "**Software Instructions**") provided by ISI are owned by and proprietary to ISI (or its licensor), constitute Confidential Information of ISI, and are subject to copyright protection. Reseller acknowledges that title to the Software and Software Instructions is and shall remain in ISI (or its licensor), including all applicable rights to patents, copyrights, trademarks, trade secrets and other intellectual property inherent therein and appurtenant thereto (collectively, "**Proprietary Rights**"). ISI (or its licensor) shall have and retain all rights (including Proprietary Rights pertaining thereto) to all copies, partial copies, and derivative works of the Software, and all modifications, if any, which are made to the Software and, upon request or termination of this Agreement, Reseller agrees to execute assignments and any other documents necessary to evidence ISI's (or its licensor's) rights thereto.
B. Reseller agrees that it: (i) will not transfer the Software or Software Instructions or allow any aspect of the Software or Software Instructions to be disclosed to or accessed or used by a third party (other than Customer) and will make its employees aware of this obligation; (ii) will not copy or modify any part of the Software or Software Instructions or attempt to develop any source code from the Software; and (iii) only has the right to use the Software and Software Instructions during the Term, and will stop using the Software and Software Instructions at the end of the Term.

9. **LIMITED WARRANTIES AND DISCLAIMER; LIMITATION OF REMEDIES -**
A. ISI warrants to Reseller only, during the term of the Agreement, that (i) the Software will perform in accordance with the Software Instructions; (ii) it will use commercially reasonable efforts to ensure that (a) the Software shall be free from harmful code including, but not limited to, spyware, malware, viruses, time bombs, and Trojan horses ("**Malware"**); and (b) no Malware is introduced or transmitted by it to Reseller's computer system. For purposes hereof, Malware does not include Software code to enforce the Terms and Conditions. ISI will, at its expense, correct any errors or omissions due solely to its negligence or defect in the Device or the Software. ISI's liability is limited to reprocessing the data and regenerating any ISI-provided reports at its expense; correcting any errors or omissions due to its negligence or defect in the Device or the Software; and replacing any tapes and/or comparable media with that of equal quality. However, ISI shall have no obligation to correct errors or omissions occasioned by causes beyond its control. If reprocessing of lost data is feasible, Reseller shall be solely responsible to re-supply any and all lost data to ISI for reprocessing.

B. ISI is not obligated to maintain or repair the Device pursuant to the terms of this Agreement if loss or damage to the Device is caused by Reseller's or Customer's negligence or by accident, theft or unexplained loss, abuse, connection to foreign current, fire, water, flood, wind, storms, lightning, act of God or public enemy, Reseller or Customer's failure to provide a suitable operating environment, failures or changes required and resulting from a local exchange company, inter-exchange carrier, power companies, signal carriers and other transmission providers, unauthorized attachment or modifications or improper wiring, grounding, installation, repair or alteration of the Device by anyone other than ISI and Software changes (or attempted Software changes) in the Device by persons unauthorized by ISI. If requested by Reseller, repairs necessitated by any of the above causes shall be performed by ISI and Reseller agrees to pay for labor, replacement parts, materials and other expenses necessary for any such repairs at ISI's then-current rates.

C. **EXCEPT AS OTHERWISE EXPRESSLY AND SPECIFICALLY PROVIDED HEREIN, (I) THE SERVICES, DEVICE AND SOFTWARE ARE PROVIDED BY ISI ON AN "AS-IS" AND "AS AVAILABLE" BASIS; AND (II) THIS AGREEMENT EXCLUDES AND ISI DISCLAIMS ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES, AND GUARANTEES WITH RESPECT TO THE SERVICES, THE SOFTWARE, AND THE DEVICE (AND THE ACCURACY, OPERATION, FUNCTIONALITY, OR CAPABILITIES OF THE SERVICES, SOFTWARE, AND DEVICE) PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY EITHER PARTY, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ISI DOES NOT WARRANT THAT THE SERVICES, THE SOFTWARE OR THE DEVICE WILL BE PROVIDED UNINTERRUPTED OR WITHOUT ERROR OR THAT THE SOFTWARE IS FREE OF MALWARE.**

10. **DISCLAIMER OF LIABILITY -** ISI DISCLAIMS ANY LIABILITY FOR UNAUTHORIZED USE OF THE DEVICE, INCLUDING TOLL FRAUD.

11. **CUSTOMER AGREEMENT -** In connection with Reseller's sale of the services to Customers, Reseller shall enter into an enforceable written agreement with Customer binding Customer to terms substantially similar to, and no less protective of ISI than, the terms contained in Section 8 of this Agreement.

12. **SURVIVAL -** The provisions of Sections 2, 4(I), 7, 8, 9(C) and 10 shall survive expiration or termination of this Agreement.

Exhibit A



MASTER PRODUCT AND SERVICES AGREEMENT

This **Master Product and Services Agreement** (hereinafter "**Agreement**") is made as of the last date written below by and between **SecureLogix Corporation** ("**SecureLogix**"), located at 13750 San Pedro, Suite 820, San Antonio, Texas 78232 and _____ and any parent, subsidiary or affiliates thereof ("**Customer**") located at _____ _____.

In consideration of the mutual promises hereinafter set forth, SecureLogix and Customer do hereby agree as follows:

1. DEFINITIONS.

   a. The term "**Product(s)**" shall mean SecureLogix's hardware products (including any software contained therein), separately provided software products, documentation, equipment and items and the services ("**Services**") described on SecureLogix's published or established price list from time to time (the "**Price List**"). The Product(s) and the SecureLogix software and documentation, whether integral to the Product(s) or furnished on a standalone basis, are subject to the licensing provisions contained herein. SecureLogix reserves the right to correct errors in its Price List and any Order(s) (as hereinafter defined below) derived therefrom but such corrections shall not apply to any Orders previously accepted by SecureLogix. Software programs provided by others that are included with or incorporated into the Product(s) are subject to the provider's license provisions.

   b. "**Order**" shall mean an order for Product(s) or Services submitted to SecureLogix, which, upon written acceptance by SecureLogix, shall become a binding contract for SecureLogix to sell and deliver and for Customer to purchase and pay for the Product(s) and/or Services described in the Order. An Order may consist of the Proposal (as hereinafter defined below) that SecureLogix has provided to Customer if the Proposal is accepted without modification and within the period specified in the Proposal. An Order may also be issued on Customer's purchase order or other form document; provided, however, that Customer's purchase order or other form document shall not alter, vary, amend, supplement or interpret the provisions of this Agreement.

   c. "**Proposal**" shall mean the written offer to Customer created by SecureLogix that describes the Product(s) and/or Services, the prices for the same, the anticipated delivery or commencement date, the work to be performed by SecureLogix for Customer and such additional information as may be included in the Proposal. All Proposal(s) are made subject to the terms and conditions stated herein.

2. SCOPE OF LICENSE FOR CUSTOMER'S USE OF PRODUCT(S).

   a. Subject to the provisions of this Agreement, upon the payment of any applicable fee(s), SecureLogix grants to Customer a nonexclusive, non-transferable license to use the Product(s) including any future versions, improvements, updates or enhancements that SecureLogix may supply in the future, solely for the performance of services for itself or third parties and the creation of reports in connection with such services. Customer shall use the Product(s) only in accordance with the quantity provisions specified in the Order accepted by SecureLogix. Separately provided SecureLogix software may only be used on a single designated unit of equipment and in accordance with the provisions of this Agreement.

b. Customer may make a reasonable number of archival copies of separately provided software Products.

c. Customer may not reverse engineer, de-compile, disassemble, or otherwise translate any Product(s) or use the Product(s) to prepare other hardware or software products or works.

d. Customer agrees to the provisions of this license and Customer affirmatively acknowledges and understands that the Product(s) contain cryptographic software subject to export controls under the United States Export Administration Regulations ("**U. S. Regulations**") and that Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of or re-export the Product(s) (including any documentation or technical data related thereto). Product(s) are classified as telecommunications/networking equipment pursuant to U. S. Regulations and subject to Export Control Classification Number 5A002A.1 which authorizes export or re-export to most government and commercial end users located in all territories except the embargoed destinations and countries designated as supporting terrorist activities listed in Part 746 of the EAR as embargoed destinations requiring a license.

e. SecureLogix provides the Product(s) to non-DOD agencies with RESTRICTED RIGHTS and documentation is provided with LIMITED RIGHTS. Use, duplication or disclosure by the Government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 (June 1987). In the event the sale is to a DOD agency, the government's rights in software, supporting documentation and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 (Nov. 1995) and subpart DFARS 227.7202-3.

3. TECHNICAL SUPPORT. The following provisions will apply when SecureLogix or its reseller accepts an Order for technical support ("Technical Support"). Technical Support shall be available from SecureLogix to Customer via email at support@securelogix.com or SecureLogix's designated toll-free number during business hours (7:00 a.m. to 5:00 p.m. U.S.A. Central Time, Monday through Friday, national holidays excepted) for minor problems and technical assistance. National holidays are listed in SecureLogix's support handbook which can be downloaded from http://www.securelogix.com/support/.

4. SECURELOGIX SOFTWARE MAINTENANCE. The following provisions will apply when SecureLogix accepts an Order for SecureLogix software maintenance ("**Software Maintenance**"). SecureLogix Software Maintenance includes revisions and new releases to the SecureLogix software but does not include future products having differing functionality or features. Such future products will be made available to Customer in accordance with SecureLogix's then existing terms, conditions and fees.

5. CONSULTING AND/OR TRAINING SERVICES. The following provisions will apply when SecureLogix accepts an Order to provide training services ("**Training Services**") and/or consulting services ("**Consulting Services**"). Training Services and/or Consulting Services shall consist of and be performed in accordance with the scope of work and dates set forth in the Order and in accordance with SecureLogix's then existing terms, conditions and fees.

6. EQUIPMENT SERVICES. The following provisions will apply when SecureLogix accepts an Order to provide installation and/or maintenance for the hardware component of the Product(s) ("**Equipment Services**"). Installation Services will be performed as mutually agreed in the accepted Order. Requests for Equipment Services for the Product(s) shall be made to SecureLogix via SecureLogix's designated toll-free number. Following SecureLogix's verification of a hardware problem, a Return Material Authorization ("**RMA**") number will be issued to Customer. The RMA will authorize Customer to receive an exchange unit on a freight prepaid basis. Customer shall return the malfunctioning

Product(s) (or a component thereof) to SecureLogix by second business day delivery, freight prepaid by SecureLogix and shall be responsible for payment to SecureLogix of the published price of any units not returned within five (5) business days following receipt of the exchange unit by Customer. After the warranty period and if Equipment Services are not provided on a contract basis, Customer shall be responsible for all freight charges for the returned Product(s). Supplies and expendable items shall be provided in accordance with SecureLogix's prices in effect on the date shipped. Equipment Services that are outside those specified herein, shall be on a time, materials and transportation basis at SecureLogix's prices in effect at the time such Equipment Services are provided and the provision of such non-contracted Equipment Services shall be at the discretion of SecureLogix and shall be subject to the availability of personnel and parts. All parts or units that are replaced by parts or units provided by SecureLogix on an exchange basis shall become the property of SecureLogix and the part or unit supplied by SecureLogix shall become the property of Customer. Parts or units that are provided by SecureLogix may be new or refurbished parts or units that are functionally equivalent to new parts or units and may be from different sources than the original equipment manufacturer. Maintenance aids, including, but not limited to, software or documentation utilized by SecureLogix are either SecureLogix's property or property of third parties. No license or right to use any such maintenance aids is granted hereunder.

7. CUSTOMER RESPONSIBILITIES. Customer shall, at its expense, prepare and maintain the site where the Product(s) will be used in accordance with the published specifications for operating environments and perform those tasks set forth in an Order for the Product(s). Customer assumes the full responsibility to back-up and/or otherwise protect its data against loss, damage or destruction before Services are performed by SecureLogix. Customer also agrees to permit prompt access to equipment consistent with Customer's generally applicable standard security requirements and to provide reasonable assistance and facilities so as to expedite the performance of Services by SecureLogix. Customer shall provide SecureLogix with an accurate description of all communication lines, modems, networks, software and other devices and related items (collectively, "**Devices**") that may be necessary for SecureLogix to access during the performance of Services or the provision of any deliverables hereunder. Customer hereby authorizes SecureLogix to access the Devices for the purposes of performing such Services or providing such deliverables. Customer warrants that it owns or possesses all rights necessary to authorize SecureLogix to access such Devices.

8. SHIPPING AND DELIVERY. Shipping dates will be established by SecureLogix upon acceptance of Orders from Customer. Shipping dates will be assigned as close as practicable to the Customer's requested date based on SecureLogix's then-current lead times for the Product(s). SecureLogix will use commercially reasonable efforts to notify Customer of the scheduled shipping date within ten (10) working days after acceptance of an Order. Unless given written instruction by Customer, SecureLogix shall select the carrier. Delivery terms are FOB origination at SecureLogix's shipping location or as otherwise agreed in the Order. SecureLogix shall not be liable for delay in delivery caused by the carrier.

9. PRICES AND FEES. The prices and/or fees for Product(s) and Services provided during the term of this Agreement shall be in accordance with the provisions set forth on the Price List. Unless Customer shall have provided SecureLogix with a valid and effective tax exemption certificate or satisfactory evidence of the same, all federal, state and local taxes (other than those based upon SecureLogix's net income) imposed upon the Product(s) or Services performed hereunder shall be paid by Customer. Payment for Product(s) and Services is due within thirty (30) days after the date of SecureLogix's invoice. Time is of the essence with respect to payments to SecureLogix. SecureLogix reserves the right to change its published or established prices upon thirty (30) days advance notice. Past due amounts are subject to an interest charge of the lower of one and one-half per cent (1-1/2%) per month or the highest rate permitted by law plus all reasonable fees and expenses of collection.
10. EXCLUSIVE WARRANTY AND EXCLUSIVE REMEDY.

a. SecureLogix's exclusive limited Product(s) warranty is that the Product(s), under normal use and service, will substantially perform all of the functions described in the specifications for the Product(s). The warranty period is one (1) year from date of delivery of the Products. In the event SecureLogix breaches this warranty, Customer's exclusive remedy shall be, at SecureLogix's option and expense, (i) SecureLogix shall correct any discrepancy in performance that materially impairs the functionality of the Product(s), or (ii) SecureLogix shall refund the price paid to SecureLogix for the Product(s) provided that Customer returns the Product(s) (freight prepaid by SecureLogix) within thirty (30) days of the discovery of the discrepancy during the warranty period.

b. With respect to Services, SecureLogix's exclusive warranty is that, the Services shall be performed in a workmanlike fashion. In the event SecureLogix breaches this warranty, Customer's exclusive remedy shall be, at SecureLogix's option and expense, (i) to have SecureLogix correct such Services within ninety (90) days of the performance of the Services or (ii) SecureLogix shall refund the price paid for the applicable portion of the Services.

c. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SECURELOGIX MAKES NO REPRESENTATION OR GUARANTEE WHATSOEVER AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE NOR DOES SECURELOGIX MAKE ANY REPRESENTATION AS TO PREVENTING OR RESOLVING ANY PROBLEMS OR PRODUCING ANY SPECIFIC RESULTS.

11. LIMITATION OF LIABILITY.

a. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 2.c. ABOVE, NEITHER PARTY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. EXCEPTING SECURELOGIX'S OBLIGATIONS CONCERNING INFRINGEMENT SET FORTH IN SECTION 12 BELOW, IN NO EVENT SHALL SECURELOGIX'S LIABILITY ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE EXCEED THE LESSER OF CUSTOMER'S ACTUAL AND DIRECT DAMAGES OR THE AMOUNTS PAID TO SECURELOGIX BY CUSTOMER UNDER THIS AGREEMENT.

12. EXCLUSIVE PROVISION REGARDING INFRINGEMENT. SecureLogix's exclusive warranty regarding infringement is that SecureLogix has developed the Products and deliverables and/or has all right, title and interest in and to the Products and deliverables necessary to grant the rights under this Agreement and that the Products and deliverables do not infringe any United States patent, copyright or trade secret. SecureLogix agrees to defend Customer against a lawsuit and pay all damages, costs and reasonable attorney's fees finally awarded against Customer resulting from any claim that any Products or deliverables created or provided by SecureLogix infringe any of the foregoing provided that Customer gives SecureLogix prompt written notice of any claim, and provides reasonable cooperation to SecureLogix in the investigation and defense of such claim and grants SecureLogix exclusive control of the defense and settlement thereof; further provided, however, that no such claim or action in which Customer is named as a defendant may be settled or compromised without Customer's express written consent, which may be conditioned upon the execution of a release of all claims against Customer by the party bringing such claim or action but which shall otherwise not be unreasonably withheld or delayed by Customer. In the event of any such infringement, SecureLogix shall, at its option and expense, either (i) replace or modify the Products or deliverables so that they become non-infringing, or (ii) accept return of the Products or deliverables and refund an amount equal to Customer's depreciated value of the returned items found to be infringing. SecureLogix shall have no liability for infringements caused in whole or in part by Customer, third parties not hired by

SecureLogix or alterations or combinations not reviewed and approved in writing in advance by SecureLogix or that are not performed or provided by SecureLogix. The foregoing constitutes the exclusive warranty of SecureLogix and exclusive remedy of Customer with respect to any claim or action for infringement. Customer may fully participate in the defense and/or settlement or compromise of any claim of infringement at Customer's expense.

13. SECURELOGIX'S EMPLOYEES. SecureLogix reserves the right to determine which of its employees will be assigned to a particular project, to replace or reassign such employees and/or subcontract to qualified third persons part or all of the performance of any Services requested hereunder. Customer may request the removal or reassignment of SecureLogix's employees on a nondiscriminatory basis at any time and SecureLogix will promptly provide a suitable replacement. SecureLogix's employees will comply with all generally applicable work and security rules of Customer.

14. FORCE MAJEURE. SecureLogix shall not be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including, without limitation, lack of cooperation or assistance by Customer, labor difficulties, fire, accident, act of the public enemy, war, public disturbances, sabotage, transportation delay, shortage of raw material, energy, or machinery, or act of God, government or the judiciary or information or telecommunications systems disruption caused by a third party that materially impairs SecureLogix's performance hereunder.

15. INDEPENDENT CONTRACTORS. The parties' relationship during the term of this Agreement shall be that of independent contractors. Neither party shall have, nor shall represent that it has, any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in such other party's name, except as herein expressly provided. Nothing stated in this Agreement shall be construed as constituting a partnership, joint venture or as creating the relationships of employer/employee, franchisor/franchisee or principal/agent between the parties.

16. NOTICES. All notices shall be in writing and all notices and payments shall be sent to the recipient at its respective address set forth above or to such other address as may, from time to time, be designated by written notice. Each party agrees to promptly provide written notice of the specifics of any claim of breach or for damages and to provide the other with a reasonable opportunity to investigate and cure any curable matter.

17. WAIVER. Any waiver of any breach of this Agreement shall not be effective unless set forth in a writing signed by an officer of the waiving party.

18. TERM. This Agreement shall be effective as of the last date written below and shall continue until Customer ceases to use the Product(s) or the date of Customer's breach of any of the provisions of this Agreement at which time Customer's rights hereunder shall terminate.

19. ASSIGNMENT. Other than to an affiliate of Customer, Customer may not assign, sub-license, transfer, pledge, lease, rent, or share the Product(s) or Customer's rights under this Agreement.

20. ARBITRATION OF DISPUTES. The parties agree that any controversy or claim (whether such controversy or claim is based upon or sounds in statute, contract, tort or otherwise) arising out of or relating to this Agreement, any performance or dealings between the parties, or any dispute arising out of the interpretation or application of this Agreement or any dealings between the parties and/or their respective directors, officers, employees or agents, which the parties are not able to resolve, will be settled exclusively by arbitration in San Antonio, Texas by a single arbitrator pursuant to the American Arbitration Association's Commercial Arbitration Rules, including the Optional Rules for Emergency Measures of Protection, then in effect and judgment upon the award rendered by the arbitrator shall be

entered in any court having jurisdiction thereof and such arbitrator will have the authority to grant injunctive relief in a form similar to that which a court of law would otherwise grant. The arbitrator will be mutually chosen from a panel of licensed attorneys familiar with the subject matter of this Agreement having at least fifteen (15) years of professional experience and will be appointed within thirty (30) days of the date the demand for arbitration was sent to the other party. Discovery will be permitted in accordance with the Federal Rules of Civil Procedure of the United States of America. If an arbitration proceeding is brought pursuant to this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, costs and necessary disbursements incurred in addition to any other relief to which such party may be entitled. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to enforce the award or to comply with legal or regulatory requirements. Before making any such disclosure, the party intending to make the disclosure shall give the other party written notice of such intention and shall afford the other party a reasonable opportunity to protect its interests, which such period shall not be less than twenty (20) days from the non-disclosing party's receipt of the aforementioned written notice. The parties expressly agree that this Agreement and any award rendered pursuant to it shall be governed by the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. All proceedings and filings will be in the English language.

21. REJECTION OF U.N. CONVENTION. THE PARTIES AGREE THAT THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, THE UNIFORM ELECTRONIC TRANSACTIONS ACT, ANY STATUTORY ADOPTIONS OR EQUIVALENTS OF THE AFOREMENTIONED ACTS AND CONVENTION, AND ANY OTHER LAWS OR REGULATIONS OF ANY STATE OR COUNTRY RELATED TO ELECTRONIC CONTRACTS, ELECTRONIC SIGNATURES, OR ELECTRONIC RECORDS SHALL NOT APPLY TO THE PARTIES, ANY ORDER OR THIS AGREEMENT.

22. ENTIRE AGREEMENT. This Agreement shall be construed in accordance with the laws of the State of Texas excluding its conflicts of laws rules and jurisdiction to enforce the arbitration provisions contained herein shall reside in the courts within the State of Texas. This Agreement constitutes the entire agreement between the parties and may only be modified by a written instrument executed by an authorized officer of both parties. All proposals, negotiations and representations (if any) made prior, and with reference to the subject matter of this Agreement, are merged herein. This Agreement may be executed in two (2) or more counterparts and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. Neither SecureLogix nor Customer shall be bound by any oral agreement or representation, irrespective of when made. This Agreement, together with any Order accepted by SecureLogix that conforms to this Agreement, is the complete statement of the terms and conditions that apply to the subject matter of this Agreement. SecureLogix and Customer agree that use of preprinted forms, such as purchase orders or acknowledgments, are for convenience only and all terms and conditions stated thereon, except for the information requested by this Agreement, are void and of no effect. In the event of any conflict between this Agreement and the terms and conditions on an Order, this Agreement will govern. A facsimile or imaged copy of this Agreement (including the facsimile or imaged signatures of the parties' representatives thereon) shall for all purposes be deemed equivalent to an original (including the original signatures of the parties' representatives thereon).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized representatives as of the last date written below.

SecureLogix Corporation

_____

Customer Name

By:_____	By:_____
Name: Rick Jordan	Name:_____
Title: Chief Financial Officer	Title:_____
Date:_____	Date:_____

Exhibit A

Terms and Conditions (Version 4.0 – Issued June 1st, 2018)

(hereinafter "**T&C**")

In these T&C the definition "**ZOOM**" means ZOOM International a.s., Id. No. 25730151, with official seat at Karolinská 650/1, Prague 8, the Czech Republic, a company registered and existing under the Laws of the Czech Republic, however in case the license agreement regarding the Software is concluded when you reside in the United States then "**ZOOM**" means Zoom International, Inc., with official seat at 810 Crescent Centre Dr., Ste 220 Franklin, TN 37067 USA.

These T&C are valid and applicable to the license agreement concluded between you and ZOOM as well as all other legal relations between you (either an individual, single entity or companies and affiliates) and ZOOM in all cases concerning the Software unless the license agreement or a separate written agreement concluded between you and ZOOM expressly stipulates otherwise.

The term "**End of Support**" means a date after which the certain version of the Software is no more supported by ZOOM. This information can be always found on ZOOM's partner portal.

The term **"Maintenance"** means access to the latest version of the purchased Software and the right for support. For the Maintenance you will pay to ZOOM an annual fee that is derived from the price of the Software and level of the support required.

The term "**Scope of Work**" means a supplementary document used in case that you require any services from ZOOM. This document defines mainly the scope of the project, milestones, deadlines etc.

The term "**Services**" means any work required by you from ZOOM or its authorized partner.

The term **"Software"** means any software produced by ZOOM or any of its subsidiaries, comprising computer software, any updates to it, all ZOOM and third party proprietary rights, relevant data carriers and documentation in any form, including, without limitation, electronic form.

The term **"Software-as-a-Service"** means a software licensing and delivery model in which Software is licensed on a subscription basis.

The terms and definitions not expressly defined herein shall have the same meaning as defined in the license agreement concluded between you and ZOOM.

Section 1. Payment

Software and related Maintenance will be invoiced immediately after receiving your purchase order (hereinafter "**PO**").

Services will be invoiced in accordance with the conditions defined in the Scope of Work using one of the following possible scenarios:

a. Upfront - All services will be included in the invoice for Software and related Maintenance;

b. 50/50 split - First half of the price for Services will be included in invoice for Software and related Maintenance. The second half of the price for Services will be invoiced upon project acceptance, i.e. accepted delivery of all Services defined in the Scope of Work;

c. Milestone payments - 30% of the price for Services will be included in invoice for Software and related Maintenance. 50% of the price for Services will be invoiced after installation of the Software. 20% of the price for Services will be invoiced upon project acceptance, i.e. accepted delivery of all Services defined in the Scope of Work.

If the delivery of Services is delayed or interrupted for reason on your side and the delay exceeds three (3) months compared with the original schedule signed in the Scope of Work, the invoices for the remaining price for Services will be issued immediately regardless the milestones and/or project acceptance date defined in the Scope of the Work.

The PO can be delivered to ZOOM or its authorized partner via e-mail, overnight courier, or first class U.S. mail.

All invoices will be due and payable within thirty (30) days after issuance. All amounts shall be considered to be paid on the date when it is credited to ZOOM's bank account specified in the invoice.

Invoices will be sent via electronic delivery (e-mail) in portable document format. If you require a paper invoice with stamp and signature, you shall let us now in the PO.

If any amount is not paid in due time, as specified above, you shall be obliged to pay, upon written request of ZOOM, a contractual penalty in the amount of 1.5% of the outstanding amount per month, until the outstanding amount is fully paid.

If not stated otherwise in writing the price does not include any hardware.

Section 2. Maintenance

A. Maintenance can be obtained with two levels of support, Standard and Enterprise. Detailed description of the support is in Annex #1.

B. The maintenance, support and development shall be provided in business days during ZOOM's normal business hours. Business hours are from 9:00 a. m. to 6:00 p. m. local time of the assigned Support Center. The emergency support for P1 issues shall be provided 24/7 when reported via telephone contact. A business day means Monday, Tuesday, Wednesday, Thursday and Friday only (the "**Business Day**"). Support shall be provided via phone and email with next Business Day reaction on problem solving.

C. Maintenance renews annually in advance. In case there is no PO or payment prior to the expiration of the maintenance period, ZOOM reserves the right to suspend Maintenance.Maintenance renewals must be for all licensed Software. Partial renewals are not accepted.

D. License additions for customers with outstanding maintenance agreements are not allowed. If the maintenance renewal is fully expected, license additions may be allowed with provisions (for example, you may be required to supply a PO for the renewal in advance of the PO for the incremental licenses). If Maintenance has lapsed and license additions are contingent on having expired products in production, maintenance renewal is required. The maintenance term and fees for license additions may be prorated in order to allow Maintenance for all software licensed by the same customer to be co-termed. ZOOM may require more than 12 months for co-terming to be accepted.

E. Any subscription services related to Maintenance can be used as long as the Maintenance is current or they have to be converted to Software-as-a-Service plan with a regular charge.

Section 3. Defects

ZOOM agrees to provide you with technical support and service in case of unexpected problems and events - defects. A "defect" shall mean a state of the Software when it is not functioning according to the supplied administrator and user documentation. In the event a defect occurs, you shall be entitled to contact ZOOM at any time by the means described in the Section 4. The defect must not be caused by unprofessional intervention by you or your users or external attack. If the defect is caused by unauthorized intervention by you or your users or by an external attack or if the defect is found in the version of the Software that reached End of Support, the provisions of these T&C on Defects shall not apply to any such defect.

You shall report any defect(s) by email or telephone and, if by telephone, with a contemporaneous writing by email. The report must include the identification of the reporting customer, description of the defect and an indication when the defect was initially discovered. ZOOM shall be obligated to confirm to you without delay, that it has accepted the report. The response time for commencement of problem resolution is next business day.

The response time shall run from acceptance of the defect report and shall include only Business Days and ZOOM's normal business hours - business hours are from 9:00 a.m. to 6:00 p.m. local time of the assigned Support Center. ZOOM agrees to use its reasonable best efforts to resolve the problem as soon as possible. In the event the defect(s) are not reported to ZOOM in a manner consistent with the T&C hereof, ZOOM shall not be responsible for the consequences thereof.

Section 4. Manner of reporting

Exhibit A

US Support Center for USA (Nashville, TN)
phone: +1 615 224 3414
e-mail: ushelpdesk@zoomint.com
web: https://portal.zoomint.com

EU Support Center for the rest of the world (Prague, Czech Republic)
phone: +420 222 554 112
e-mail: helpdesk@zoomint.com

web: https://portal.zoomint.com

Section 5. Delivery

Software and any applicable licenses shall be delivered to you within fourteen (14) days after payment of the initial license fee to ZOOM or its authorized partner in accordance with the issued Invoice.

Services shall be delivered to you in accordance with the Statement of Work, usually within (14) days after delivery of the PO for the Services to ZOOM or its authorized partner. Nevertheless, the delivery of the Services will not start until:

a. All the necessary hardware is prepared for the installation of the Software;
b. ZOOM or its authorized partner receives from you complete information necessary for the delivery of the Services, i.e. the pre-install info document is filled by you and provided to ZOOM or its authorized partner.

If the delivery of Services is delayed or interrupted for reason on your side the milestones and deadlines defined in the Scope of Work will be shifted accordingly.
Unless agreed otherwise in writing any implementation of Software means a remote implementation. If traveling on-site is required, additional costs will be applied. Remote implementation consists of the following:

a. Network topology analysis for Span port configuration (in co-operation with the authorized partner);
b. Project preparation;
c. Remote installation of purchased Software;
d. Documentation for acceptance tests;
e. Remote user training;
f. User documentation;
g. Technical and project documentation;
h. Project management.

ZOOM never does any Work Made for Hire. This means that for all Software, Services and other deliverables you will be granted with a perpetual royalty-free, worldwide, non-exclusive, irrevocable license to use the intellectual property created by ZOOM, but the intellectual property itself remains in the possession of ZOOM.

Annex #1 - ZOOM Maintenance Description

Maintenance is an annual fee that customers pay to ZOOM to get access to the latest version of the purchased Software and obtain support. Below is specifically described what the Maintenance contains and specifically, what it does not contain.

Maintenance services can be obtained with two levels support, Standard and Enterprise.

Standard Support includes

A. ZOOM remote support
   1. by phone (24/7 response on P1 Critical issues), e-mail or using support portal with Next Business Day response time
   2. Incident handling for ZOOM Software

3. Telephony platform troubleshooting for areas related to recording
    a. Cisco UCM in following areas
        i. Recording profiles
        ii. SIP trunks
        iii. Device setup for recording
        iv. Device firmware and model compatibility
        v. Application users for recording and its roles
        vi. Route patterns and regions
        vii. CSS setup for ensuring Devices can reach SIP trunks
    b. HW issues troubleshooting:
        i. Disk drive speed
        ii. Network cards

B. System administration tasks:
1. Linux system configuration
    a. Time zone data updates
    b. Networking reconfiguration
2. Storage provisioning in Linux
    a. Connecting of SAN, NAS, iSCSI arrays
    b. Multipath configuration in Linux
    c. disk partitioning, LVM management
3. ZOOM Software configuration
    a. IP address changes
    b. Software modules redistribution
    c. Memory tuning

C. Additional
1. Updates – access to Software patches, updates and fixes
2. Major new versions – access to all available new versions of the Software (within the scope of purchased licenses)

On top of new features that are available in both minor and major versions, ZOOM is providing compatibility updates to address new features and devices that vendors such as Cisco, AVAYA & Genesys deliver:

A. Continuous support for new versions of supported soft switches
B. Support for new devices – IP Phones & gateways with new firmware and services
C. Support for new versions of call center platforms (contact center integration modules)

The compatibility updates are not available for versions of the Software that reached End of Support.

Enterprise Support includes following additional services

A. ZOOM Remote Support
1. 24/7 phone support on Any incident
2. 1 hour guaranteed Start of Work
3. Pro-Active incident prevention (On Monitoring alarms)

B. Administration tasks
1. Software database (PostgreSQL only) patching, tuning, defragmentation and administration support
2. Data and recording moves, backups, restores, archives and deletes
3. Configuration for recording, data settings and related media lifecycle management

C. Updates
1. ZOOM server OS patching and administrative support
2. ZOOM application patching and administrative support

D. Additional

1. Hosted, enterprise class monitoring
2. Immediate alert notifications
3. Automated, weekly health checks
4. Annual system audits on performance, volumes and a report with recommendations
5. System change audit trails

Maintenance does not include

Services and tasks not covered in Maintenance contract:

A. Installation services

B. Any upgrades requested as a part of incremental feature enhancement

C. Any upgrade services from version that reached End of Support

D. Any configuration updates or data migration related to moves, ads, changes or deletions with customer provider equipment including but not limited to recorded devices, virtualization environment

E. Any performance issue related to unsupported hardware configuration

F. User and administration training

G. Tasks related to data manipulation in Standard Support (included in Enterprise Support)

H. Any tasks on platform troubleshooting not specifically mentioned in what Maintenance includes

Such services can be ordered from ZOOM on per case basis or covered by individual service contract.

Service Level Agreements & 24/7 Support

Maintenance programs can be upgraded with individual requirements and additional services supplied through an extended service agreement or SLA (Service Level Agreement) contract. For example full 24/7 service, guaranteed response times etc. These contracts are negotiated individually based on your requirements to match your exact needs.

Exhibit A

Software License Agreement (Version 4.0 — Issued January 1st, 2018)

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Version 3, 29 June 2007

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This License shall be governed by and construed in accordance with the laws of England and Wales, excluding its conflict of law provisions. All disputes arising out of or in connection with the License shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The place of arbitration shall be Stockholm and the language to be used in the arbitral proceedings English.

10.9 Notices

All notices and demands of any kind which either Teleopti or Licensee may be required or wish to serve upon the other under the terms of this License shall be in writing and shall be served by personal service, by fax or by recorded delivery post at the address of the receiving party set forth in this License (or at such different addresses as may be designated for such purpose by such party by written notice to the other party); all notices or demands given by personal service shall be effective upon receipt, all notices or demands given by fax or post shall be deemed given upon sending. All notices should be in English.

EXHIBIT B

DIR Contract No. DIR-TSO-4192

Vendor Contract No. _____

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

NWN Corporation

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and NWN Corporation (hereinafter "Vendor"), with its principal place of business at 4802 N. Sam Houston Parkway West, Suite 500, Houston,Texas 77068.

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-TSO-TMP-425, on December 20, 2017, for Cisco Branded Products and Services. . Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-425 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-425, including all addenda; and Exhibit 2, DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then 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 initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Cisco Branded Products and Related Products 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 Cisco Branded and Related Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (*.75%*). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated 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:
Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:
Chris Joslin

NWN Corporation
2969 Prospect Park Drive
Suite 225
Rancho Cordova, California 95670
Phone: (916) 596 - 4764
Email: CJoslin@nwnit.com

7. Software License and Service Agreements

A. Shrink/Click-wrap License Agreement

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

B. Conflicting or Additional Terms

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

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not without prior written agreement from Customer's authorized signatory, require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

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

No exceptions have been agreed to by DIR and Vendor.

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

NWN Corporation

Authorized By: Signature on File

Name: Mathew Niemann

Title: Vice President of Contracts

Date: 6/22/2018

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 6/28/2018

Office of General Counsel: Signature on File, 6/25/2018

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

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

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

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

B. **Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

management staff or their designees.

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

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

E. **Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

F. **Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

G. **Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

H. **State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

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

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

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

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

parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

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

G. Limitation of Authority

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

H. Proof of Financial Stability

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

5. Intellectual Property Matters

A. Definitions

1)" Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

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

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

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

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

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

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

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

C. Further Actions.

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

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

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

J. Agreement with Subcontracts.

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

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

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

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all

necessary hardware, software and technology services.

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

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

B. Use of Order Fulfillers

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

1) Designation of Order Fulfillers

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

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

2) Changes in Order Fulfiller 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 Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

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

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

a) the products and services awarded;

b) description of product and service awarded

c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;

d) discount percentage (%) off MSRP or List Price;

e) designated Order Fulfillers;

f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;

g) instructions for obtaining quotes and placing Purchase Orders;

h) warranty policies;

i) return policies;

j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;

k) a link to the DIR "Cooperative Contracts" webpage; and

l) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

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) Webpage Compliance Checks

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

4) Webpage Changes

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

5) Use of Access Data Prohibited

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

6) Responsibility for Content

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

F. DIR Logo

Vendor and 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

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's 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' 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 no more than two 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

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

J. Performance Review Meetings

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

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

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

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

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

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

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

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Invoices shall be submitted by the Vendor or 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 Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

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

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) State Contract Manager

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

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and 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. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), 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. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

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

4) DIR Administrative Fee

a) The Vendor shall pay an administrative fee 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. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days

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

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

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

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

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

D. Contract Administration Notification

1) Prior to 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 Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

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

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

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

4) PROPERTY DAMAGE

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

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

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

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

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

(i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;

(ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;

(iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

(iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;

(v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

(vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;

(vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

(viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control;

(ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;

(x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;

(xi) 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;

(xii) 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;

(xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;

(xiv) 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;

(xv) under Section 2155.006, and Section 2261.053, Texas 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;

(xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and

(xvii) represent and warrant that the Customer's payment and their receipt of

appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and

(xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and

(xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

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 if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, 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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies 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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 the Customer.. 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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises 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 have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include $1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of $2,000,000; Medical Expense per person of $5,000; Personal Injury and Advertising Liability of $1,000,000; Products/Completed Operations Aggregate Limit of $2,000,000; and Damage to Premises Rented: $50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract;
b) Independent Contractor coverage;
c) State of Texas, DIR and Customer listed as an additional insured; and
d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF $1,000,000 BODILY INJURY PER ACCIDENT, $1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND $1,000,000 PER DISEASE POLICY LIMIT.

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. The policy shall contain the following endorsements in favor of DIR and/or Customer:

a) Waiver of Subrogation; and
b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security[1]s E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

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

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

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

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

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) 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.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over $25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

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

4) Termination for Cause

a) Contract

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

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) 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. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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.

7) Vendor or Order Fulfiller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

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

B. Handling of Written Complaints

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

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

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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.

Exhibit B

Rev. 10/16

HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

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

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

- ☉ Section 1 - Respondent and Requisition Information
- ☉ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☉ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☉ Section 2 c. - Yes
- ☉ Section 4 - Affirmation
- ☉ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a *<u>continuous contract</u>** in place for more than five (5) years *<u>meets or exceeds</u>* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

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

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☐ Section 3 - Self Performing Justification
- ☐ Section 4 - Affirmation

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

Exhibit B

Rev. 10/16

HUB Subcontracting Plan (HSP)

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

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

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

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

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: NWN Corporation — State of Texas VID #: 49876

Point of Contact: John Dees — Phone #: (713) 816-1223

E-mail Address: JDees@nwnit.com — Fax #:

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

c. Requisition #: DIR-TSO-TMP-425 — Bid Open Date: 02/16/2018 (mm/dd/yyyy)

Exhibit B

Enter your company's name here: NWN Corporation Requisition #: DIR-TSO-TMP-425

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

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

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

☑ - ***Yes***, I will be subcontracting portions of the contract. (If ***Yes***, complete Item b of this SECTION and continue to Item c of this SECTION.)

☐ - ***No***, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If ***No***, continue to SECTION 3 and SECTION 4.)

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Customer Service Support	21.1 %	%	%
2	which includes but is not limited to the	%	%	%
3	pre-sales, marketing, and other contract	%	%	%
4	supporting functions	%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	**%**	**%**	**%**

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

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

☑ - ***Yes*** (If ***Yes***, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ - ***No*** (If ***No***, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**."

☐ - ***Yes*** (If ***Yes***, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

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

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

Exhibit B

Enter your company's name here: NWN Corporation Requisition #: DIR-TSO-TMP-425

SECTION 3: SELF PERFORMING JUSTIFICATION **(If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)** If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

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

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

Signature on File	Mathew S. Niemann	VP	02/12/2018
Signature	Printed Name	Title	Date (mm/dd/yyyy)

Reminder:

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

Exhibit B

HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: NWN Corporation Requisition #: DIR-TSO-TMP-425

IMPORTANT: If you responded "***Yes***" to **SECTION 2, Items c** or **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: 1 **Description: Customer Service Support**

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "**A**" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
LyncVerse Technologies, Inc.	☒ - Yes ☐ - No	486578	$ 15M	21.1 %
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

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

Exhibit B

Rev. 10/16

HUB Subcontracting Opportunity Notification Form

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

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

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

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: NWN Corporation

State of Texas VID #: 49876

Point-of-Contact: John Dees

Phone #: (713) 816-1223

E-mail Address: JDees@nwnit.com

Fax #:

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:

Point-of-Contact:

Phone #:

Requisition #: DIR-TSO-TMP-425

Bid Open Date: 02/16/2018 (mm/dd/yyyy)

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

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ (Central Time) on _____ (Date (mm/dd/yyyy)).

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

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

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

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

CISCO BRANDED PRODUCTS			
Brand	**Product Category**	**Product Description**	**DIR Customer Discount % off MSRP**
CISCO	Hardware on Cisco Global Price List	All Cisco Products not listed below	40.00%
CISCO	Meraki Price List	All Meraki Products	40.00%
CISCO	Networking - Core/Compute	Switches, Routers, Wireless and Interface Modules	40.00%
CISCO	Wireless and Mobility - Core/Compute	Wireless Access Points, Controllers	40.00%
CISCO	Security - Core/Compute	Firewalls, Malware Protection, Email & Web Security	40.00%
CISCO	Collaboration - Core/Compute	Endpoints, Conferencing, Unified Communications	40.00%
CISCO	Data Center - Compute	Unified Computing System (UCS) products	40.00%
CISCO	Data Center - Core	Security, Management & Automation, Switches, Infrastructure, Storage & Virtual Networking	40.00%
CISCO	Analytics - Core/Compute	Business Intelligence Analytics	40.00%
CISCO	Video - Core/Compute	Endpoints, Entertainment, Intelligence, Signage	40.00%
CISCO	Internet of Things - Core/Compute	Connectivity, IoT Analytics, Iox, Embedded Networks	40.00%
CISCO	Software - Core/Compute	Spark Subscription - WebEx, Meeting Center, Video Bridging	21.00%
CISCO	Software - Core/Compute	Sparkboard and licensing	14.00%
CISCO	Software - Core/Compute	IOS & NX-OS, One	40.00%

VALUE ADDED AND RELATED SERVICES			
BRAND	**SERVICE DESCRIPTIONS**	**Product Description**	**DIR Customer Discount % off MSRP**
CISCO	SMARTnet for Government (1 year term)		10.00%
CISCO	SMARTnet for Government (3 year term)		17.00%
CISCO	SMARTnet for Government (5 year term)		21.00%

CISCO	SMARTnet for Education (1 year term)		25.00%
CISCO	SMARTnet for Education (3 year term)		28.00%
CISCO	SMARTnet for Education (5 year term)		30.00%
CISCO	Technical and Maintenance Services		10.00%
CISCO	Training		5.00%
CISCO	Support		5.00%
NWN	Miscellaneous as a Service	NWNComm Video Services	7.00%
NWN	Miscellaneous as a Service	NWNComm Meetings	7.00%
NWN	Miscellaneous as a Service	NWNComm Spark	7.00%
NWN	Miscellaneous as a Service	NWNComm Gateways	7.00%
NWN	Collaboration as a Service	NWNComm Endpoints (Includes Product Replacement)	7.00%
NWN	Collaboration as a Service	NWNComm Hosted Call Center Platform and Agents	7.00%
NWN	Collaboration as a Service	NWNComm Call Center Bundles - Includes Agent/SUP Licensing, Call Center Platform, Agent Software, One IVR Ports per Agent (min of 50 total)	7.00%
NWN	Collaboration as a Service	NWNComm Additional Features	7.00%
NWN	Collaboration as a Service	NWNComm Hosted Voice and Messaging Platform	7.00%
NWN	Collaboration as a Service	NWNComm Voice Bundles - Includes Licensing, Call Control and Messaging Platform, Redundant WAN, SIP Trunks, DID	12.00%
NWN	Platform as a Service	Ncloud Platform as a Services (PaaS)	12.00%
NWN	Infrastructure as a Service	Ncloud Infrastructure as a Services (IaaS)	12.00%
NWN	Managed Services	Ncare Service Desk	12.00%
NWN	Managed Services	Ncare Management & Monitoring - ex. Application Server (Physical or Virtual), Data Center, Switches	20.00%
NWN	Managed Services	Ncare Management & Monitoring - ex. Application Server (Physical or Virtual), Data Center, Switches	20.00%
NWN	Technical Services Project Based and Staff Augmentation Based	Npro Technical Services - NWN Applications and Data Service Offerings: Hourly Rates	20.00%
NWN	Technical Services Project Based and Staff Augmentation Based	Npro Technical Services - NWN Applications and Data Service Offerings: ex. Applications Solutions, Enterprise Mobility Solutions, Analytics and Big Data Solutions, System Integration Solutions	20.00%

NWN	Technical Services Project Based and Staff Augmentation Based	NPro Technical Services - ex. Technicians and Engineers, Project Management, Training	20.00%

THIRD PARTY PRODUCTS FOR CISCO BRANDED PRODUCTS

BRAND	Product Category (if applicable)	Product Description	DIR Customer Discount % off MSRP
Hardware			
APC	Hardware	Ethernet and IT related cabling	10.00%
Tripplite	Hardware	Equipment Rack/shelves, cabling patch panels, ethernet cabling	10.00%
Eaton	Hardware	Uninterruptable Power Supplies (UPS)	10.00%
Panduit	Hardware	Uninterruptable Power Supplies (UPS)	10.00%
C2G	Hardware	Uninterruptable Power Supplies (UPS)	10.00%
Data Center			
Nutanix	Data Center	Next Gen Enterprise Compute (converges compute, virtualization and storage into single solutions)	5.00%
Veeam	Data Center	Virtual Infrastructure Management and Data Protection	5.00%
Commvault	Data Center	Cloud Data Management Solutions	5.00%
VMWare	Data Center	Virtualization Solutions	5.00%
Citrix	Data Center	App and Data Delivery Solutions	5.00%
Services			
Quantela	Internet of Things	IoT Sensors and Analytics for Smart Cities	10.00%
iOmniscient	Internet of Things	Video alarm analytics	10.00%
2Ring	Collaboration	Finesse based gadgets, dashboards, wallboards and services for Enhanced and Premium Agent types	10.00%
Acqueon	Collaboration	Outbound List and Campaign Management	10.00%
AltoCloud	Collaboration	Website Traffic Analyzer and Technical Services	10.00%
Calabrio	Collaboration	Advanced Quality Management Analytics	10.00%
Consilium	Collaboration	Contact Center Solutions Connectors, Dashboards & Outbound	10.00%
eGAin	Collaboration	Digital Customer Engagement, Knowledge Management Solutions	10.00%
Jabra	Collaboration	Wireless Headsets	10.00%
NICE	Collaboration	Workforce Optimization Solutions	10.00%
Noble Systems	Collaboration	Life Cycle Solutions	10.00%

Nuance	Collaboration	Website Traffic Analyzer and Technical Services	10.00%
Plantronics	Collaboration	Wired and Wireless Headsets	10.00%
Singlewire / Informacast	Collaboration	Paging through Phones	10.00%
SpinSci	Collaboration	Agenta Snap Toolkit and Electronic Health Record Adapter	10.00%
Verint	Collaboration	Workforce Optimization Solutions	10.00%
Webtext	Collaboration	Cloud Messaging Services	10.00%
Zoom	Collaboration	Video Solutions	10.00%

VOLUME DISCOUNTS- CISCO BRANDED PRODUCTS AND SERVICES

Brand	Type of Volume	Product Category	DIR Customer Discount % off MSRP
	By QTY		
	1-99 units	All Cisco Branded Solutions and NWN Services	Base Discount
	100-500 units	All Cisco Branded Solutions and NWN Services	Base Discount + .5%
	500+ units	All Cisco Branded Solutions and NWN Services	Base Discount + 1%
	Total Statewide Aggregate Contract Sales		
	Aggregated Sales are greater than $3M	All Cisco Branded Solutions and NWN Services	Base Discount + 1%
	Aggregated Sales are greater than $5M	All Cisco Branded Solutions and NWN Services	Base Discount + 2%

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Appendix D

MASTER LEASE AGREEMENT

1. Scope.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule ("Schedule"), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement ("MLA"). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term "Equipment" shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-4192, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

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

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

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

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2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number One (1) and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

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

4. Administration of MLA.

(a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.

(b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.

(c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-4192 on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.

(d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

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

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

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

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

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal

property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

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

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

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

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds

are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

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

9. Inspection and Acceptance.

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

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

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

(b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.

(c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

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

12. Ownership.

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

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

(a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together will all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.

(b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location,

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

14. Quiet Enjoyment.

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

15. Warranties.

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

16. No Warranties.

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

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

17. Indemnification.

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

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

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

18. Risk of Loss.

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

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

19. Insurance.

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

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

20. Representations and Warranties of Lessee.

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

(a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

(b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;

(d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;

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

(f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and

(g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

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

(a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;

(b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;

(d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;

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

(f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;

(g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and

(h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

(a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;

(b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;

(d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and

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

23. Default.

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

24. Remedies.

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

opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

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

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

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

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original

signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

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

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

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

DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

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

28. Lessee's Waivers.

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

29. Security Interest and UCC Filings.

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

30. Miscellaneous.

(a) Applicable Law and Venue. The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where

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Lessee has its principal office or where the Equipment is located, with the following exception: if a Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.

(b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.

(c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.

(d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.

(e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-4192 and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.

(f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.

(g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.

(h) Lessor Certifications. Lessor certifies that:

(i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;

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(ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;

(iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

(iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;

(v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,

(vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;

(vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;

(viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

(ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control;

(x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;

(xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;

(xii) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All

Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;

(xiii) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;

(xiv) Lessor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.

(xv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;

(xvi) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;

(xvii)Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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

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

Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated

there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

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

(k) 31. Amendments.

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

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Exhibit B

Appendix E

MASTER OPERATING LEASE AGREEMENT

1. Definitions. Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.

(a) "Assets" refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).

(b) "Contract" refers to DIR Contract number DIR-TSO-4192 into which this Appendix is incorporated.

(c) "Event of Default" is defined in Section 23, "Default."

(d) "Event of Loss" means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.

(e) "Hardware" refers to the computer machinery and equipment specifically identified on the applicable Schedule.

(f) "Lease" means the financing transaction described in this MOLA.

(g) "Lessee" means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

(h) "Lessor" means the Vendor identified in the Contract.

(i) "MOLA" means this Master Operating Lease Agreement (Appendix E). Any reference to "MOLA" includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.

(j) "Rent Payment" means the amount payable by Lessee for the Assets as specified in the applicable Schedule.

(k) "Schedule" or "Supplementary Schedule" to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee,

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

(l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.

(m) "Software" refers to the computer programs specifically identified on the applicable Schedule.

(n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

(a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.

(b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.

(c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.

(d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.

(e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both

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

3. Term of MOLA.

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract, or (b) on the Effective Date specified in Amendment Number One (1), if this MOLA is added to the Contract under such Amendment. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the date specified in the Lessee Certificate of Acceptance, as described in Section 10, . Unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the "Schedule Term"). Specifically with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

(a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.

(b) With respect to Lessor's obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a "purchase sale." Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 ("Lease") hereof for the transaction(s) between Lessor and Lessee.

(c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.

(d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

(a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is $3,000 and the Scheduled Commencement date is the 15th of the month, a payment of $1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.

(b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be refunded to Lessee within ninety (90) calendar days. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.

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

7. Liens.

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

8. Appropriation of Funds.

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

9. Assignment of Warranties.

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

10. Inspection and Acceptance.

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

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

(a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.

(b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.

(c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

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

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

13. Taxes.

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

14. Ownership.

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

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

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

(b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight

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

16. Quiet Enjoyment.

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

17. Warranties regarding the Assets.

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

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the

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

19. Risk of Loss.

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

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

20. Representations and Warranties of Lessee.

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

(a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

(b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;

(d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;

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

(f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and

(g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

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

(a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;

(b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;

(d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;

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

(f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and

(g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. <u>Representations and Warranties of Lessor</u>.

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

(a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;

(b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;

(d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;

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

(f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

23. Default.

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

24. Remedies.

(a) Lessor's Remedies.

i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:

A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;

B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;

C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;

D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:

I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the

Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;

II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and

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

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

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

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

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

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

25. Notices and Waivers.

(a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.

(b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

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

(a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.

(b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. Delivery of Related Documents.

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

28. Miscellaneous.

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

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

Exhibit B

Attachment 1 to the Master Operating Lease Agreement
Financial Disclosure Summary

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

Exhibit B

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

Exhibit B



Department of Information Resources

Request for Offer
DIR-TSO-TMP-425

Cisco Branded Products and Services

Issued: 12/20/2017

Initial Responses Due: 02/05/2018 02:00 PM (CT)

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1. Introduction

1.1. Purpose

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

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 5 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to make a single award or multiple awards from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

As a result of this RFO, DIR expects to create a contract vehicle that satisfies statewide procurement requirements for Cisco Branded Product Contracts and improves the efficiency of the procurement process by shortening the time required to procure Cisco Branded Products.

As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall best value to the state.

1.2. Background

1.2.1 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government, or institution of higher education as defined in Texas Government Code, Section 2054.003; the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771; any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

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

will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for product and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41.

1.2.2 **Texas Government Code, Section 2157.068**

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

Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is a commercially available program that operates hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements and may include Software provided as a service. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance and subscription services. Seat management is a service through which a state agency transfers its responsibilities to a Vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

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

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

http://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=25

1.2.3 **Cost Avoidance Performance Measures**

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

1.2.4 Cost Recovery

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

1.2.5 Historical Sales

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

	2015	2016	2017
Assistance Org	$2,698,755.30	$2,357,384.76	$3,140,797.08
Higher Ed	$402,325,577.21	$351,306,997.17	$338,555,841.28
K-12	$677,730,203.21	$628,703,140.22	$577,858,667.24
Local Government	$433,721,905.98	$462,736,727.05	$461,433,333.12
Out of State	$10,944,441.03	$8,767,492.85	$20,451,872.88
State Agency	$540,953,164.15	$515,716,174.70	$492,152,560.00
Total:	**$2,068,374,046.88**	**$1,969,587,916.75**	**$1,893,593,071.60**

1.2.6 Current Contracts

DIR currently has one (1) contract with Cisco Systems, Inc. to provide the Cisco Branded Products and Services and related services. There were originally five (5) contracts awarded under the previous Cisco Branded RFO DIR-TSO-TMP-215 with five (5) different vendors. The volume of products sold through the contract[s] for Fiscal Year 2014 to Fiscal Year 2017 was approximately $654,975,998. **Note: Branded Vendor's business methods may or may not allow for the selling of Cisco branded products through multiple DIR contracts through this RFO. Respondent resellers must document their authority to sell Cisco branded products through a multiple award DIR contract under this RFO.**

1.2.7 **E-Rate**

The Cisco Branded Product and Services RFO DIR-TSO-TMP-425 may result in the award of contracts for E-Rate qualified products and services. The E-Rate program provides discounts to public K-12 schools, and libraries purchasing telecommunications services, Internet access, Internet connections, and basic maintenance of internal connections. Eligible entities include K-12 public schools, school districts, charter schools, and libraries. DIR simplifies the procurement process for products and services that qualify for E-Rate funding by filing the Form 470 with Universal Service Administrative Co. (USAC) on select RFOs where the possibility of E-Rate contracts is anticipated. Contracts awarded under selected RFOs are considered E-Rate eligible. Eligible contracts on the DIR website are designated by the following green E-Rate symbol on the contract detail page.



2. Vendor Information System (VIS) Portal - BidStamp

DIR's BidStamp Vendor Information System (BidStamp VIS) provides prospective bidders (Vendors) with the ability to create a profile that supports the key functions required during the solicitation response process. The high-level processes associated with the portal include vendor account/profile creation, vendor contact creation, vendor account management, and response submission. In addition to the account management and solicitation response capabilities enabled by the BidStamp VIS portal, Vendors will be able to view open solicitations and additional information about DIR.

2.1. Solicitation Response Requirement

Any Vendor responding to this RFO must submit their response through the BidStamp VIS. Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in section 4.1 of this solicitation. Please allow at least five business days for response.

2.2. VIS Account Request Process

Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via **http://dircommunity.force.com/BidStamp**, and enter in their access credentials. If a Vendor does not yet have login credentials, it will request one by clicking on "Are you a vendor and need to request an account?" button that is located on the login page.

Instructions for VIS account access and using the BidStamp VIS portal to submit solicitation response can be found on DIR's website Information for Vendors page.

3. Scope

3.1. Products

DIR intends to contract to provide Cisco Branded Products and Value-Added Services to the State of Texas. The Cisco products and services shall include but are not limited to the following products and services:

3.1.1 Products

Product Categories

Cisco Hardware, Networking, Wireless and Mobility, Security, Collaboration, Data Center, Analytics, Video, Internet of Things and Software.

Any responding Vendor offering Cisco Branded products must submit a description of those products and the related pricing on DIR's Automated Pricing Form in the BidStamp VIS.

Value Added Reseller Services

Value Added Reseller services for the Cisco products shall include, but are not limited to configuration, integration, education, optimization, deployment, support, training, technical and other valued added services.

Reseller Requirements

Vendors may bid any or all or any combination of the products or product categories listed above in their proposals.

Third-Party Products

Third-Party products may be proposed as an option and will be awarded at the discretion of DIR. Third-Party Products are those hardware, peripherals, accessories and software manufactured or published by other manufacturers or publishers that may be used as an attachment or embedded within a Cisco Branded or Service product to create, enhance or extend the functionality of a Cisco Branded product; or to create, enhance or extend the functionality of the Authorized Third Party Product which relies on a Cisco Branded product platform to function. No stand-alone Third-Party products will be allowed.

Any responding Vendor offering third-party products must submit a description of those products and the related pricing on DIR's Automated Pricing Form in the BidStamp VIS.

Vendors may incorporate changes to their authorized Third-Party Product offerings; however, any changes must be within the scope described in this section herein. Vendors may not add a manufacturer's product that was not included in the Respondent's response to the solicitation without pre-approval of DIR. All Third-Party Products must be sold as part of a solution for a Cisco Branded product or service and cannot be sold separately.

By listing a Third-Party Manufacturer Brand and proposing a Pricing Discount Percent (%) off MSRP, the responding Vendor attests that it has authorization from the manufacturer to resell the products on a resulting DIR contract. At any time prior to contract award and during the contract term, DIR may require Vendor to provide a Letter of Authorization from the manufacturer stating that the responding Vendor has the authorization to sell that manufacturer's products and/or that the Vendor has the certifications to provide the related services on a DIR contract.

3.1.2 **Pricing**

Any Vendor responding to this RFO must submit specific pricing for the products requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and related services, if any, shall be priced and discounted as instructed in this solicitation number DIR-TSO-TMP-425. All products for Cisco Branded Products and Services may be made available through a Contract.

Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS. Failure to respond as instructed may result in Vendor's offer being disqualified from further evaluation.

1. **Cisco Branded Discount Sheet**: The products will be categorized as provided on the SAMPLE Bid Package 2 spreadsheet titled "Cisco Branded." Vendors must offer only one discount for each Product Category listed as applicable to the Vendor's offering. Vendors may bid on any of the product categories listed on Bid Package 2. The discount for each product category will be applied to all products within the product category to determine the net DIR Customer price. The price to the DIR Customer shall include all shipping and handling fees. **With the exception of Volume Discounts, all Product Category discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS.**

2. **Third Party Products: Third-Party products and the discounts for the Third-Party products are entered into DIR's Automated Pricing Form in the BidStamp VIS.** The Third-Party products must be listed in VIS utilizing the same information as provided on the SAMPLE Bid Package 2 spreadsheet titled, "Third-Party Products ." **Each Third-Party product and its Brand must be listed individually**. The discount for each Third-Party product will be applied to the MSRP for that Third-Party product to determine the net DIR Customer price. The price to the DIR Customer shall include all shipping and handling fees.

3.1.2.1 **Volume Pricing**

1) Volume Pricing: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services on the SAMPLE Bid Package 2, spreadsheet titled, "Volume Discount."

2) In addition to VOLUME pricing for specific Products and/or Services, DIR encourages Vendors to propose increased discount based on total statewide aggregate contract sales for Products and Services. See Instruction tab in Bid Package 2, Pricing Index for volume pricing instructions.

Volume Discounts are only entered in Bid Package 2, Volume Discount spreadsheet, which must be submitted with Vendor's response, if applicable. Vendors will enter Volume Discounts in the Bid Package 2 spreadsheet, on the Volume Discount tab. Vendor will upload the Bid Package 2 spreadsheet into BidStamp VIS with Vendor's response.

In addition to purchases, DIR and any Vendor awarded a Contract as a result of this RFO may agree to provisions that allow leasing of the products offered under the resulting Contract.

DIR is not soliciting Cisco Branded Products and Services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and services.

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

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

3.2. Value Added and Related Services

Related services are any value-added service that Vendor may perform as related to the products proposed in Section 3.1. Related services include but are not limited to: product installation, maintenance and technical support, project management, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Automated Pricing Form in the BidStamp VIS.

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

3.3. Emerging Technologies

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of DIR-TSO-TMP-425. Vendor may propose such products and related services throughout the term of the contract. In order to meet the needs of DIR customers, DIR may request the addition of products and services within the scope of DIR-TSO-TMP-425 by augmenting the original solicitation through a competitive bidding process. Pricing and terms will be negotiated upon DIR agreement. Any determination will be at DIR's sole discretion and any decision will be final.

3.4. Threshold and SOW Requirements

State Agency Customers (not including institutions of higher education), must adhere to the requirements of Senate Bill 533 (85R) relating to DIR Cooperative Contracts. Senate Bill 533 (SB533) requires state agencies to adhere to the following purchasing thresholds:

Threshold Requirements for IT Commodities (Hardware, Software and Services)

Contract Value	Number of DIR Vendors
$50,000 or less	May award directly to DIR Vendor of choice
$50,000.01 to $1,000,000,00	Three (or all DIR Vendors in a category with less than three vendors)
$1,000,000,01 to $5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than $5,000,000.01	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

In addition, TGC Section 2157.0685 requires that state agencies procuring more than $50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Threshold and SOW review and signature processes do not apply to Institutions of higher education, K-12, local governments, assistance organizations, or out-of-state customers.

3.5. Electronic and Information Resources (EIR) Accessibility

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and WCAG 2.0 AA as applicable, and when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Accordingly, **all Vendors must submit completed VPAT form** (Bid Package 6) **or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award for the proposed product or product family.** Instructions on how to complete a VPAT® can be found on DIR's website.

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must use the VPAT form to: (1) specify each exempt product or product family and indicate "Not Applicable" in the "Supporting Features" column of the Summary Table; (2) provide an explanation in the "Remarks" column of Summary Table.

- For Consumer Off the Shelf (COTS) products, including Software as a Service (SAAS), a completed, accurate **Voluntary Product Accessibility Template (VPAT)** for each product or service included in the submitted pricelist.

  Vendors who do not already have accessibility documentation should complete the form located here: http://www.itic.org/public-policy/accessibility. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

In addition to the VPAT requirement, vendors **must** complete the **Policy Driven Adoption for**

Accessibility (PDAA) for Vendor Self-Assessment. (Bid Package 5)

3.6. Form of Contract

3.6.1 Sample Contract and Terms Negotiation

Negotiation: The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the **sample** *Contract for Products and Related Services* attached as "Bid Package 3" and the *Standard Terms and Conditions for Products and Related Services Contracts* attached as "Bid Package 4" to the posting for this RFO, requisition number DIR-TSO-TMP-425, on the Electronic State Business Daily, http://www.txsmartbuy.com/sp

3.6.2 Proposed Changes and Exceptions

Caution: Vendors' Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below. Item 11 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the *Contract for Products and Related Services and Standard Terms and Conditions for Products and Related Services Contracts*. Vendor should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 11 of Exhibit A. **Vendors may request exceptions to standard contract terms and conditions; however, (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor's response may be subject to disqualification from further consideration for this solicitation; (2) DIR in its discretion may or may not accept the Vendor's requested exceptions; and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid.** An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language **must** be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

3.6.3 Contract Term and Automatic Renewal

DIR anticipates a contract with an initial term of two (2) years renewable automatically in one-year increments for three (3) additional years under the same terms and conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modifications of terms or not renew. In the event of prolonged contract negotiations DIR may in its discretion offer Vendor a shorter contract term.

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

4. General Information

4.1. Point of Contact

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

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

4.2. Contact with DIR Staff

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 4.1 will not discuss the contents of this RFO with any Vendor or their representatives. **Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

4.3. Anticipated Schedule

4.3.1 RFO Schedule

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Date/Time	Activity
12/20/2017	Publish RFO on Electronic State Business Daily
01/9/2018 02:00 PM (CT)	Optional Vendor Conference
01/12/2018 02:00 PM (CT)	Deadline for submitting questions
01/23/2018 02:00 PM (CT)	Deadline for posting answers to questions on the ESBD
02/05/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
02/05/2018 02:00 PM (CT)	Deadline for submitting responses to RFO
2/6/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution

4.3.2 **Vendor Conference**

The Optional Vendor Conference will be held on the date and time specified in RFO Section 4.3.1 above at the location listed below. **Please have a copy of the RFO when listening to the Vendor Conference Webinar.**

Webinar Only

Webinar Information
A webinar will be held on the date and time specified in RFO Section 4.3.1 above.

To reserve a webinar seat, register at:

https://attendee.gotowebinar.com/register/486117567586109699

After registering, you will receive a confirmation email containing information about joining the Webinar.

DIR will provide webinar attendees with an opportunity to submit written questions at the webinar. **All questions submitted at the webinar must reference the appropriate RFO page and section number.** Although DIR may provide tentative verbal responses to questions at the webinar, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, http://www.txsmartbuy.com/sp. DIR reserves the right to amend answers prior to the offer submission deadline.

4.3.3 **Written Questions and Official Answers**

Vendors shall submit all questions regarding this RFO through the BidStamp VIS. **Questions regarding this RFO will be accepted until the date and time specified above in Section 4.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-425 on the Electronic State Business Daily (ESBD), http://www.txsmartbuy.com/sp. DIR reserves the right to amend answers prior to the offer submission deadline.

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

4.4. Historically Underutilized Businesses

The purpose of the Historically Underutilized Business (HUB) Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency must make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total

contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.2% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders' contracts;
3. 32.9% for all special trade construction contracts;
4. 23.7% for professional services contracts;
5. 26.0% for all other services contracts;
6. 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161.252(b), and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

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

4.4.1 HUB Subcontracting Plan

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **The HUB Goal for this RFO is 21.1%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION. The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.** The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are available in the BidStamp VIS. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be uploaded into BidStamp. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

4.4.2 HUB Continuing Performance

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

4.4.3 HUB Resources Available

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA)

Website at: https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. For additional information, contact the CPA's HUB program office at StatewideHUBProgram@cpa.texas.gov. If Vendors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

4.5. Vendor Qualifications

4.5.1 Authorized Vendors

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

1) Vendor who will sell directly to Customers through a Co-op Contract. **Any vendor responding to this solicitation must have a signed letter of authorization from Cisco dated on or after June 1, 2017** certifying that Vendor is an authorized reseller of Cisco's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. Signed letters of authorization must be submitted with Vendor's proposal. **Failure to supply the letter may result in elimination of the related proposal from the solicitation process.**

2) Vendor who will execute a Co-op Contract with DIR and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. Vendor may also sell directly to Customers. **Any vendor responding to this solicitation must have a signed letter of authorization from Cisco dated on or after June 1, 2017** certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. Signed letters of authorization must be submitted with Vendor's proposal. **Failure to supply the letter may result in elimination of the related proposal from the solicitation process.**

4.5.2 Federal Requirements

1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited Vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any Vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.
2) Should any Vendor or its principals awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in

the *System for Award Management (SAM)* maintained by the General Services Administration, the Vendor's contract will be terminated without recourse.

3) Vendor shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

4.5.3 Vendor Performance and Debarment

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

4.5.4 Required Vendor and Subcontractor Current and Former State Employee Disclosures

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 12 of Exhibit A to the RFO, all of the following:

1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of DIR within the past five (5) years;
2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of DIR. Disclosure of former state employees may be limited to the last five (5) years; and
3) Vendor will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

4.6. Response Deadline and Submission Requirements

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **the solicitation response due date listed in section 4.3.1. No late responses will be reviewed**. No facsimile or e-mail responses shall be accepted. No physical written responses will be accepted unless pre-approved and authorized by DIR in accordance with section 2.1 of this solicitation.

4.6.1 Official Timepiece

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

4.7. Response Format and Contents

4.7.1 Per section 2.1 of this solicitation, any Vendor responding to this RFO must submit their response through the BidStamp VIS unless granted an accommodation by DIR by the appropriate deadline.

4.7.2 **Mandatory Response Contents**

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

1) **Vendor Information – Exhibit A of this RFO**
This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor. Vendors Response should offer information to support its capability to provide the services requested in this RFO. Attachments 1 and 2 must be completed and submitted with the response if applicable per Item 21, Canceled Contracts.

2) **Vendor History and Experience - Exhibit B of this RFO**

3) **Contract Marketing and Support Plan – Exhibit C of this RFO**
Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

4) **HUB Subcontracting Plan Forms**

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS**, must submit a HUB Subcontracting Plan. **The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal**. Refer to Section 4.4 for more information regarding HUB subcontracting. **Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The signed copy of the HSP must be uploaded and submitted in the BidStamp VIS.**

5) **Product Pricing**
Vendor shall provide a detailed description and the specific pricing for any products and related services that Vendor is proposing to offer in response to this RFO **via the Automated pricing Form in the BidStamp VIS**. Vendor shall provide specific pricing for the products and related services categories applicable to their response. Sample Categories are provided in the SAMPLE Bid Package 2, spreadsheets titled, "Cisco Branded and Third Party Products."

Volume Discounts are submitted by Vendor **only** in the SAMPLE Bid Package 2 spreadsheet titled, "Volume Discount" tab, **not** through the **BidStamp VIS**.

6) **Signed letter(s) from Cisco** certifying that Vendor is an authorized reseller of Cisco Branded products dated on or after June 1, 2017.

7) **Software License Agreements and/or Service Agreements**

Vendor shall provide any Software License Agreements and/or Service Agreements that are applicable to the services Vendor is proposing. These Agreements must, at a minimum, allow and provide for inclusion of the terms and conditions of the *Contract for Products and Related Services* (Bid Package 3) and the *Standard Terms and Conditions for Products and Related Services Contracts* (Bid Package 4).

8) **Policy-Driven Adoption for Accessibility – Bid Package 5**

Vendors must provide the PDAA form (Bid Package 5) as requested in Section 3.5, Electronic and Information Resources (EIR) Accessibility, of this RFO.

4.7.3 **References**

Vendor must send the Vendor Reference Questionnaire **(Bid Package 7)** to three (3) companies or government agencies. Instructions are included on the questionnaire. **Vendor may submit the Vendor Reference Questionnaire to companies or government agencies through the BidStamp VIS.** DIR is not responsible for undeliverable e-mails or for non-responsive references. Vendor's references will be evaluated in accordance with Section 5.2.2. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. References may be contacted for clarification at DIR's discretion.

4.7.4 **Accessibility of Electronic Response Documents**

Vendor response documents should be submitted in a format that is accessible to people with disabilities. This can include, but is not limited to accessible Office, Adobe PDF, or other productivity document suite. **Vendor should not submit scanned documents.**

4.8. Rejection of Responses

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

4.9. Right to Amend or Withdraw RFO

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

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-425 on the Electronic State Business Daily, http://www.txsmartbuy.com/sp. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the

RFO Pre-agreement Costs.

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

4.10. Ownership of Responses

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

4.11. Public Information

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but if a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s).

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

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor. Vendors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

5. Evaluation, Negotiations, and Award

5.1. Evaluation of Responses

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All proposals determined to be responsive will go through a financial review overseen by the Chief Financial Officer's (CFO's) office. **The financial review is a pass/fail determination that is final**. Only proposals that receive a passing grade will proceed to the Evaluation Committee. DIR will establish an Evaluation Committee to review all responses that have not been rejected. At any time during the evaluation process, DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. DIR's request and Vendor's response shall be in writing. Once initial evaluation of responses has been completed, the Evaluation Committee shall turnover the tabulated scores to the DIR purchasing office and shall conclude their duties.

5.2. Evaluation Criteria

5.2.1 **Pass/Fail Criteria**

In addition to the weighted criteria listed below DIR also reviews additional Pass/Fail criteria as follows:

1. DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 12)
2. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
    a. A score of less than 90% in the Vendor Performance System;
    b. Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,
    c. Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
3. Completion of HUB Subcontract Plan.

5.2.2 **Weighted Evaluation Criteria**

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

- 45% - Pricing
- 30% - Vendor History and Experience and References in providing the products and services requested. Exhibit B of Bid Package 1, and Vendor References.
- 25% - Vendor's plan for supporting the Contract – Exhibit C of Bid Package 1.

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

5.3. Oral Presentations, Best and Final Offer

DIR in its discretion shall make the determination whether to request oral presentations and/or engage in the Best and Final Offer process. Both oral presentations and the he Best and Final Offer process, if held, will also be scored.

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

5.4. Negotiations

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

5.5. Award of Contract

DIR Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number on the Electronic State Business

Daily, http://www.txsmartbuy.com/sp, upon execution of a contract with one or more Vendors. All responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all contracts resulting from this RFO have been executed.

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

5.6. Vendor Protest Procedures

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the Vendor protest procedures posted on the DIR Web site at: http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21.

END OF RFO

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Exhibit A
Vendor Information

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

1) Company Name: _____

2) Comptroller of Public Accounts Vendor Identification Number: _____

3) Principal place of business
Address:
City:
State:
Zip Code:

4) Facility responsible for servicing the contract
Address:
City:
State:
Zip Code:

5) Contact Person regarding Vendor's response to the Cisco Branded RFO
Name:
Address:
City, State, Zip:
Phone Number:
Fax:
Email:

6) Contact Person responsible for contract negotiation
Name:
Address:
City, State, Zip:
Phone Number:
Fax:
Email:

7) Officer or Agent empowered to contractually bind the Vendor:
Name:
Title:
Address:
Phone Number:
Fax:
Email:

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

9) Provide the year in which your company was created/incorporated.

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

11) List below by subsection all exceptions to the *Contract for Products and Related Services* and *Standard Terms and Conditions for Products and Related Services Contracts* **in redline form**. You must include the basis of your exceptions and provide proposed alternate language. **If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter. Vendor shall not redline the contract or Exhibit A. All exceptions must be listed in the chart below (additional rows may be added by the Vendor).**

Section	Section Title	Explanation of Exception	Proposed Language (redline)

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

1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and

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

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Vendor Personnel:

Current or Former Employees who are current or former State employees (see Note 1 above)	Vendor Personnel related to State of Texas Employees (see Note 2 above)

Subcontractor personnel:

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

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

13) Proof of Financial Stability.

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

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

14) Electronic Product Environment Assessment Tool (EPEAT). To the extent Customers use products provided by Vendor in the delivery of Services offered under this RFO, indicate whether the products provided are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If products provided are not EPEAT certified, describe Vendor's efforts to obtain EPEAT certified products.

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

Manufacturer Name_____
Recycles their own computers? _____Yes _____No
Recycles other manufacturer's computers? _____Yes _____No

If Reseller, check one that applies:
_____Will use Manufacturer's program
_____Will use Respondent's own program

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

16) Statement of Compliance

A. Checklist for the RFO

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

A completed checklist shall not be binding on DIR's administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 4.7.2. of the RFO and reject any response that does not comply.

All responses must be received by DIR on or before the date and time specified in Section 4.3.1 of this RFO. No late responses will be reviewed.

Item	Check
Responses must be submitted in the BidStamp VIS Portal	
Mandatory Response Contents	
Vendor Information – Exhibit A signed	
Vendor History and Experience – Exhibit B	
Contract Support Plan – Exhibit C	
Manufacturer Letters, Section 4.7.2	
HUB Subcontracting Plan Forms – BidStamp VIS Form (Print, sign and upload)	
Pricing Form (BidStamp VIS Portal)	
Pricing Bid Package 2 Volume Discount spreadsheet (if applicable)	
Accessibility Documentation (PDAA), Section 3.3 RFO Requirement	
Service Agreement(s) *(if applicable)*	

B. **Certification Statement**

The undersigned hereby certifies on behalf of *insert company name here* that Cisco Branded Products and Services RFO DIR-TSO-TMP-425; has been read and understood. In submitting its response *insert company name here* represents to DIR the following:
i) Vendor is capable of providing the products and services as described in the RFO;
ii) Vendor is offering true and correct pricing and discounts for the products and services;
iii) To the extent applicable to this scope of this Solicitation, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services offered in the response to this Cisco Brand Products and Services solicitation number DIR-TSO-TMP-425;

iv) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
v) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control;
vi) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
vii) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
(viii) Vendor certifies that, to the extent applicable to the scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
(ix) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
(x) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
(xi) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
(xii) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; Enter the name and Social Security Numbers for each person below alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

xiii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
(xiv) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
(xv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
(xvi) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself

and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
(xvii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
(xviii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;
(xix) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and
(xx) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO; and
(xxi) Respondent certifies that there have been ☐ **yes** / ☐ **no** canceled contracts in the past five (5) years. Note: If yes is checked, Respondent must complete Exhibit A, Attachment 1 & 2 and submit with the response; and
(xxii) Vendor represent and warrant as required by Texas Government Code section 2270.002, by executing this Contract, that Vendor does not, and will not during the term of this Contract, boycott Israel. Vendor further certifies that no subcontractor of the Vendor boycotts Israel, or will boycott Israel during the term of this Contract. Vendor agrees to take all necessary steps to ensure this certification remains true during the term of this Contract.

_____
Signature of Officer or Agent empowered to contractually bind the Vendor

_____
Date

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Exhibit A
Attachment 1
List of Vendor's Cancelled Contracts

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED CONTRACT CANCELLED WITHIN THE PAST FIVE YEARS REFERENCE AND SUBMITTED WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION

RESPONDENT NAME: _____

COMPANY NAME			
COMPANY ADDRESS (Street, City, State, Zip Code)			
*CONTACT NAME / PHONE			
*E-MAIL			
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:	
DESCRIPTION OF SERVICE:			
REASON FOR CANCELLATION:			

COMPANY NAME			
COMPANY ADDRESS (Street, City, State, Zip Code)			
*CONTACT NAME / PHONE			
*E-MAIL			
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:	
DESCRIPTION OF SERVICE:			
REASON FOR CANCELLATION:			

*** Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference**

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Exhibit A
Attachment 2
RESPONDENT RELEASE OF LIABILITY
(TO REFERENCE)

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE (GENERAL REFERENCES AND CANCELLED CONTRACT REFERENCES) AND SUBMITTED WITH THE RESPONDENTS REQUIREMENTS SUBMISSION

To company providing the reference:

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

Enter name of company (Respondent) or key staff person's name needing a reference

to the:

Texas Department of Information Resources
Cisco Branded Solicitation Evaluation Team

Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.

Signed the _____ day of _____, 20____.

_____
(Respondent Signature)

_____
(Respondent Printed Name)

_____
(Respondent Title)

Signed the _____ day of _____, 20____.

_____
(Key Staff Signature or "N/A" if Respondent-level release)

_____
(Key Staff Printed Name)

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Exhibit B
Vendor History and Experience

1) Provide a detailed history of your company.

2) Provide the number of years your company has sold the Cisco Branded products/services requested in this RFO.

3) Provide the number of years your company has sold the Cisco Branded products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.

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

_____Yes _____No

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

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

_____Yes _____No

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

6) Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell the Cisco Branded products and services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.

_____Yes _____No

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

7) Indicate whether or not your company currently holds or has held a DIR contract(s) in the past 5 years.

_____Yes _____No

If yes, provide the DIR contract number(s).

END OF EXHIBIT B

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Exhibit C
Contract Marketing and Support Plan

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

1) Describe your company's strategy for marketing and selling the Cisco products and services listed in this RFO to eligible DIR Customers. A Contract Marketing Plan, as an example, would list the marketing elements Vendor would use like publishing on DIR website, email signature tag, Trade Publication Advertisements etc.

2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.

3) Provide the projected total sales of the Cisco products and services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.

4) Do you have other existing DIR Contracts? If yes, list those existing DIR contracts, and explain how this contract will impact the marketing and support of your other contracts? How will your other contracts impact the marketing of this contract, should you receive an award?

5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract for Cisco Branded Products and Services. Address the following:

    a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
    b. Provide names, titles, prior account management experience for accounts of the State's size and type.
    c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract. In a narrative, describe how the Vendor will manage the contract to ensure uninterrupted, high quality performance and overall contract effectiveness.

END OF EXHIBIT C

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
CISCO Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

Instructions

VENDORS RESPONDING TO THIS RFO MUST ENTER THEIR PROPOSED PRICING SHEET IN THE BIDSTAMP VENDOR INFORMATION SYSTEM (VIS). CATEGORIES MUST BE ENTERED IN BIDSTAMP EXACTLY AS LISTED IN THE PRICING SHEET.

1) **The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).**
2) **CISCO Product Discounts MUST be listed by product categories listed on CISCO Branded Discount Sheet. The Vendor will enter the required information into DIR's Automated Pricing From in the BidStamp VIS.**
3) **Discount range (e.g., 0% - 99%) is not allowed.**
4) **Vendor shall provide a description of MSRP or the method utilized to derive MSRP.**
5) **Volume Pricing information is not entered in the BidStamp VIS. If Vendor is proposing Volume Discounts, the product must be listed separately with the associated type or grouped with an associated discount.**
   For example:
   ABC Product, 1-5 Units - 10%
   ABC Product, 6-10 Units - 20%
   ABC Product, 10+ Units - 30%
6) **All Product Category Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS. The Cisco Branded discount sheet is provided as a guide only.**

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services Discount Sheet
BID PACKAGE 2 - PRICING SHEET

SAMPLE ONLY. All Product Category Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS.

DO NOT SUBMIT PRICING ON THIS EXCEL SPREADSHEET.

CISCO BRANDED PRODUCTS				
BRAND	**PRODUCT CATEGORY**	**Product Description**	**MSRP**	**DIR Customer Discount % off MSRP**
EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tablulating correctly.				
CISCO	**Hardware on Cisco Global Price List**			
CISCO	**Meraki Price List**			
CISCO	**Networking**			
	(ex. Switches, Routers, Wireless, Interfaces & Modules)			
CISCO	**Wireless and Mobility**			
	(ex. Access Points, Controllers)			
CISCO	**Security**			
	(ex. Firewalls, Malware Protection, Email & Web Security)			
CISCO	**Collaboration**			
	(ex. Endpoints, Conferencing, Unified Communications)			
CISCO	**Data Center**			
	(ex. Servers, Management & Automation, Security, Switches, Infrastructure, Storage & Virtual Networking)			
CISCO	**Analytics**			
CISCO	**Video**			
	(ex. Endpoints, Entertainment, Intelligence, Signage)			
CISCO	**Internet of Things**			
	(ex. Connectivity, IoT Analytics, Iox, Embedded Networks)			
CISCO	**Software**			
	(ex. IOS & NX-OS, ONE)			

VALUE ADDED AND RELATED SERVICES				
BRAND	**SERVICE DESCRIPTIONS**	**Product Description**	**MSRP**	**DIR Customer Discount % off MSRP**
CISCO	*EXAMPLE: Training*	6 hours training	$ 100.00	20.00%
CISCO	**SMARTnet for Government (1 year term)**			
CISCO				
CISCO	**SMARTnet for Education (1 year term)**			
CISCO				
CISCO	**Technical and Maintenance Services**			
CISCO				
	Training			
CISCO				
	Support			
CISCO				

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

All Third Party Product Descriptions and Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS. DO NOT SUBMIT THIRD-PARTY PRODUCT DESCRIPTIONS AND/OR DISCOUNTS ON THIS EXCEL SPREADSHEET.

EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tablulating correctly.

THIRD PARTY PRODUCTS FOR CISCO BRANDED (OPTIONAL)

BRAND	Product Category (if applicable)	Product Description	MSRP	DIR Customer Discount % off MSRP
	Hardware			
	Networking			
	(ex. Switches, Routers,			
	Data Center			
	(ex. Servers, Management & Automation, Security, Switches, Infrastructure, Storage & Virtual Networking)			

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

COMPANY NAME: _____

VENDOR SHALL ENTER VOLUME DISCOUNTS IN THIS BID PACKAGE 2 AND UPLOAD THE SPREADSHEET INTO THE BIDSTAMP VIS WITH VENDOR'S RESPONSE. VENDOR MAY ALTER THE VOLUME TYPE AS NEEDED FOR PRODUCT CATEGORIES LISTED.

VOLUME DISCOUNTS- CISCO BRANDED PRODUCTS AND SERVICES

Type of Volume	Product Category	DIR Customer Discount % off MSRP
By QTY		
1-99 units		
100-500 units		
500+ units		
Per Transaction (e.g. Purchase Order)		
Per Dollar Volume Threshold		
Total Statewide Aggregate Contract Sales		

DIR Contract No. DIR-TSO-XXXX

Vendor Contract No. _____

DIR-TSO-TMP-425, BID PACKAGE 3

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

VENDOR NAME

1. Introduction

A. Parties

This Contract for Cisco branded products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and *VENDOR NAME* (hereinafter "Vendor"), with its principal place of business at *VENDOR ADDRESS*.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-425, on 12/20/2017, for Cisco Branded Products and Services. *DIR subsequently issued a BAFO opportunity on BAFO DATE.* Upon execution of this Contract, a notice of award for DIR-TSO-TMP-425 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-425, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-425, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases,

SAMPLE

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

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Cisco branded products and services 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 Cisco *insert* ***SPECIFIC*** *services here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon

SAMPLE

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:
Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:
Vendor Representative
Company Name
Address
City, State Zip
Phone: ( ) -
Facsimile: ( ) -
Email:

7. Software License, Service and Leasing Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. rder Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

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

SAMPLE

B. Shrink/Click-wrap License Agreement

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

C. Service Agreement

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

D. Master Operating Lease Agreement

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

E. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix E of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions. Texas State Agencies that have the requisite capital authority and who are not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease Agreement; each such agency must confer with its own counsel to make this determination.

F. Conflicting or Additional Terms

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

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update;

SAMPLE

and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not without prior written agreement from Customer's authorized signatory, require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

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

No exceptions have been agreed to by DIR and Vendor.

SAMPLE

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

VENDOR NAME

Authorized By: _____

Name: _____

Title: _____

Date: _____

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

Authorized By:_____

Name: **Hershel Becker**

Title: Chief Procurement Officer

Date:_____

Office of General Counsel: _____

SAMPLE

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

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

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

B. **Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

management staff or their designees.

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

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

E. **Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

F. **Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

G. **Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

H. **State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

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

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

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

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

parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

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

G. Limitation of Authority

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

H. Proof of Financial Stability

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

5. Intellectual Property Matters

A. Definitions

1)" Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

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

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

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

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

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

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

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

C. Further Actions.

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

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

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

J. Agreement with Subcontracts.

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

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

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

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all

necessary hardware, software and technology services.

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

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

B. Use of Order Fulfillers

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

1) Designation of Order Fulfillers

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

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

2) Changes in Order Fulfiller 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 Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

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

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

a) the products and services awarded;

b) description of product and service awarded

c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;

d) discount percentage (%) off MSRP or List Price;

e) designated Order Fulfillers;

f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;

g) instructions for obtaining quotes and placing Purchase Orders;

h) warranty policies;

i) return policies;

j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;

k) a link to the DIR "Cooperative Contracts" webpage; and

l) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

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) Webpage Compliance Checks

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

4) Webpage Changes

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

5) Use of Access Data Prohibited

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

6) Responsibility for Content

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

F. DIR Logo

Vendor and 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

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's 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' 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 no more than two 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

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

J. Performance Review Meetings

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

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

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

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

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

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

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

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Invoices shall be submitted by the Vendor or 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 Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

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

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) State Contract Manager

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

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and 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. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), 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. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

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

4) DIR Administrative Fee

a) The Vendor shall pay an administrative fee 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. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days

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

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

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

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

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

D. Contract Administration Notification

1) Prior to 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 Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

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

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

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

4) PROPERTY DAMAGE

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

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

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

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

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

(i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;

(ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;

(iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

(iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;

(v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

(vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;

(vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

(viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control;

(ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;

(x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;

(xi) 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;

(xii) 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;

(xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;

(xiv) 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;

(xv) under Section 2155.006, and Section 2261.053, Texas 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;

(xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and

(xvii) represent and warrant that the Customer's payment and their receipt of

appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and

(xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and

(xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

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 if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, 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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies 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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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 the Customer.. 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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises 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 have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include $1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of $2,000,000; Medical Expense per person of $5,000; Personal Injury and Advertising Liability of $1,000,000; Products/Completed Operations Aggregate Limit of $2,000,000; and Damage to Premises Rented: $50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract;
b) Independent Contractor coverage;
c) State of Texas, DIR and Customer listed as an additional insured; and
d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF $1,000,000 BODILY INJURY PER ACCIDENT, $1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND $1,000,000 PER DISEASE POLICY LIMIT.

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. The policy shall contain the following endorsements in favor of DIR and/or Customer:

a) Waiver of Subrogation; and
b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security[1]s E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

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

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

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

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

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) 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.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over $25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism",* published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

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

4) Termination for Cause

a) Contract

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

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) 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. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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.

7) Vendor or Order Fulfiller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

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

B. Handling of Written Complaints

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

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

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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.

Exhibit B



Department of Information Resources

Request for Offer
DIR-TSO-TMP-425

Cisco Branded Products and Service

Bid Package 5

Vendor ICT Accessibility Policy Assessn
(PDAA)

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Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services
BID PACKAGE 5

Vendor ICT Accessibility Policy Assessment

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

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility information such as VPATs. All questions, inquiries, etc. regarding Bid Package 5, Vendor ICT Accessibility Policy (PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.gov

Organization information

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

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

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

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

Responses

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

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

1a. Having an ICT accessibility policy.

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

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

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

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

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

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

Exhibit B

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

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

2a. Developing an organization wide governance system.

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

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

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

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

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

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

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

Manufacturers: Address processes that pertain to your development of ICT products.
Service providers: Address processes that pertain to your development of ICT services.
Integrators: Address processes that pertain to your ICT integration services and solutions.
Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.

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

3a. Identifying candidate processes for criteria integration.

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

3b. Implementing process changes.

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

3c. Integrate fully into all key processes.

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

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

4. Provide processes for addressing inaccessible ICT.

Frequently Asked Question (FAQ) for Vendors regarding Policy-Driven Adoption for Accessibility (PDAA)

1. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

towards the creation of accessible offerings over the long term.

- Enabling products for accessibility requires integrating accessibility criteria into all phases of a product life cycle, and other business processes where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards.

Gaps in Vendor internal governance systems and leadership commitment inhibit their ability to meet these standards.

continue to improve them over time.

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

Making an organization's information and communications technology (ICT) offerings accessible to people with disabilities requires commitment in many areas of that organization. PDAA data helps buying organizations understand a Vendor's accessibility policy, A mature accessibility policy implementation signals that the Vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the Vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

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

The requested information provides insight into Vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the procuring organizations' confidence in the accuracy of Vendor's accessibility documentation. Current ICT accessibility reporting formats such as VPATs (Voluntary Product Assessment Templates) only apply to COTS products and services. In many cases, Vendor VPATs lack credibility due to limited knowledge about their offerings' accessibility. Additionally, there is no standard reporting format for non-COTS offerings such as development services for websites, web applications, system

4. How will this information be used?

The initial completed form will establish a baseline for where a vendor stands with regard to its ICT accessibility policy. The baseline illustrates the depth and maturity of the Vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity **(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)**
The questionnaire may also be included in future solicitations so that progress can be assessed. The Vendor responses from the questionnaire may be considered as an element in Vendor selection; however, this would be determined by the procuring Additionally, Vendor organizations can use the results as a roadmap for implementing their organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible

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

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. The expectation is that organizations with mature approaches to PDAA will greatly improve the levels of accessibility in products. It should also result in well documented, accurate VPATs, improving their value in product-level

6. What is the PDAA Maturity Model?

Based on the Capability Maturity Model (CMM) concept, the PDAA Maturity Model (Link on next line) provides buying organizations and vendors with a simple dashboard or matrix to track and demonstrate Vendors' progress toward full system-wide support of

(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

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

(http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)
Or contact the Statewide EIR Accessibility Coordinator via Email at:
statewideaccessibilitycoordinator@dir.texas.gov

For government organizations/agencies

8. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

towards the creation of accessible offerings over the long term.

· Enabling products for accessibility requires the integration of accessibility criteria in all phases of a product life cycle, and other

· Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards, but gaps in internal governance and commitment by industry inhibits the adoption and implementation of these standards.

· Agency procurement organizations need assurances that vendors have the ability to produce accessible offerings and continue

9. Does the PDAA replace VPATs?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. VPATs are still a valuable tool at the product level, and the expectation is that vendors with mature

10. Why a "maturity model" of evaluation?

Successfully enabling an organization for ICT accessibility requires implementation within various areas of an organization. As with any organization-wide initiative, implementation cannot occur all at once. The PDAA Maturity Model is used to gauge progress (http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

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

A mature accessibility policy implementation signals that the vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning

12. How should we score PDAA information?

In general, the PDAA questionnaire is meant to ensure that the same information is collected from all bidders, and how the agency uses that information will depend on circumstances.

offerings or Vendors by the procuring organization.

PDAA evaluation is an area that will need some practical experience, and we hope that organizations will share what they learn.

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

Using consistent information in evaluating bids is a key element of open and competitive public procurements. The information given in a PDAA report can help judge the ability of a Vendor to: complete a VPAT correctly, produce accessible custom ICT offerings (web sites, web applications, software, etc.), resolve accessibility defects when discovered, and otherwise be a partner in helping you meet your compliance obligations. The specific role of PDAA responses may be determined in part by the procurement laws,

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

Vendors often claim this for information required in procurements. Your organization's procurement laws, policies, or practices may already address how you handle such claims.

15. What other states are using the PDAA model?

The PDAA model is in its early stages. A coalition of states are working with several national associations to harmonize the criteria for this model, and for obtaining and evaluating PDAA information. The goal is for more states and other government entities to

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

(http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)

Or contact the Statewide EIR Accessibility Coordinator at:

statewideaccessibilitycoordinator@dir.texas.gov

Bid Package 5
DIR-TSO-TMP-425 Exhibit B

EXAMPLE

Vendor ICT Accessibility Policy Assessment

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

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the assessment is not a substitute for other requested accessibility information such as VPATs.

All questions, inquiries, etc. regarding Bid Package 5, Vendor ICT Accessibility Policy (PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.g

Organization information

Organization name: __Company X_____
Organization address: _ 1111 State Blvd. Anytown, TX 78701
Responder contact information: _____myemailaddress@yahoo.com_____
Date of assessment completion: ____1/1/15_____

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

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

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statemer

Responses	
	1. Develop, implement, and maintain an ICT accessibility policy.
	0 My organization has no plan to have an ICT accessibility policy. **(If selected, skip to next section or provide comments at the end of this section)**
2	**1a. Having an ICT accessibility policy.**
	1 My organization is developing an ICT accessibility policy.
	2 My organization is finalizing an ICT accessibility policy.
	3 My organization has approved an ICT accessibility policy.
1	**1b. Having appropriate plans in place to implement and maintain the policy.**
	1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
	2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.
	3 My organization has approved plans for accessibility policy implementation and maintenance.
1	**1c. Establishing metrics and tracking progress towards achieving compliance to the policy.**
	1 My organization is identifying metrics that can be used to gauge policy compliance.
	2 My organization is collecting metrics and has begun designing progress reporting based on them.
	3 My organization is tracking progress on policy adoption and continues to refine the metrics.
	Section 1 Comments (Provide any comments or additional information on this section here.)
	2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.
	0 My organization has no plan to develop a governance system to support ICT accessibility. **(If selected, skip to next section or provide comments at the end of this s**
1	**2a. Developing an organization wide governance system.**
	1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
	2 My organization is finalizing plans that will result in an organization wide governance system.
	3 My organization has approved plans for an organization wide governance system.
2	**2b. Designating one or more individuals responsible for implementation.**
	2 My organization has identified key individuals in the implementation process.
	3 My organization has assigned implementation duties and responsibilities to appropriate individuals.
	2c. Implementing reporting/decision mechanism and maintain records.
1	**1** My organization is developing tools and procedures for tracking ICT accessibility issues.
	2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
	3 My organization uses reports to make organizational changes to improve ICT accessibility.
	Section 2 Comments (Provide any comments or additional information on this section here.)
	3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant busines
	Manufacturers: Address processes that pertain to your development of ICT products.
	Service providers: Address processes that pertain to your development of ICT services.
	Integrators: Address processes that pertain to your ICT integration services and solutions.
	Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.
	0 My organization has no plan to integrate accessibility criteria into key business processes. **(If selected, skip to next section or provide comments at the end of this s**
1	**3a. Identifying candidate processes for criteria integration.**
	1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
	2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.

Request for Offer
Cisco Branded Products and Services
DIR-TSO-TMP-425

Bid Package 6

VPAT™

Voluntary Product Accessibility Template®

Version 1.3

The purpose of the **Voluntary Product Accessibility Template**, or **VPAT™**, is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial "Electronic and Information Technology" products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the Section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, e.g., "equivalent facilitation." The third column contains any additional remarks and explanations regarding the product. In the subsequent tables, the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

Date:

Name of Product:

Contact for more Information (name/phone/email):

Summary Table

VPAT™

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Section 1194.21 Software Applications and Operating Systems – Detail

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Criteria	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.		
(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.		

(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.		
(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.		
(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.		
(g) Applications shall not override user selected contrast and color selections and other individual display attributes.		
(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.		
(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.		
(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.		

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.		
(l) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		

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Section 1194.22 Web-based Internet information and applications – Detail

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Criteria	**Supporting Features**	**Remarks and explanations**
(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		

(d) Documents shall be organized so they are readable without requiring an associated style sheet.		
(e) Redundant text links shall be provided for each active region of a server-side image map.		
(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.		
(g) Row and column headers shall be identified for data tables.		
(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.		
(i) Frames shall be titled with text that facilitates frame identification and navigation		
(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.		
(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.		
(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.		

(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (l).		
(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		
(o) A method shall be provided that permits users to skip repetitive navigation links.		
(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		

Note to 1194.22: The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

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Section 1194.23 Telecommunications Products – Detail

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Criteria	**Supporting Features**	**Remarks and explanations**
(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.		
(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.		
(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.		
(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the		

user to indicate more time is required.		
(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.		
(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.		
(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.		
(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.		
(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.		
(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the		

information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.		
(k)(1) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be tactilely discernible without activating the controls or keys.		
(k)(2) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2N) maximum.		
(k)(3) Products which have mechanically operated controls or keys shall comply with the following: If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.		
(k)(4) Products which have mechanically operated controls or keys shall comply with the following: The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.		

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Section 1194.24 Video and Multi-media Products – Detail

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Criteria	Supporting Features	Remarks and explanations
a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays measuring at least 13 inches vertically, and stand-alone DTV tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption		

decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals.		
(b) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.		
(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.		
(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.		
(e) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.		

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Section 1194.25 Self-Contained, Closed Products – Detail

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Criteria	Supporting Features	Remarks and explanations
(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach Assistive Technology to the product. Personal headsets for private listening are not Assistive Technology.		
(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		
(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(d) When biometric forms of user identification or control are used, an alternative form of identification or		

activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(e) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.		
(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.		
(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.		

(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.		
(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.		
(j) (1) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length on products which are freestanding, non-portable, and intended to be used in one location and which have operable controls.		
(j)(2) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the		

following: Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.		
(j)(3) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.		
(j)(4) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Operable controls shall not be more than 24 inches behind the reference plane.		

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Section 1194.26 Desktop and Portable Computers – Detail

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Criteria	Supporting Features	Remarks and explanations
(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).		
(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards		

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Section 1194.31 Functional Performance Criteria – Detail

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Criteria	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user		

hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided		
(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.		
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.		
(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.		

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Section 1194.41 Information, Documentation and Support – Detail

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Criteria	Supporting Features	Remarks and explanations
(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge		
(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.		
(c) Support services for products shall accommodate the communication needs of end-users with disabilities.		

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Exhibit B



Bid Package 7

Department of Information Resources

Cisco Branded Products and Services

Request for Offer DIR-TSO-TMP-425

Vendor References

Exhibit B

VENDOR REFERENCES
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

REFERENCE DEADLINE TO DIR: No later than 02/05/2018 02:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: ciscoreferencesrfo-425@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name_____
***Insert Type of (e.g. Hardware)* Product/Services Category**_____
Prime Contractor _____
Subcontractor(s) _____
Dates of Performance: Starting Date _____ **Ending Date** _____
Total Est. Contract Dollar Amount_____

This portion to be completed by the Customer providing reference and returned to DIR at ciscoreferencesrfo-425@dir.texas.gov.

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

Please provide your opinion by rating the following:

Quality of Cisco Branded Products and Related Services

1. Have you purchased any Cisco Branded Products or Related Services from this Vendor in the past 2 years? Yes___ No____
2. Vendor's ability to provide the products or services in a timely manner? 0.___ 1.___ 2.___ 3.___ N/A____
3. Vendor's knowledge of and ability to answer questions regarding the products? 0.___ 1.___ 2.___ 3.___ N/A____
4. Vendor's ability to resolve problems? 0.___ 1.___ 2.___ 3.___ N/A____

Cost

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

Timeliness of Performance

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

Business Relations & Customer Satisfaction

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

Comments: (Please use additional page if necessary)

_____
_____

In your opinion, should this Vendor be used again for Cisco Branded Products or related services?
Yes_____ No _____

In your opinion, should this Vendor be recommended to others? Yes_____ No _____

Rater's Name:_____ Date:_____
Organization:_____
Title:_____
Phone Number:_____ Fax Number:_____ Email address:_____

Exhibit B

Vendor Reference Evaluation Scoring

Excellent (3) There are no quality problems.	There are no cost issues.	There are no delays.	Responses to inquiries, technical, service, and administrative issues are effective and responsive.
Satisfactory (2) Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is usually effective and responsive.
Marginal (1) Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Cost issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.
Unsatisfactory (0) Nonconformances are compromising the achievement of contract requirements.	Cost issues are compromising performance of contract requirements.	Delays are compromising the achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is not effective and responsive.

Appendix E

MASTER OPERATING LEASE AGREEMENT

1. Definitions. Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.

(a) "Assets" refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).

(b) "Contract" refers to DIR Contract number DIR-TSO-XXXX into which this Appendix is incorporated.

(c) "Event of Default" is defined in Section 23, "Default."

(d) "Event of Loss" means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.

(e) "Hardware" refers to the computer machinery and equipment specifically identified on the applicable Schedule.

(f) "Lease" means the financing transaction described in this MOLA.

(g) "Lessee" means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

(h) "Lessor" means the Vendor identified in the Contract.

(i) "MOLA" means this Master Operating Lease Agreement (Appendix E). Any reference to "MOLA" includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.

(j) "Rent Payment" means the amount payable by Lessee for the Assets as specified in the applicable Schedule.

(k) "Schedule" or "Supplementary Schedule" to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee,

SAMPLE

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

(l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.

(m) "Software" refers to the computer programs specifically identified on the applicable Schedule.

(n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

(a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.

(b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.

(c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.

(d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.

(e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both

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

3. Term of MOLA.

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

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the date specified in the Lessee Certificate of Acceptance, as described in Section 10. Unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the "Schedule Term"). Specifically, with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

(a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.

(b) With respect to Lessor's obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a "purchase sale." Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 ("Lease") hereof for the transaction(s) between Lessor and Lessee.

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(c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.

(d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

(a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is $3,000 and the Scheduled Commencement date is the 15th of the month, a payment of $1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.

(b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be refunded to Lessee within ninety (90) calendar days. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.

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

7. Liens.

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

8. Appropriation of Funds.

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

9. Assignment of Warranties.

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

SAMPLE

10. Inspection and Acceptance.

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

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

(a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.

(b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.

(c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

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

SAMPLE

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

13. Taxes.

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

14. Ownership.

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

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

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

(b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight

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

16. Quiet Enjoyment.

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

17. Warranties regarding the Assets.

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

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the

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

19. Risk of Loss.

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

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

20. Representations and Warranties of Lessee.

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

(a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

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(b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;

(d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;

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

(f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and

(g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

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

(a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;

(b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;

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(d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;

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

(f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and

(g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. Representations and Warranties of Lessor.

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

(a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;

(b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;

(d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;

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

(f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

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23. Default.

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

24. Remedies.

(a) Lessor's Remedies.

i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:

A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;

B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;

C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;

D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:

I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the

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Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;

II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and

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

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

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

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

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

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

25. Notices and Waivers.

(a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.

(b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

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

(a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.

(b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. Delivery of Related Documents.

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

28. Miscellaneous.

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

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

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Attachment 1 to the Master Operating Lease Agreement
Financial Disclosure Summary

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

SAMPLE

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

SAMPLE

Appendix F

MASTER LEASE AGREEMENT

1. Scope.

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

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

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

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

SAMPLE

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number XXX (XX) and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

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

4. Administration of MLA.

(a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.

(b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.

(c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-XXX on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.

(d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

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5. Rent Payments.

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

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

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

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

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal

SAMPLE

property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

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

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

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

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds

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are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

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

9. Inspection and Acceptance.

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

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

SAMPLE

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

(b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.

(c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

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

SAMPLE

12. Ownership.

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

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

(a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together will all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.

(b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location,

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

14. Quiet Enjoyment.

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

15. Warranties.

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

16. No Warranties.

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

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

17. Indemnification.

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

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

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

SAMPLE

18. Risk of Loss.

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

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

19. Insurance.

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

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

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20. Representations and Warranties of Lessee.

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

(a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

(b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;

(d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;

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

(f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and

(g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

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

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(a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;

(b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;

(d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;

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

(f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;

(g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and

(h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

(a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;

(b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;

(c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;

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(d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and

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

23. Default.

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

24. Remedies.

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

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opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

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

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

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

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original

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signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

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

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

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

DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

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

28. Lessee's Waivers.

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

29. Security Interest and UCC Filings.

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

30. Miscellaneous.

(a) Applicable Law and Venue. The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where

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Lessee has its principal office or where the Equipment is located, with the following exception: if a Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.

(b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.

(c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.

(d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.

(e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-XXX and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.

(f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.

(g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.

(h) Lessor Certifications. Lessor certifies that:

(i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;

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(ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;

(iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

(iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;

(v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,

(vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;

(vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;

(viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

(ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control;

(x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;

(xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;

(xii) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All

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Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;

(xiii) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;

(xiv) Lessor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.

(xv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;

(xvi) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;

(xvii)Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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

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

Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated

SAMPLE

there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

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

(k) 31. Amendments.

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

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Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #1

Addendum 1

Department of Information Resources

Cisco Branded Products and Services

DIR-TSO-TMP-425

Issued: 12/20/2017

Initial Responses Due: 2/05/2018 02:00 PM (CT)

Exhibit B

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #1

This Addendum #1 to Request for Offer DIR-TSO-TMP-425:

1. Provides official answers to questions submitted at the Pre-Bid Webinar/Conference held on January 9, 2018 and by email to the Purchasing Point of Contact and the BidStamp Vendor Information System (VIS) submitted prior to the January 12, 2018 02:00 PM (CT) deadline for question submittal.
2. Provides a spreadsheet of the Pre-Bid Webinar/Conference attendees.
3. Provides a copy of the PowerPoint presentation used at the Pre-Bid Webinar/Conference held on January 9, 2018 (DIR-TSO-TMP-425 Bid Package 10 Webinar PowerPoint).

1. **Questions and Official Answers**:

1. **Question**: Is this RFO only for Cisco (the manufacturer) to respond to with named resellers or is a Cisco reseller allowed to respond?

   Answer: Anyone may respond to the RFO, provided they meet the Vendor Qualifications (**RFO Section 4.5**) included in the RFO.

2. **Question:** If a reseller is allowed to respond, what is the Cisco partner level that is required for this RFO?

   Answer: There is not a Cisco partner level requirement in the RFO.

3. **Question:** Is the Offeror expected to maintain an annual sales threshold, if so what is the amount of annual sales needed to maintain the contract?

   Answer: There is not an annual sales threshold that the Offeror is expected to maintain included in the RFO.

4. **Question:** Does the attached (Cisco Branded RFO) allow for partners like us to respond to the RFP directly? I don't want to miss out on responding if the model is changing and they (Cisco) won't be on-boarding partners like they did in the past?

   Answer: Anyone may respond to the RFO, provided they meet the Vendor Qualifications (**RFO Section 4.5**) included in the RFO. DIR is not involved in agreements between Cisco and Cisco partners, and is unable to anticipate changes to Cisco's business model.

5. **Question:** What is the correct hyperlink address for the Pre-Bid Webinar/Conference?

   Answer: https://attendee.gotowebinar.com/register/486117567586109699.

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #1

6. **Question:** Will we be provided a copy of the Pre-Bid Webinar/Conference PowerPoint presentation?

   Answer: Yes, the PowerPoint presentation utilized at the Pre-Bid Webinar/Conference will be posted as **DIR-TSO-TMP-425 Bid Package 10 Webinar PowerPoint** on the State of Texas Electronic State Business Daily (ESBD).

7. **Question:** We respectfully request an extension on the bid deadline based on the documentation needed?

   Answer: As of the posting of this Addendum #1 to the RFO, an extension of the response deadline stated in RFO Section 4.3.1 is not being proposed.

8. **Question:** In order to meet the RFO requirements for a Prime bidder using resellers for fulfillment, and OEM-Prime will need to contact resellers for HUB information for submission in its bid response. Please confirm that this communication will not violate the prohibition on communications contained in Appendix A, Section 10.M., page 22?

   Answer: Contacting resellers for HUB information will not violate the prohibition on communications contained in RFO Bid Package 4, Appendix A, Section 10.M., page 22.

9. **Question:** Under what DIR schedule would Cisco Advanced, Technical and Maintenance Services and reseller services be acquired? By excluding these services from this RFP's scope, customers will have no ability to do preliminary scoping (e.g., site assessments) or integration involving end-to-end solutions. Would the State consider allowing professional services for related services where they are directly associated to a Cisco product or service sale under the contract, e.g., site assessment, installation, configuration and on-site remediation?

   Answer: The Bid Package 2 Pricing Sheet, as implemented through the BidStamp VIS Portal, utilizes broad product and service categories for DIR to evaluate and score Vendor responses. Included in the broad categories listed are: 1) Technical and Maintenance Services, 2) Training, and 3) Support. Vendors selected for negotiation by DIR will utilize the Vendor's submitted Pricing Information as a starting point to develop the products, services and discount % off MSRP to be included in any awarded contract, which could include related services that are directly associated to a Cisco product or service included in Vendor's response. **Please Note**: Vendors must include a bid in BidStamp VIS under a a Value Added and Related Service category for Services to be included with any Cisco branded product contract award.

10. **Question:** The Limitation of Liabilities included in Bid Package 4, Appendix A Products and Related Services 09292017, page 22, includes more instances of unlimited liability

than the prior contract. What is the state experiencing causing this modification in contracting strategy?

Answer: Bid Package 4, Appendix A Products and Releated Services 09292017, Section 10.K. Limitation of Liability, contains the same language included in the current Cisco Systems, Inc. contract DIR-TSO-2542.

11. **Question:** Bid Package 2 Pricing Sheet - For the Pricing Spreadsheet, do licenses need to be entered under the product category or under Software? For example should Cisco UC UWL and UCL licenses be entered under the Collaboration section in the "Cisco Branded" tab?

    Answer: The BidStamp VIS portal requires Vendors to submit bids for Categories, and may include specific products, which allows the VIS to compare Vendor Pricing across Categories. Cisco Unified Communications is listed as an example under the Pricing Sheet Collaboration category. Software licenses would also be properly listed under the Pricing Sheet Software Category. It is the Vendor's responsibility to make offers under the Categories it believes most appropriate for the Cisco products and services it offers.

12. **Question:** Bid Package 2 Pricing Sheet - For the Pricing Spreadsheet, some items such as voice gateways have multiple different types of configurations, can DIR provide a list of standardized/approved Cisco equipment to help reduce the scope of the RFO?

    Answer: No, the 1.0 DIR-TSO-TMP-425 Bid Package 1 Products, Section 3 Scope – indicates DIR's intent to provide a wide scope of Cisco Branded Products and Services. There is therefore, no standardized/approved Cisco equipment list to provide Vendors responding to the RFO.

13. **Question:** Bid Package 2 Pricing Sheet - For the Pricing Spreadsheet, is there a user threshold for which we should account? For example the Business Edition 6000 is geared towards a total user size of 1000 and less, so may not provide value if DIR is not anticipating this type of a use case?

    Answer: The BidStamp VIS portal requires Vendors to submit bids for Categories, and may include specific products, which allows the VIS to compare Vendor Pricing offers across Categories. Volume Product Pricing, is not entered in the VIS portal, but on the Volume Discount Sheet, included in the DIR-TSO-TMP-425Bid Package 2 – Pricing Sheet. Vendors are required to complete the Volume Discount sheet (if applicable) and submit it with their RFO response. Per the Bid Package 2 instructions, Vendors may alter the volume type as needed for Product Categories listed by the Vendor.

14. **Question:** Bid Package 2 Pricing Sheet - For the Pricing Spreadsheet, what is the term length DIR would like to see for hardware and software support (Smartnet/SWSS/etc)?

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #1

Answer: At least a one-year term. Vendors should provide all available options in their response.

15. **Question:** What are DIR the expectations for Admin and User Training?

Answer: DIR does not have expectations for Admin and User Training, other than requiring Vendors to provide the Brand, Service Description Category, Product Description, MSRP and DIR Customer Discount% off MSRP. The BidStamp VIS portal requires Vendors to submit bids for Categories, not necessarily specific products, which allows the VIS to compare Vendor Pricing across Categories.

2. **A spreadsheet of the Pre-Bid Webinar/Conference attendees**, is provided below.

Texas Department of Information Resources
Request for Offer: Cisco Branded Products and Services
DIR-TSO-TMP-425
Vendor Conference/Webinar Sign-in Sheet
January 9, 2018 2:00 PM (CT)

Webinar ID: 883-005-083			
REPRESENTATIVE	**COMPANY NAME**	**E-MAIL ADDRESS**	**HUB STATUS**
Chris Butler	Datavox	chrisb@datavox.net	No
Sanjeet Chauhan	CST Corp	schauhan@cstcorp.net	Yes
Lynne Coughlan	Cisco Systems	lcoughla@cisco.com	No
John Dees	NWN Corp.	jdees@nwnit.com	No
Erica Falchetti	Insight Public Sector	Erica.falchetti@insight.com	No
Neil Ferguson	DataVox	neil@datavox.net	No

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #1

Al Lam	PCMG	Al.Lam@pcmg.com	No
Airy Luang	DIR	Airy.luangaphay@dir.texas.gov	No
Curtis Milligan	Cisco	Curtis.milligan@ally-services.com	No
Mimi Nguyer-Farr	Cisco Systems, Inc.	mimnguye@cisco.com	No
Matt Niemann	NWN Corp.	mniemann@nwnit.com	No
Hinesh Patel	NWN	hpatel@nwnit.com	Not Sure
Mark Remington	Long View Systems	Mark.remington@lvs1.com	No
Amy Robinson	NWN Corp.	arobinson@nwnit.com	No
Jeff Sundstrom	Cisco	jsundstr@cisco.com	Not Sure
Shearrard Thomas	LyncVerse Tech.	sthomas@lyncverse.com	Yes
Taylor Truitt	NWN Corp.	ttruitt@nwnit.com	Not Sure
Mara Umpierre	DataVox Inc.	marau@datavox.net	No
Daron Walker	Secure Networkers	Daron.walker@securenetworkers.com	Yes
Stephanie Clark	NWN Corp.	sclark@nwnit.com	No
Susan Zeronda	Cisco Systems, Inc.	szeronda@cisco.com	No

3. **The Vendor Pre-Bid Webinar/Conference PowerPoint presentation (DIR-TSO-TMP-425 Bid Package 10 Webinar PowerPoint)**, utilized at the Vendor Pre-Bid Conference/Webinar held on January 9, 2018, is contemporaneously being posted to the State of Texas Electronic State Business Daily (ESBD) with this Addendum #1.

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #1

End of Addendum #1

Exhibit B

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Cisco Branded Products & Services
Request for Offer DIR-TSO-TMP-425

Vendor Pre-Bid Conference

January 9, 2018

2:00 pm (central time)

Texas Department of Information Resources

Exhibit B

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Introduction

Mario Gutierrez, DIR

Contract Manager
Chief Procurement Office

Joan Scott, DIR

Contract Manager
Chief Procurement Office

Lynn Sanchez, DIR

HUB Coordinator
Chief Procurement Office

Jeff Kline, DIR

Program Director
Statewide EIR Accessibility

Mary Vickery, DIR

Contract Manager
Chief Procurement Office

Beth Perry, DIR

Manager
IT Application Development

Exhibit B

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Agenda

- General Information
- BidStamp Vendor Information System Portal (VIS) Overview
- Request for Offer (RFO)
  - RFO Overview
  - RFO Scope
  - RFO Schedule
  - RFO Contents
  - Mandatory Submissions
  - Evaluation Criteria
- Break
- Questions
- Conference Closing

Exhibit B

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General Information

- Reference the RFO page number and Section number when submitting questions.
- **Webinar participants may submit questions electronically at anytime during the webinar, please use the question tab.**
- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Check the ESBD often for updates
- All questions regarding this RFO must be **submitted in writing through the BidStamp Vendor Information System Portal (VIS)** by 2:00 P.M. (CT), January 12, 2018.

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General Information (continued)

- **Disqualification of Offers**
  - Failure to sign Vendor Information Form (Exhibit A)
  - Failure to complete Financial Information (DUNS Number)
  - Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
  - Failure to submit on or before due date and time
  - Contact with DIR employees regarding this RFO other than designated contacts

- **Delivery of Offers**
  - **Any Vendor responding to this RFO must submit their response through the BidStamp VIS. Persons with disabilities seeking an accommodation for responding to the solicitation should contact the RFO Point of Contact listed in Section 4.1 of the Solicitation.**

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General Information (continued)

Vendors and all vendor representatives shall not attempt to discuss the contents of this RFO with any employees or representatives of DIR other than designated contacts. Failure to observe this restriction may result in disqualification of any related Response.

Exhibit B

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General Information (continued)

Contacts for inquiries regarding this RFO

Carrie Cooper – carrie.cooper@dir.texas.gov

Contacts for the following related topics:

Vendor Information Systems (VIS) Portal - BidStamp: Kelly Parker -- kelly.parker@dir.texas.gov

HUB Subcontracting Plan: Lynn Sanchez – dir.hub@dir.texas.gov

Statewide Electronic and Information Resources (EIR) Accessibility: Jeff Kline – jeff.kline@dir.texas.gov

Exhibit B

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DIR Cooperative Contracts

- DIR combines the buying power of DIR Customers to obtain volume-discounted pricing for IT products and services.

- Customer purchases through the Cooperative Contracts Program resulted approximately $6 billion for fiscal years FY2015 – FY2017. See Bid Package 1, Section 1.2.5, Historical Sales.

- DIR currently has only one Cisco Branded contract however, sales on all Cisco Branded contracts for Cisco Products and Services resulted in almost $655 million in sales for the fiscal years FY2014 - FY2017.

Exhibit B

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Bid Submittal

- Any Vendor responding to this RFO must submit their response through the BidStamp Vendor Information System (VIS)

- Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via **http://dircommunity.force.com/BidStamp** and enter in their access credentials.

- If a Vendor does not have login credentials, the Vendor may request one by clicking on "Are you a vendor and need to request an account?" hyperlink that is located on the BidStamp VIS Portal login page below the blue Login bar.

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Bid Submittal

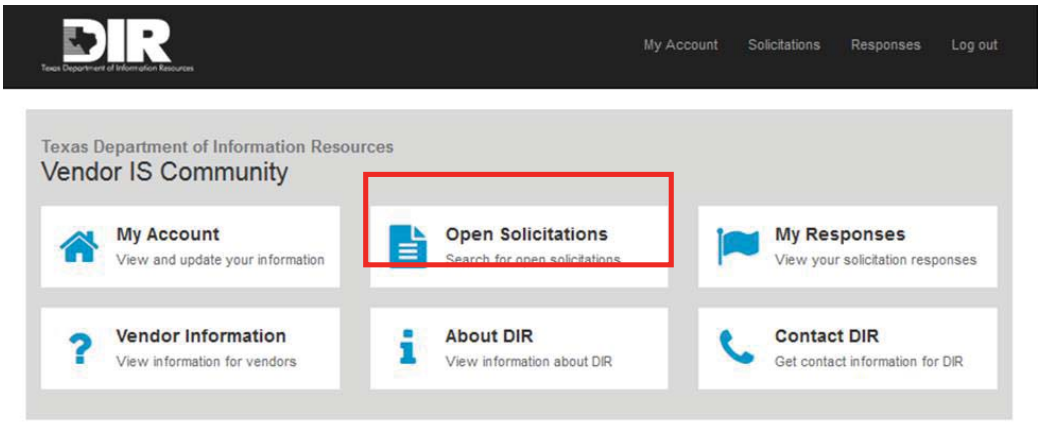
- Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact the DIR Point of Contact listed in Section 4.1 of this solicitation. Please allow at least five business days for response.

Exhibit B

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Responding to a Solicitation

After Vendor account is enabled, Vendor will submit and manage RFO responses from the BidStamp VIS portal.



The Vendor BidStamp Guide and the presentation are posted on DIR's website on the Information For Vendors page.
http://dir.texas.gov/View-Information-For-Vendors/Landing.aspx

Exhibit B

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Creating a New Response

To create a new response:

1. Log in to the VIS portal and select the “Open Solicitations” tile
2. Click on the “RFO Number” (**DIR-TSO-TMP-425**) of the solicitation you want to respond to
3. You will be navigated to the “RFO Number” detail page

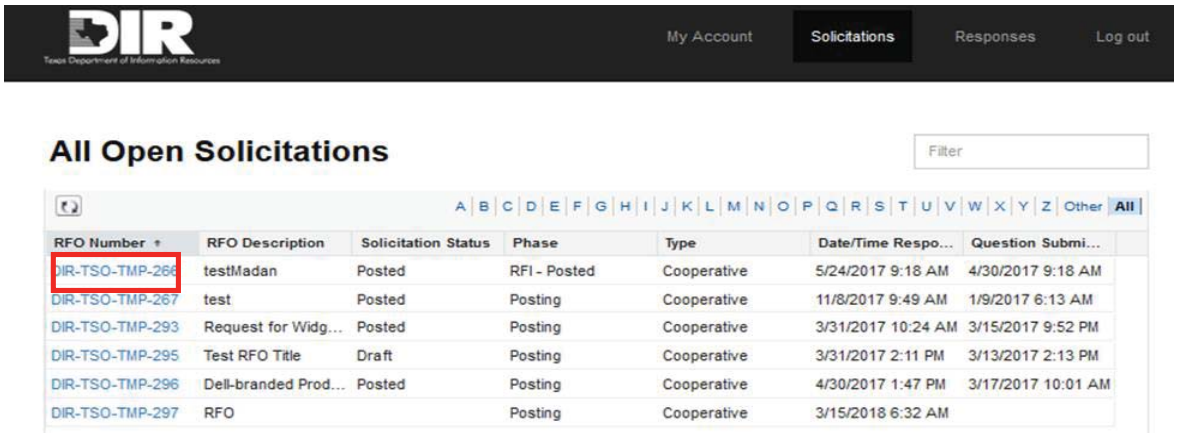
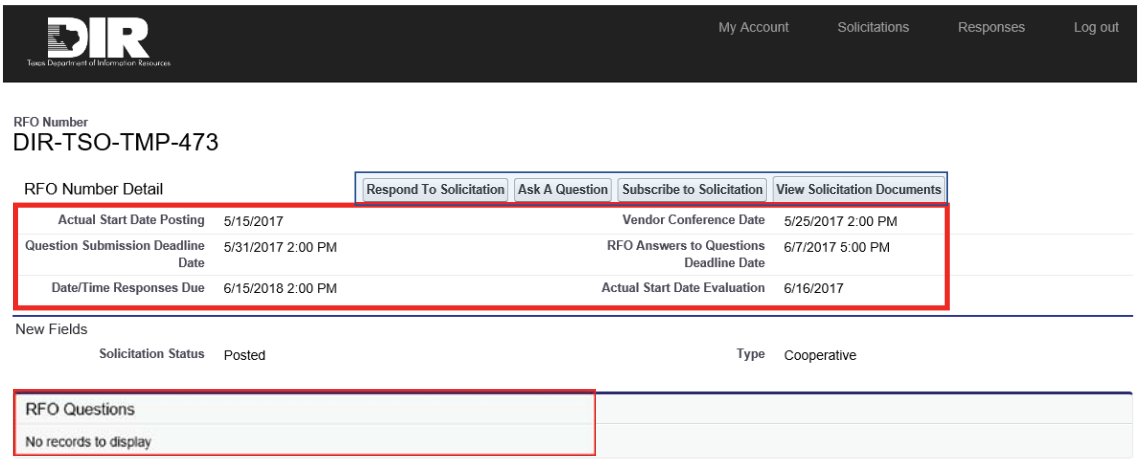


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Creating a New Response, *cont.*



This page will display important deadlines for the solicitation and list any questions Vendor has submitted.

Buttons discussed on the next slide.

Exhibit B

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Creating a New Response, *cont.*

RFO Number Detail Button Description:

- **Respond to a Solicitation (or View Response)**: Create a new response or view a response that is in-progress. If a response has already been created or started, this button will read as **"View Response"** and allow you to resume your progress on an existing RFO response.

- **Ask A Question:** Submit a question to be reviewed by a DIR resource. Questions can be submitted up until the "Question Submission Deadline date and time" indicated in the RFO document and on the detail page.

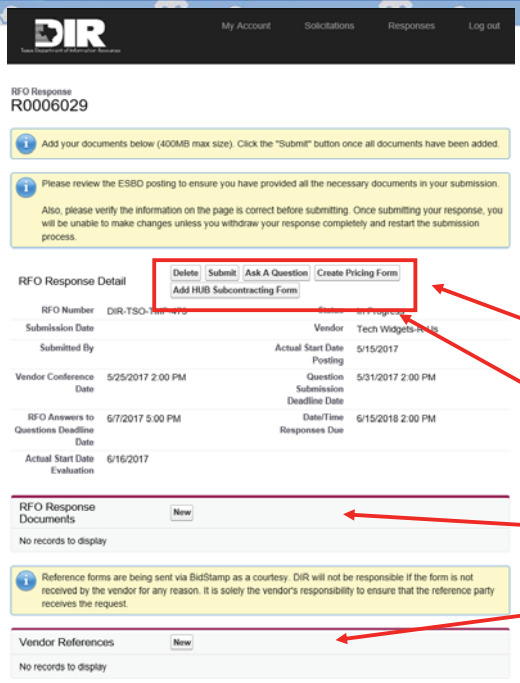
- **Subscribe to Solicitation:** Subscribe to a solicitation if you would like to receive addendum notifications. To subscribe to the solicitation, you must select the "Subscribe to Solicitation" button AND have enabled your contact to "Receive Notifications".

- **View Solicitation Documents:** Navigate to the ESBD posting for a solicitation and view the solicitation's documents.

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Respond to a Solicitation



"RFO Response Page" buttons:

- **Delete:** Delete all information that has been uploaded and the response record before the response has been submitted. **Note:** Once the response is submitted, Vendor must use the **Withdraw** button that will appear upon solicitation submission.
- **Submit:** Submits the response record and all associated information. *(reference Vendor Guide Section 5.7)*
- **Ask A Question:** Questions can be submitted up until the "Question Submission Deadline date and time" indicated in the RFO document and on the detail page. *(reference Vendor Guide Section 5.6)*
- **Add (or Edit) HUB Subcontracting Form:** Complete an automated version of the HSP form. Note: Vendors must also print, sign, and upload the signed HSP. *(reference Vendor Guide Section 5.4)*
- **Create Pricing Form:** Create a pricing form to submit pricing information for your response *(reference Vendor Guide Section 5.5)*
- **New (RFO Response Documents):** Upload required files indicated in the RFO posted on the ESBD *(reference Vendor Guide Section 5.2)*
- **New (Vendor References):** Submit a new reference's email address and opt to send the vendor a reference *(reference Vendor Guide Section 5.3)*

Exhibit B

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RFO Overview

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

- DIR may make multiple awards from this RFO.

Exhibit B

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RFO Contents

Bid Package 1 – RFO DIR-TSO-425 (contains Exhibits A, B, C, & Appendix D)

Bid Package 2 – Pricing List Sample

Bid Package 3 – DIR Sample Contract for Products and Services

Bid Package 4 – Standard Terms and Conditions for Product Contracts

Bid Package 5 – Policy Driven Adoption Assessment (PDAA)

Bid Package 6 – Voluntary Product Accessibility Template (VPAT)

Bid Package 7 – Vendor References

Bid Package 8 – Master Operating Lease Agreement Template

Exhibit B

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Bid Package 1

- Bid Package 1 – RFO DIR-TSO-425
  - Vendor Information System (VIS) Portal - BidStamp
  - Scope
  - General Information
  - Submission requirements, etc.
  - Evaluation, Negotiations, and Award
  - Exhibit A, Vendor Information Form
  - Exhibit B, Vendor History and Experience
  - Exhibit C, Contract Marketing and Support Plan
  - Appendix D – Historically Underutilized Business (HUB) Subcontracting Plan (The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.)

Exhibit B

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RFO Scope

Section 3. Scope

DIR intends to contract with qualified Vendors to provide the full suite of Cisco Products and Services, including but not limited to:

- **Product Categories:** includes Cisco Hardware, Networking, Wireless and Mobility, Security, Collaboration, Data Center, Analytics, Video, Internet of Things and Software.

- **Value Added Reseller Services:** includes configuration, integration, education, optimization, deployment, support, training, technical and other value added services.

- **Third-Party Products:** includes hardware, peripherals, accessories and software manufactured or published by other manufacturers or publishers that may be used as an attachment or embedded within a Cisco Branded or Service product, to create, enhance or extend the functionality of a Cisco Branded product; or to create, enhance or extend the functionality of the Authorized Third-Party Product which relies on a Cisco Branded product platform to function. Third-Party Products may be proposed as an option and will

Exhibit B

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RFO Scope

- **Reseller Requirements:**
  - Vendors are encouraged to bid any or all or any combination of the products or product categories listed above in their proposals.
  - **Any vendor responding to this solicitation must have a signed letter of authorization from Cisco dated on or after June 1, 2017.**

Exhibit B

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Term of Contract

Section 3.6.3 Contract Term and Automatic Renewal

The term of any Contract awarded from this RFO shall be **two (2) years** commencing on the last date of approval by DIR and Vendor.

NEW!

The contract will **renew automatically in one-year increments for three (3) additional years** under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

Exhibit B

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RFO Schedule

- Section 4.3.1 Anticipated Schedule:

Date/Time	Activity
12/12/2017	Publish RFO on Electronic State Business Daily
01/09/2018 02:00 PM (CT)	Optional Vendor Conference Webinar Only
01/12/2018 02:00 PM (CT)	Deadline for submitting questions
01/23/2018 05:00 PM (CT)	Deadline for posting answers to questions on the ESBD
02/05/2018 02.00 PM (CT)	Deadline for DIR to receive Vendor references
02/05/2018 02.00 PM (CT)	**Deadline for submitting Responses to RFO**
02/06/2018 - until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

Exhibit B

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Bid Package 1 – Exhibits A, B, &C

Exhibit A, Vendor Information

- This form must be **filled out in its entirety** and **signed by an officer or agent empowered to contractually bind the Respondent.** Complete cancelled contract references, if applicable.

Exhibit B, Vendor History and Experience

- Respondent must provide a detailed response to each question detailing the Vendor's history and experience in providing the Cisco products and services proposed.

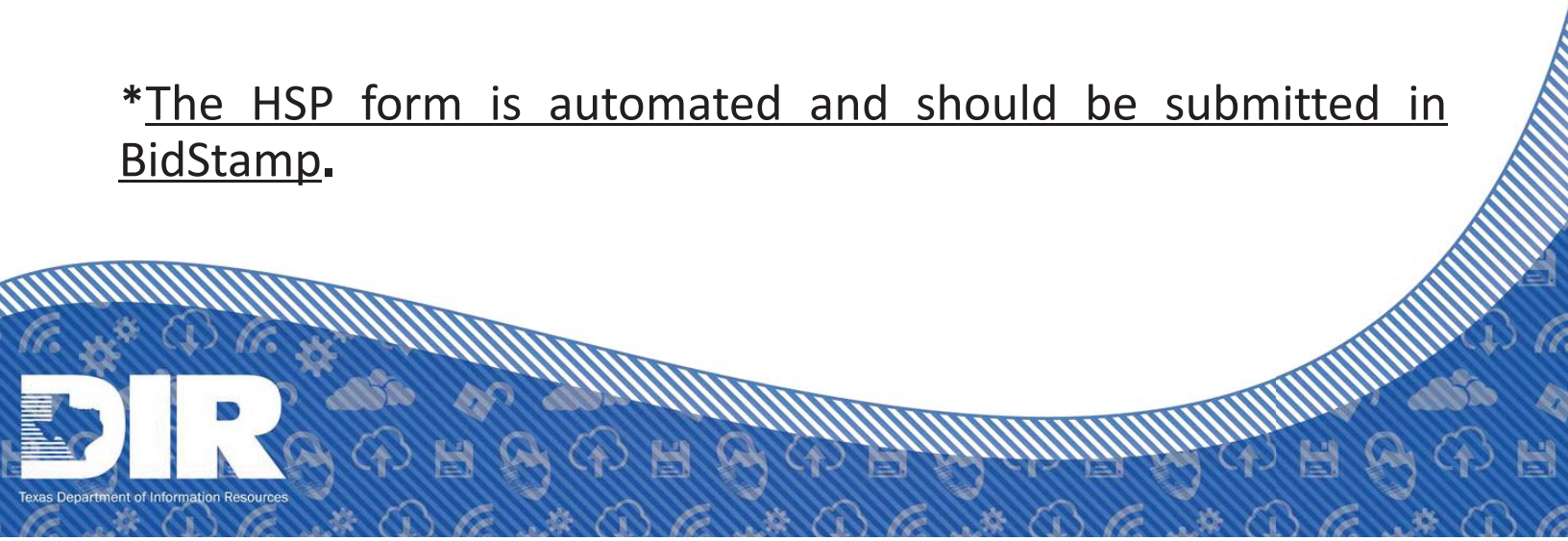
Exhibit C, Contract Marketing and Support Plan

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

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Appendix D - HUB Subcontracting Plan (Bid Package 1)

*The HSP form is automated and should be submitted in BidStamp.



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Appendix D – HUB Subcontracting Plan (Bid Package 1)

- DIR encourages all respondents to seek Historically Underutilized Business (HUB) subcontractors and maximize HUB participation in their bids.
- Responses submitted without a current HUB Subcontracting Plan (HSP) provided in the RFO, will be **disqualified per TAC Rule** §20.285
- All respondents, **HUBs and Non-HUBs**, are required to submit a completed HSP
- The HSP form includes specific instructions for meeting the Good Faith Effort requirements
- Vendors must complete a **new** HUB Plan and a good faith effort for this procurement

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Bid Package 1, Appendix D – HUB Subcontracting Plan

The HUB Goal for this RFO is 21.1%

- METHOD A (Attachment A) - If you are subcontracting and you are meeting or exceeding the HUB Goal for this RFO, you will complete Method A.

- Include all VID numbers for each vendor, all estimated dollar amounts and percentages for each vendor.

Exhibit B

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Bid Package 1, Appendix D – HUB Subcontracting Plan

METHOD B (Attachment B) - If you are subcontracting, and are not going to meet the HUB Goal of 21.1% you will complete Method B.

- **Provide written notification** of subcontracting opportunity listed to at least three State of Texas certified HUBs
- **Provide written notification** of subcontracting opportunity to at least (2) minority or women's trade organization or development center
- Allow no less than seven (7) working days from their receipt of notice for HUBs to respond (keep delivery receipt emails).
- **Note:** Attach supporting documentation (letters, fax transmittals, email, etc.) demonstrating evidence of the good faith effort performed with RFO submittal

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Bid Package 1, Appendix D – HUB Subcontracting Plan

If not subcontracting, your response must contain a detailed explanation demonstrating HOW your company will fulfill the entire contract with its own resources

- Self-Performance Justification must be provided in the space provided in SECTION 3, do not reference sections in the RFO

Exhibit B

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Bid Package 1 – HUB Subcontracting Plan

You may contact DIR's HUB Department for assistance in completing your HUB Subcontracting Plan (HSP) up to **seven (7) working days** before the RFO submittal.

Lynn Sanchez
512-463-9813

Email: lynn.sanchez@dir.texas.gov
or
dir.hub@dir.texas.gov

Exhibit B

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Bid Packages 3 and 4

- Bid Package 3 – Sample Contract for Products and Services
- Bid Package 4 - Standard Terms and Conditions for Products and Related Services Contracts
- **No exception**s may be taken to certain terms as indicated on the Standard Terms and Conditions
- **Any exception must be listed in Bid Package 1, Exhibit A, Question 11**.

Exhibit B

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Pricing

- **Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS**.

- Bid Stamp – Vendors will need to enter the following items:
  - **Brand**
  - **Product Category or Subcategory**
  - **Product Description**
  - **DIR Customer Discount % off MSRP**

Exhibit B

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Pricing

Cisco Branded Products and Services

Vendors must offer only one discount for each Product Category or Product Subcategory listed in Sample Bid Package 2 as applicable to the Vendor's offering.

Listed Categories

- Hardware on Cisco Global Price List
- Meraki Price List
- Networking (ex. Switches, Routers, Wireless, Interfaces & Modules)
- Wireless and Mobility (ex. Access Points, Controllers)
- Security (ex. Firewalls, Malware Protection, Email & Web Security)
- Collaboration (ex. Endpoints, Conferencing, Unified Communications)
- Analytics
- Video (ex. Endpoints, Entertainment, Intelligence, Signage)
- Internet of Things (ex. Connectivity, IoT Analytics, Iox, Embedded Networks)
- Software (ex. IOS & NX-OS, ONE)

Exhibit B

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Pricing

Cisco Value Added and Related Services

Listed Categories

- SMARTnet for Government (1 year term)
- SMARTnet for Education (1 year term)
- Technical and Maintenance Services
- Training
- Support

Exhibit B

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Pricing

Cisco Categories and Subcategories

Third Party Products

- Hardware
- Networking (ex. Switches, Routers, Wireless, Interfaces & Modules)
- Data Center (ex. Servers, Management & Automation, Security, Switches, Infrastructure, Storage & Virtual Networking)

Exhibit B

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Pricing

DO NOT SUBMIT PRICING ON THIS EXCEL SPREADSHEET.

CISCO BRANDED PRODUCTS				
BRAND	PRODUCT CATEGORY	Product Description	MSRP	DIR Customer Discount % off MSRP
EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tablulating correctly.				
CISCO	Hardware on Cisco Global Price List			
CISCO	Meraki Price List			
CISCO	Networking			
	(ex. Switches, Routers, Wireless, Interfaces & Modules)			
CISCO	Wireless and Mobility			
	(ex. Access Points, Controllers)			
CISCO	Security			
	(ex. Firewalls, Malware Protection, Email & Web Security)			
CISCO	Collaboration			
	(ex. Endpoints, Conferencing, Unified Communications)			
CISCO	Data Center			
	(ex. Servers, Management & Automation, Security, Switches, Infrastructure, Storage & Virtual Networking)			
CISCO	Analytics			
CISCO	Video			

Exhibit B

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Pricing – Volume Pricing

- Volume Discounts: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services.
- Aggregate Sales: If Vendor is proposing increased discounts based on total statewide aggregate contract sales, Vendor must list total contract dollar amount threshold, specific product and/or service or ALL, and discount percentage increase.
- **Vendors offering Volume Discounts should use the Bid Package 2 excel spreadsheet format for all volume discounts.**
- Vendors will need to enter Volume Discount information into the EXCEL Volume Discount spreadsheet, save the EXCEL spreadsheet as a PDF and upload it into Bid Stamp.

Exhibit B

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Pricing- Volume Pricing

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

COMPANY NAME: _____

VENDOR SHALL ENTER VOLUME DISCOUNTS IN THIS BID PACKAGE 2 AND UPLOAD THE SPREADSHEET INTO THE BIDSTAMP VIS WITH VENDOR'S RESPONSE. VENDOR MAY ALTER THE VOLUME TYPE AS NEEDED FOR PRODUCT CATEGORIES LISTED.

VOLUME DISCOUNTS- CISCO BRANDED PRODUCTS AND SERVICES

Type of Volume	Product Category	DIR Customer Discount % off MSRP
By QTY		
1-99 units		
100-500 units		
500+ units		
Per Transaction (e.g. Purchase Order)		
Per Dollar Volume Threshold		
Total Statewide Aggregate Contract Sales		

Exhibit B

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Threshold and SOW Requirements

Beginning September 1, 2017, the Threshold Requirements for IT Commodities (Hardware, Software and Services) are as follows:

Contract Value	Number of DIR Vendors
$50,000 or less	May award directly to DIR Vendor of choice
More than $50,000 but not more than $1 million	Three (or all DIR Vendors in a category with less than three vendors)
More than $1 million but less than $5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than $5,000,000	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

State agencies procuring more than $50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Exhibit B

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Electronic and Information Resources (EIR) Accessibility Forms

Texas state agencies and institutions of higher education are required to procure, develop, and use EIR that is inclusive and accessible to people with disabilities.

This RFO include 2 accessibility related forms:

1. Voluntary Product Accessibility Templates (VPATs) – Bid Package 6
   - If response includes Commercial Off the Shelf (COTS) offerings

2. Vendor Accessibility Policy Assessment Form (PDAA) – Bid Package 5
   - Required for all vendors

Exhibit B

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Bid Package 5 - Policy Driven Adoption for Accessibility (PDAA)

Why is DIR requesting information on vendor accessibility policy?

- Texas agencies and institutions of higher education are required to procure or develop accessible offerings. Gaps in vendor internal governance systems and leadership commitment inhibit the ability to meet these standards for their products / services.

- Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings.
  - Results mapped to the Policy Driven Adoption for Accessibility (PDAA) Maturity Model.

- Vendors can use the results as a roadmap for implementing their organization-wide IT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

Note: Form (excel file) should be completed and returned in its original format.

Exhibit B

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Bid Package 6 - Voluntary Product Accessibility Templates (VPAT)

What is a VPAT?

- Formal statements for commercial off the shelf (COTS) products and services documenting accessibility compliance to US Section 508 technical standards.
  - utilize ITIC VPAT template form.
  - manufacturer-generated and product / product family specific
- Completed by individuals with relevant knowledge of the product accessibility.
- Based on accessibility testing results and supported by documentation (on request).
- Accurate; inaccurate claims of compliance could generate end user complaints under the Americans with Disabilities Act.

Exhibit B

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Bid Package 6 - Voluntary Product Accessibility Template (VPAT)

The VPAT Form

- VPAT documents are formal statement of compliance by your organization.
- VPATs should be filled out by an individual that has knowledge of the product accessibility.
- VPAT claims should be backed by an audit trail.
- VPAT claims should be based on the demonstrable accessibility of a product. (i.e.. accessibility testing).
- Inaccurate claims of compliance could generate end user complaints under the Americans with Disabilities Act.

Exhibit B

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Bid Package 6 - Voluntary Product Accessibility Template (VPAT)

The VPAT Form

- VPAT forms can either be submitted with the response or prior to award.
- The Respondents that are selected for negotiation must submit completed VPAT form or links to complete VPATs located on manufacturer websites prior to an award for the proposed product or product family.
- Instructions on how to complete a VPAT® can be found on DIR's website

Exhibit B

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Additional Information regarding EIR Accessibility and VPAT Forms

- **EIR Accessibility Website**
  http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36

- **PDAA Maturity Model**
  http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx

- **Additional Information**
  http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement

Jeff Kline
Program Director
Statewide Electronic and Information Resources (EIR) Accessibility

Email: jeff.kline@dir.texas.gov

Exhibit B

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Bid Package 7 – Vendor Reference Questionnaire

Bid Package 7 - References

- The vendor must provide the vendor reference questionnaire directly to companies/government agencies as specified in Section 4.7.3 of the RFO.
- Instructions are included in Bid Package 7.
- DIR is not responsible for undeliverable e-mails or for non-responsive references.
- **References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation.**
- The Vendor may NOT submit the reference form to DIR.

- **Forms submitted directly by the vendor to DIR will receive a score of zero**.

Exhibit B

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Bid Package 7 – Vendor Reference Questionnaire

VENDOR REFERENCES
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

REFERENCE DEADLINE TO DIR: No later than 02/05/2018 02:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: ciscoreferencesrfo-425@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name_____
***Insert Type of (e.g. Hardware)* Product/Services Category**_____
Prime Contractor _____
Subcontractor(s) _____
Dates of Performance: Starting Date _____ **Ending Date** _____
Total Est. Contract Dollar Amount_____

This portion to be completed by the Customer providing reference and returned to DIR at ciscoreferencesrfo-425@dir.texas.gov.

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

Please provide your opinion by rating the following:

Exhibit B

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Mandatory Submissions

RFO Section 4.7.2 – Mandatory Response Contents

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

- Exhibit A – Vendor Information **(SIGNED)**
- Exhibit A – **Canceled Contracts** – Attachments 1 and 2 (if applicable)
- Exhibit B – Vendor History and Experience
- Exhibit C – Contract Marketing and Support Plan
- Exhibit D – HUB Subcontracting Plan **(SIGNED)**
- Pricing – Bid Package 2 (Automated Pricing Form in BidStamp VIS)
- Policy Driven Adoption Assessment (PDAA) – Bid Package 6
- **Letter of Authorization Any vendor responding to this solicitation must have a signed letter of authorization from Cisco dated on or after June 1, 2017.**
- Vendor's service or licensing agreement, etc.(if any)
- Any addendum requirements – check the ESBD for these; Vendors do not receive notice

Exhibit B

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Evaluation Criteria

- **RFO Section 5.1 – Evaluation of Responses**
  - Incomplete response package will be rejected
  - The financial review and **HSP** review are on a pass/fail basis.
    - **Failure to provide a DUNs number will result in your response being disqualified**.
  - Only responses that receive the passing grade will proceed to the next evaluation phase.

- **RFO Section 5.2 – Evaluation Criteria**
  - Pricing – 45%
  - Vendor History and Experience and Vendor References – 30%
  - Vendor's Contract Marketing and Support Plan – 25%

Exhibit B

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Questions

- Break (10 minutes)
- Reference the Section Number and page number with your submitted question.
- Questions answered today are unofficial until posted on the ESBD.

Exhibit B

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Reminder

- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-425 on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/
- It is the responsibility of Vendors to monitor the EBSD web site for addenda.

Exhibit B

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RFO Schedule

- Section 4.3.1 Anticipated Schedule:

Date/Time	Activity
12/20/2017	Publish RFO on Electronic State Business Daily
01/09/2018 02:00 PM (CT)	Optional Vendor Conference Webinar Only
01/12/2018 02:00 PM (CT)	Deadline for submitting questions
01/23/2018 02:00 PM (CT)	Deadline for posting answers to questions on the ESBD
02/05/2018 02.00 PM (CT)	Deadline for DIR to receive Vendor references
02/05/2018 02.00 PM (CT)	**Deadline for submitting Responses to RFO**
02/06/2018 - until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

Exhibit B

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Conference Closing

- All questions, inquiries must be directed to Carrie Cooper

Carrie Cooper

Phone: 512-936-2353
Fax: 512-936-6896
Email: carrie.cooper@dir.texas.gov

Thank you for attending today's webinar!

Exhibit B

Addendum 2

Department of Information Resources

Cisco Branded Products and Services

DIR-TSO-TMP-425

Exhibit B

Department of Information Resources
Cisco Branded Products and Services
Request for Offer DIR-TSO-TMP-425

Addendum #2

This Addendum #2 to Request for Offer DIR-TSO-TMP-425:

1. Extends the due date for Responses from February 5, 2018 to February 16, 2018, by amending the 425 Bid Package 1, Cover Page and Section 4.3.1 RFO Schedule.
2. Replaces 425 Bid Package 2 Pricing Sheet in its entirety with the new 425 Bid Package 2 - Pricing Sheet (per Addendum 2).

---

1. **Amends RFO 425 Bid Package 1, Cover Page and Section 4.3.1 RFO Schedule as follows**:

Revises Initial Response Due date on RFO Cover Page to 02/16/2018, and the Response due date in the RFO Schedule table as shown below:

Date/Time	Activity
12/20/2017	Publish RFO on Electronic State Business Daily
01/9/2018 02:00 PM (CT)	Optional Vendor Conference
01/12/2018 02:00 PM (CT)	Deadline for submitting questions
01/23/2018 02:00 PM (CT)	Deadline for posting answers to questions on the ESBD
02/05/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
02/16/2018 02:00 PM (CT)	Deadline for submitting responses to RFO
2/17/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution

2. **Replaces the 425 Bid Package 2 - Pricing Sheet in its entirety with updated version titled 425 Bid Package 2 - Pricing Sheet (per Addendum 2),** which is contemporaneously being posted to the State of Texas Electronic State Business Daily (ESBD) with this Addendum #2.

End of Addendum #2

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
CISCO Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

Instructions

VENDORS RESPONDING TO THIS RFO MUST ENTER THEIR PROPOSED PRICING SHEET IN THE BIDSTAMP VENDOR INFORMATION SYSTEM (VIS). CATEGORIES MUST BE ENTERED IN BIDSTAMP EXACTLY AS LISTED IN THE PRICING SHEET.

1) **The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).**
2) **CISCO Product Discounts MUST be listed by product categories listed on CISCO Branded Discount Sheet. The Vendor will enter the required information into DIR's Automated Pricing From in the BidStamp VIS.**
3) **Discount range (e.g., 0% - 99%) is not allowed.**
4) **Vendor shall provide a description of MSRP or the method utilized to derive MSRP.**
5) **Volume Pricing information is not entered in the BidStamp VIS. If Vendor is proposing Volume Discounts, the product must be listed separately with the associated type or grouped with an associated discount.**
   For example:
   ABC Product, 1-5 Units - 10%
   ABC Product, 6-10 Units - 20%
   ABC Product, 10+ Units - 30%
6) **All Product Category Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS. The Cisco Branded discount sheet is provided as a guide only.**

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services Discount Sheet
BID PACKAGE 2 - PRICING SHEET

SAMPLE ONLY. **All Product Category Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS.**

DO NOT SUBMIT PRICING ON THIS EXCEL SPREADSHEET.

CISCO BRANDED PRODUCTS				
BRAND	**PRODUCT CATEGORY**	**Product Description**	**MSRP**	**DIR Customer Discount % off MSRP**
EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tablulating correctly.				
CISCO	Hardware on Cisco Global Price List			
CISCO	Meraki Price List			
CISCO	Networking - Core/Compute	(ex. Switches, Routers, Wireless, Interfaces & Modules)		
	Networking - Market			
	Networking - Net			
CISCO	Wireless and Mobility - Core/Compute	(ex. Access Points, Controllers)		
	Wireless and Mobility - Market			
	Wireless and Mobility - Net			
CISCO	Security - Core/Compute	(ex. Firewalls, Malware Protection, Email & Web Security)		
	Security - Market			
	Security - Net			
CISCO	Collaboration - Core/Compute	(ex. Endpoints, Conferencing, Unified Communications)		
	Collaboration - Market			
	Collaboration - Net			
CISCO	Data Center - Core/Compute	(ex. Servers, Management & Automation, Security, Switches, Infrastructure, Storage & Virtual Networking)		
	Data Center - Market			
	Data Center - Net			
CISCO	Analytics - Core/Compute			
	Analytics - Market			
	Analytics - Net			
CISCO	Video - Core/Compute	(ex. Endpoints, Entertainment, Intelligence, Signage)		
	Video - Market			
	Video - Net			
CISCO	Internet of Things - Core/Compute	(ex. Connectivity, IoT Analytics, Iox, Embedded Networks)		
	Internet of Things - Market			
	Internet of Things - Net			
CISCO	Software - Core/Compute	**(ex.** IOS & NX-OS, ONE)		
	Software - Market			
	Software - Net			
VALUE ADDED AND RELATED SERVICES				
BRAND	**SERVICE DESCRIPTIONS**	**Product Description**	**MSRP**	**DIR Customer Discount % off MSRP**
CISCO	*EXAMPLE: Training*	6 hours training	$ 100.00	20.00%
CISCO	SMARTnet for Government (1 year term)			
	SMARTnet for Government (3 year term)			
	SMARTnet for Government (5 year term)			
CISCO	SMARTnet for Education (1 year term)			
	SMARTnet for Education (3 year term)			
	SMARTnet for Education (5 year term)			
CISCO	Technical and Maintenance Services			
CISCO	Training			
CISCO	Support			

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

All Third Party Product Descriptions and Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS. DO NOT SUBMIT THIRD-PARTY PRODUCT DESCRIPTIONS AND/OR DISCOUNTS ON THIS EXCEL SPREADSHEET.

EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tablulating correctly.

THIRD PARTY PRODUCTS FOR CISCO BRANDED (OPTIONAL)

BRAND	Product Category (if applicable)	Product Description	MSRP	DIR Customer Discount % off MSRP
	Hardware			
	Networking	(ex. Switches, Routers, Wireless, Interfaces & Modules)		
	Data Center	(ex. Servers, Management & Automation, Security, Switches, Infrastructure, Storage & Virtual Networking)		

Exhibit B

Department of Information Resources
Request for Offer DIR-TSO-TMP-425
Cisco Branded Products and Services
BID PACKAGE 2 - PRICING SHEET

COMPANY NAME: _____

VENDOR SHALL ENTER VOLUME DISCOUNTS IN THIS BID PACKAGE 2 AND UPLOAD THE SPREADSHEET INTO THE BIDSTAMP VIS WITH VENDOR'S RESPONSE. VENDOR MAY ALTER THE VOLUME TYPE AS NEEDED FOR PRODUCT CATEGORIES LISTED.

VOLUME DISCOUNTS- CISCO BRANDED PRODUCTS AND SERVICES

Type of Volume	Product Category	DIR Customer Discount % off MSRP
By QTY		
1-99 units		
100-500 units		
500+ units		
Per Transaction (e.g. Purchase Order)		
Per Dollar Volume Threshold		
Total Statewide Aggregate Contract Sales		

Exhibit B

Amendment Number 1
to
Contract Number DIR-TSO-4192
between
State of Texas, acting by and through the Department of Information Resources
and
NWN Corporation

This Amendment Number **1** to **Contract** Number **DIR-TSO-4192** ("**Contract**") is between the Department of Information Resources ("DIR") and NWN Corporation ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 1, Introduction, C. Order of Precedence,** is hereby restated in its entirety as follows:

   C. Order of Precedence
   For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Master Lease Agreement; Appendix E, Master Operating Lease Agreement; Exhibit 1 RFO DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions.

   For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix D, Master Lease Agreement or Appendix E, Master Operating Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1 RFO DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. 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. **Appendix D, Master Lease Agreement,** is hereby added to the Contract.

3. **Appendix E, Master Operating Lease Agreement,** is hereby added to the Contract.

   All other terms and conditions of the **Contract [as amended],** not expressly amended

herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1, and then the Contract."

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

NWN Corporation

Authorized By: Signature on file

Name: Steve Lonon

Title: Vice President of Sales

Date: 12/18/2019

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

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 01/03/2020

Office of General Counsel: Signature on file 12/31/2019