

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AMENDMENT NO. 1 TO IMAGESOFT, INC.'S AGREEMENT

THIS AMENDMENT NO. 1 (“Amendment”) 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 ImageSoft, Inc. (“ImageSoft”), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the “parties”).

RECITALS

WHEREAS, the Parties have previously executed and accepted the Master and System Maintenance Agreement, utilizing State of Texas Department of Information Resources Contract Number DIR-TSO-3734 on March 24, 2020. A copy of the aforementioned Master and System Maintenance Agreement is attached as Exhibit 1, and incorporated by reference as if set forth verbatim below.

WHEREAS, the Parties now desire to amend a certain portion of the Master and System Maintenance Agreement; and

NOW THEREFORE, for and in consideration of the mutual benefits to be derived by the parties hereto, County, and ImageSoft agree as follows:

I. Amendments

A. Scope of Services. Subject to the terms of the Master and System Maintenance Agreement and this Amendment, ImageSoft shall render products and/or services to County as described in ImageSoft’s revised Quote. The revised Quote is attached as Exhibit 2, and incorporated by reference as if set forth herein verbatim. The revised Quote, attached as Exhibit 2, will replace the original Quote in Exhibit A in Exhibit 1. The original Quote in Exhibit A in Exhibit 1 is hereby deleted in its entirety. The remaining provisions in Exhibit A in Exhibit 1 are not otherwise modified.

B. Cooperative Purchasing. ImageSoft shall provide product and/or services in accordance with DIR Contract Number DIR-TSO-3734, incorporated by reference as if set forth herein verbatim and attached as Exhibit “3,” and DIR Contract Number DIR-TSO-4392, incorporated by reference as if set forth herein verbatim and attached as Exhibit “4.”

C. Professional Services Agreement. Any reference on ImageSoft’s Statement of Work. No. 20605 to a Professional Services Agreement will refer to this Amendment.

- C. Confidential Information.** ImageSoft expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Amendment to the contrary, County will make any information related to the Amendment, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by ImageSoft shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of this Amendment are not proprietary or confidential information
- D. Severability.** If any provision of this Amendment is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Amendment for each party remain valid, binding, and enforceable.
- E.** Except as modified herein, the Master and System Maintenance Agreement remains in full force and effect and has not been modified or amended.
- F.** If there is a conflict among documents, the most recently executed document will prevail with regard to the conflict.

(Execution Page Follows)

IN WITNESS WHEREOF, this Amendment 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 Amendment 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

IMAGESOFT, INC.

KP George
County Judge

Authorized Agent- Signature

Date

Scott D. Bade
Authorized Agent- Printed Name

ATTEST:

President
Title

Laura Richard, County Clerk

4/21/2020
Date

Reviewed:

Information Technology Department

EXHIBIT 1: Copy of Master and System Maintenance Agreement, utilizing State of Texas Department of Information Resources Contract Number DIR-TSO-3734, which was approved by Fort Bend County's Commissioners Court on March 24, 2020.

EXHIBIT 2: Revised Quote.

EXHIBIT 3: DIR Contract Number DIR-TSO-3734.

EXHIBIT 4: DIR Contract Number DIR-TSO-4392.

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 1

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

ADDENDUM TO IMAGESOFT, INC.'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 ImageSoft, Inc. (“ImageSoft”), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the “parties”).

WHEREAS, the parties have executed and accepted ImageSoft’s Quote, Master Agreement, and System Maintenance Agreement (hereinafter collectively referred to as the “Agreement”), and attached hereto as Exhibit “A” and incorporated by reference, for OnBase maintenance services (the “Product”); and

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

1. **Cooperative Purchasing.** ImageSoft shall provide product and/or services in accordance with DIR Contract Number DIR-TSO-3734, 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 (the “Execution Date”), and will continue until the first anniversary of the Execution Date. This Agreement shall not automatically renew but may be subsequently renewed in writing upon agreement of the parties.
3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoices. 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. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
4. **Limit of Appropriation.** ImageSoft 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 One Hundred Thirty-

Four Thousand, Two Hundred Forty-Eight and 21/100 (\$134,248.21), specifically allocated to fully discharge any and all liabilities County may incur. ImageSoft does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that ImageSoft may become entitled to and the total maximum sum that County may become liable to pay to ImageSoft shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Thirty-Four Thousand, Two Hundred Forty-Eight and 21/100 (\$134,248.21).

5. **Confidential Information.** ImageSoft 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 ImageSoft 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 ImageSoft 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 ImageSoft publicly known or is contained in a publicly available document; (b) is rightfully in ImageSoft'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 ImageSoft who can be shown to have had no access to the Confidential Information.

ImageSoft agrees to hold Confidential Information in strict confidence, using at least the same degree of care that ImageSoft 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. ImageSoft 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, ImageSoft shall advise County immediately in the event ImageSoft 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 ImageSoft will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or ImageSoft against any such person. ImageSoft agrees that, except as directed by County, ImageSoft 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, ImageSoft will promptly turn over to County all documents, papers, and other matter in ImageSoft's possession which embody Confidential Information.

ImageSoft 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. ImageSoft 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.

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

ImageSoft expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by ImageSoft shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. 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 ImageSoft for any reason are hereby deleted.

ImageSoft 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 ImageSoft, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of ImageSoft or any of ImageSoft's agents, servants or employees.

7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by ImageSoft in any way associated with the Agreement.
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.
10. **Network access.** When performing services for the County, ImageSoft shall comply with, and ensure that all ImageSoft personnel comply with, all rules, regulations and policies of County that are communicated to ImageSoft in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.
11. **Product Assurance.** ImageSoft represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by ImageSoft to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. ImageSoft 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 ImageSoft's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and ImageSoft's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.
12. **Insurance.** Prior to commencement of the Services under this Agreement, ImageSoft 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. ImageSoft shall provide certified copies of insurance endorsements and/or policies if requested by County. ImageSoft 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. ImageSoft 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 ImageSoft 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, ImageSoft 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.

- 13. **Use of Customer Name.** ImageSoft may use County's name without County's prior written consent only in any ImageSoft's customer lists, any other used must be approved in advance by County.
- 14. **Performance Warranty.** ImageSoft warrants to County that ImageSoft has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and ImageSoft 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.
16. **Personnel.** ImageSoft 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 ImageSoft 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 ImageSoft shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of ImageSoft or agent of ImageSoft who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

17. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., developed by ImageSoft 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. ImageSoft 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.

18. **Compliance with Laws.** ImageSoft 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, ImageSoft shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
19. **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, ImageSoft verifies ImageSoft does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code Section 2252.152 Acknowledgment: By signature below, ImageSoft represents pursuant to Section 2252.152 of the Texas Government Code, that ImageSoft 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 2252.153
20. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, IMAGESOFT 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.
 21. **Professional Services Agreement.** Any reference on ImageSoft's Statement of Work. No. 20605 to a Professional Services Agreement will refer to this Agreement.
 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.

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

KP George
County Judge KP George

KP George
County Judge

3-24-2020

Date

ATTEST:

Laura Richard
Laura Richard, County Clerk



IMAGESOFT, INC.

Scott D. Bade
Digitally signed by Scott Bade
DN: cn=Scott Bade, o=ImageSoft, inc, ou=HQ, email=sbade@imagesoftinc.com, c=US
Date: 2020.03.17 16:03:07 -0400

Authorized Agent- Signature

Scott D. Bade

Authorized Agent- Printed Name

President

Title

3/17/2020

Date

Reviewed:

Robyn Doughtie

Information Technology Department

EXHIBIT A: ImageSoft's Quote, Master Agreement, and System Maintenance Agreement
EXHIBIT B: DIR Contract Number DIR-TSO-3734

AUDITOR'S CERTIFICATE

R.E.
134,248.21 March 30, 2020

I hereby certify that funds in the amount of \$ ~~134,348.21~~ are available to pay the obligation of Fort Bend County within the foregoing Agreement

Robert E. Sturdivant

Robert E. Sturdivant, County Auditor

EXHIBIT A

Fort Bend County

OnBase Solution

Quote
December 20, 2019

Sales Contact:

Toni Smith
Senior Account Manager
O: (517) 663-4584
C: (517) 256-2520
tsmith@imagesoftinc.com

Technical Contact:

Terry Chaudhuri
Sales Engineer
O: (248) 948-8100 x235
tchaudhuri@imagesoftinc.com

ImageSoft, Inc.
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Southfield, MI 48034
www.imagesoftinc.com



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Purpose and Overview

The purpose of this document is to provide a budgetary estimate/quote to Fort Bend County for OnBase services, maintenance and training for the existing AP and contract management solution. ImageSoft welcomes the opportunity to prepare the proposal.

As requested, we have included pricing and additional details on for the following items:

- *Professional services*
- *Software Maintenance*
- *Custom coding - rates for PM, BA, developers etc.*
- *Yearly Upgrades – two (2) per year*
- *Yearly health check*
- *Patches and fixes*
- *New installation assistance*
- *Training - onsite and offsite options*

ImageSoft leverages 22 years of experience delivering productivity enhancing solutions to government and private sector entities at all levels. We focus on providing enterprise-wide solutions, which include business process management, document management, automated workflow, advanced capture, line-of-business application integration, and records management.

ImageSoft is ideally suited to be your strategic partner for OnBase. We are one of the leading Hyland OnBase integrators worldwide with numerous government and private sector customers throughout Texas, the U.S. and North America. ImageSoft has proven capabilities in the delivery of systems involving advanced enterprise content management, case management, and workflow. ImageSoft's knowledge and expertise, coupled with our Diamond Rated Support Department and a proven solution implementation "best practices" approach, will be an asset to the partnership.

ImageSoft is a value added reseller (VAR) and integrator of OnBase® by Hyland Software. After meeting with Fort Bend to provide demos, answer questions and support, we are confident we will make a great partner on your journey with OnBase Enterprise Content Management (ECM) system. We are convinced we will provide the best support for not only your current system but for the future initiatives as well.

This document includes the understood scope, approach and supporting assumptions along with a quote. Should Fort Bend County wish to proceed with ImageSoft as a partner, a Statement of Work (SOW) for the project will be created.

ImageSoft has support staff available to your OnBase team immediately.

We appreciate your confidence in our firm and look forward to the opportunity to work together in advancing your solution.

Professional Services

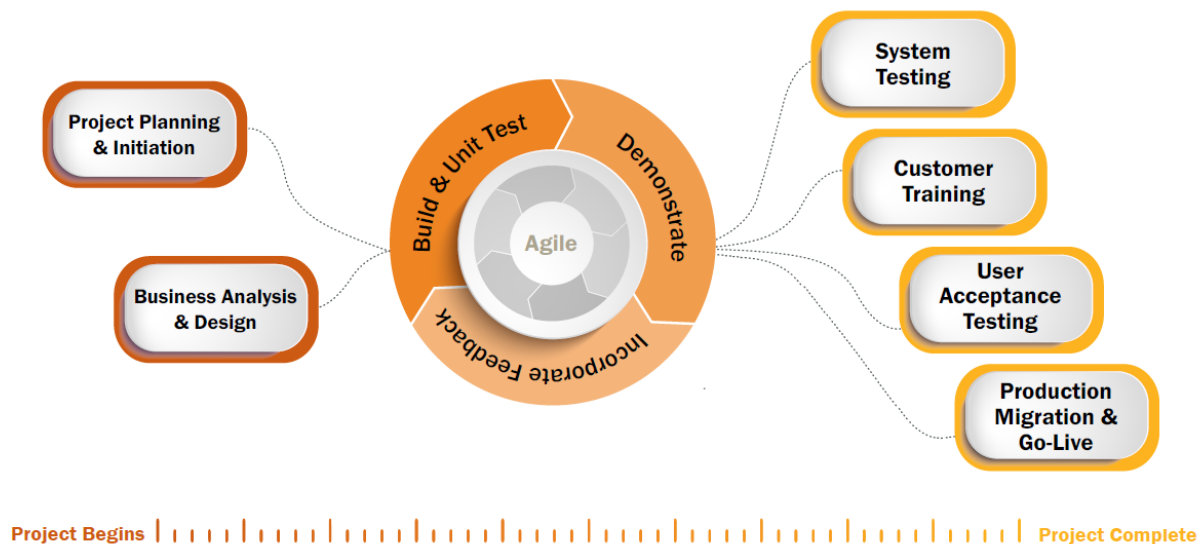
ImageSoft offers several different styles of contracts (statement of work); Hourly Assist, Small Project and Full Project.

An Hourly Assist project works very much like a staff augmentation. There are no deliverables. We provide a resource with the skill set to match the project and they work at the discretion of the customer. This works very well when resources are tight and you need some additional help or a resource with a skill set an internal resource does not have.

A Small Project is a project with defined deliverables which ImageSoft is responsible for. This is a defined project where ImageSoft is providing a resource(s) to complete a set of tasks and deliverables. Included with the project is a limited amount of project management.

Full Project – In a full project we use what we call the ImageSoft Way. It is described below:

ImageSoft can utilize Agile or Waterfall methodologies to design and deploy solutions, but we commonly use a combination of both. Our process, the “ImageSoft Way”, uses the traditional waterfall approach for Project Planning, Initiation, Business Analysis, and Design, but employs an agile approach during the Build and Unit Testing phases. Once the development is complete, the waterfall approach is used again for System Testing, Customer Training, User Acceptance Testing, and Go-Live process phases.



The degree to which the Agile methodology is used will be determined based on the details of the project and Fort Bend’s comfort level with agile.

ImageSoft also utilizes Use Cases to define the functionality of the solution. During the Business Analysis and Design phase, ImageSoft will create a Solution Requirements Document (SRD) that identifies the requirements of the solution in the form of Use Cases. These Use Cases are converted to Test Cases and are utilized during the System Testing and User Acceptance Testing phases of the project.

ImageSoft Way Project Implementation

With this hybrid Agile/Waterfall approach, the “ImageSoft Way” provides customers inclusive insight into their solutions as they are being developed on time and within scope by using an iterative mode of development, demonstration, and feedback cycles. The ImageSoft Way relies on traditional project phases but uses an iterative feedback cycle during the build phase which allows ImageSoft to demonstrate the solution to the customer, receive immediate feedback, and make adjustments to the solution. In turn, the customer doesn’t wait until the start of their testing period to see their solution for the first time; they can collaborate through the entire build process. This results in business requirements being clarified, missed requirements being identified, and ensures the best solution for the customer is delivered.

The first phase is our Planning and Initiation phase. This phase allows the team to learn about the project and the solution, first by meeting with the Sales team and then with the customer. Any documentation provided to the Sales team is shared with the Project team to ensure an efficient transfer of knowledge. During this phase, the Project Manager builds an initial draft of the project schedule so the customer will know what to expect. The project kickoff meeting is scheduled and conducted and discovery is scheduled.

Our second phase, Business Analysis and Design, is often called discovery. We send two experienced team members, usually the Solution Architect and a Systems Engineer, to your location to sit with the users and walk through their business process. We listen, document, and ask questions. We do not build out the solution during this time; we ensure we understand your business, your pain points, and have the right information to build you a solution that will work. When we return to our office, we design your solution. In order to ensure we understand your business rules, we draft a document called the Solutions Requirement Document (SRD). In this document, we write Use Cases to identify the steps required to complete your business process within the new solution. Once internally vetted and reviewed, we send you this draft and schedule a review with you and your business Subject Matter Experts. We review the document live with you, making corrections to the process to ensure all parties agree on what the solution will include. The Business Analysis and Design phase completes once the Solution Requirements Document is signed.

With the design agreed to, the Build phase begin. While we collaborate consistently through the entire project, the Build phase is the most iterative in terms of solution reviews and feedback loops. We will establish a regular cadence with you to demonstrate the solution as it is being built. Your feedback is critical in this phase. If we can catch a misunderstanding early in the project, we can update the design and estimate early to avoid overages later in the project. Seeing the solution often also helps your users and IT team understand the solution well before it is released to test and support.

Before we release a solution for user testing, we perform system testing within ImageSoft to ensure everything works as designed within the Solution Requirements Document. After this is complete, we train your users to test the solution. We provide and consult on a sample training plan that you can customize for your team, as well as provide training manuals for your solution. We follow a checklist of steps that include other templates and documents that we share with your team to make sure training is successful. Trained users are happy users.

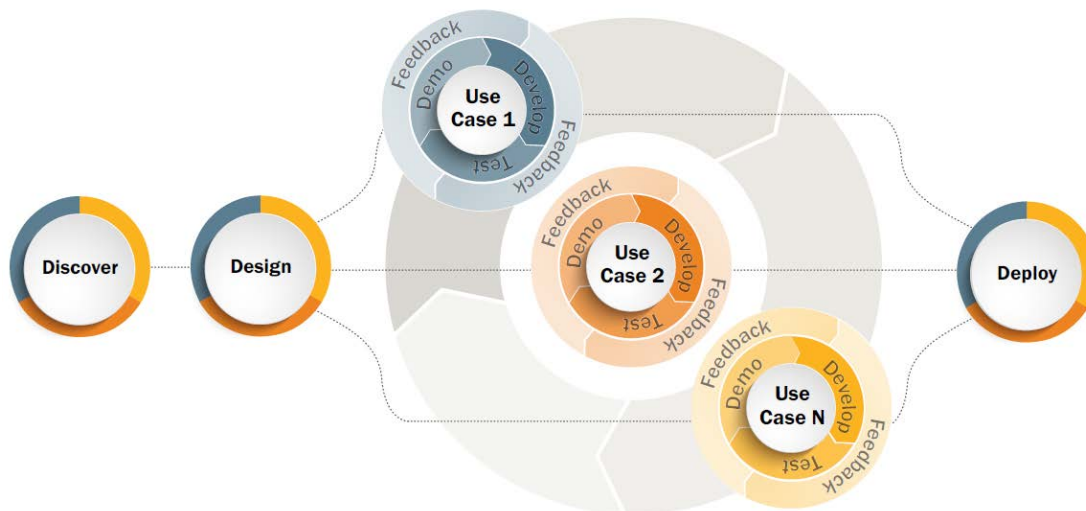
During the User Acceptance Testing (UAT) phase, we setup an issue tracking software, Jira, just for you to log your issues or enhancements. We meet with your team multiple times a week

to review the issues, work with you to prioritize, resolve, and release for retest. At the end of UAT, we send you a signoff form to permit the solution to be promoted to Production.

The last phase is the Production Migration and Go Live. While it seems like we are at the end of the project lifecycle, this is a critical phase and we treat it as such. Our team will collaborate with your IT staff well in advance of migration day to review the infrastructure, apply all licenses, and prep the environment. We build a migration checklist with your IT team with tasks, assignees, and dates to make sure nothing gets missed. We are available outside of business hours so that there can be as little impact as possible to your end users. The project team is allocated post go live to provide the continued support of your solution in Production for up to 30 days. After that 30 days is up, the project team completes a checklist for our Customer Care team that evaluates whether the solution is ready to be transitioned. The Customer Care team has product and development experts available for quick issue resolution and will escalate back to the project team to expedite the resolution of issues for you.

Through all phases, you will have a dedicated Project Manager working to ensure your project stays on track. Whether tracking budget, challenging design decisions that compromise scope, removing roadblocks to allow the project team to meet dates, the Project Manager is your project advocate. They also provide you status reports, identify and mitigate risks, and maintain the project plan.

Regardless of which team is working on your solution, the ImageSoft Way is to be collaborative, open to feedback, and quick to respond.



Professional Services Rate – ImageSoft uses a blended rate for all roles on the project of **\$185.00 per hour**.

Software Maintenance and Customer Care

This covers troubleshooting issues, general assistance and advice. Download information is provided for upgrades and enhancements.

Maintenance and support from ImageSoft for your software solutions is a vital part of every customer relationship, representing both a high level of enterprise support services value and a comprehensive commitment to your future success with OnBase and Hyland technologies.

Maintenance

To help you maximize your technology investment, ImageSoft provides the following software maintenance benefits to keep your implemented solution operating at peak performance:

- *Notification of new software release versions, software patches, technical alerts and updates*
- *Access to software utilities and documentation for new version releases and software patches*
- *Error correction for confirmed errors with the supported software*

Software Maintenance Support

Customers with active software maintenance and support have access to a full range of technical support services:

- *Support for Hyland product functionality provided with exceptional customer service*
- *A comprehensive Technical Support team to handle all aspects of the support process*
- *Optimized access to Technical Support analysts, who respond to all technical support requests*
- *Access to the subject matter experts needed to drive issues to resolution*
- *Advice related to the operation of the implemented software*
- *Defined escalation process to ensure resolution*
- *Response to software errors based on confirmed severity level*
- *A Technical Support advisor who serves as your advocate throughout the support process*
- *A comprehensive product and solution testing lab to reproduce your environment for acute issue troubleshooting*
- *Secure, personalized 24/7 access to the online support portal*

Custom Coding

ImageSoft will correct issues arising from code developed by ImageSoft.

Annual Software Upgrades

This includes planning and remote technical assistance for two upgrades per year. (Customers are responsible for testing and backup prior to an upgrade.) If pre-scheduled, production upgrade assistance is also available after hours, 24x7 at no additional cost.

ImageSoft will ensure that any supported configuration, integration or custom development will continue to work in future versions of software products that are covered by software maintenance.

Yearly Health Checks

ImageSoft will perform, upon request, a Solution Health Check to ensure your solution is being optimized. Our dedicated Solution Health Specialist reviews your solution in accordance with established procedures and standards and provides you a report which summarizes the results and any action items identified.

Patches and Fixes

ImageSoft will provide support for bug fixes and error in the provided software in accordance with the ImageSoft/Hyland System Maintenance Agreement. ImageSoft will liaise with Hyland Software support personnel to coordinate the resolution of the bug or software product error.

Software Patches

Hyland, the creators of OnBase is dedicated to ensuring the monthly cumulative updates released by Microsoft® are compatible with OnBase®. On the second Tuesday of each month, the Quality Assurance department of Hyland evaluates the cumulative fixes released and labeled as Critical or Important by Microsoft®. The details of the update provided by Microsoft are reviewed for interaction with OnBase® and installed when appropriate for testing its compatibility with OnBase®.

Patches are applied within 90 days of release, but only after they have been tested in a non-production environment. Hyland evaluates each patch released for the Microsoft Windows operating system in order to ensure compatibility. Hyland's partnership with Microsoft enhances Hyland's ability to identify and resolve compatibility issues more effectively.

A summary of Microsoft's Security Bulletin Guide can be found on the Hyland Community Third-Party Compatibility Technical page that can be accessed [Microsoft Path Bulletin](#) with an active Hyland Community account.

For example; The following is a summary of Microsoft's Security Bulletin Guide for November 2019. Hyland has downloaded these patches and applied them to our R&D Infrastructure. We will be performing SCR, automated, and regression testing in environments containing these

patches over the next month. If no issues have been found or reported, we will deem testing to be complete.

The testing is not all-inclusive; issues may still be found upon implementation. Follow best practices for testing and installing software updates/patches in a development environment before implementing the updates in a production environment. Where applicable, the updates are tested on all supported Windows platforms with the latest OnBase® version.

- *Release Notes*
- *November 2019 Security Updates*

Release Date: November 12, 2019

The November security release consists of security updates for the following software:

- *Microsoft Windows*
- *Internet Explorer*
- *Microsoft Edge (EdgeHTML-based)*
- *ChakraCore*
- *Microsoft Office and Microsoft Office Services and Web Apps*
- *Open Source Software*
- *Microsoft Exchange Server*
- *Visual Studio*
- *Azure Stack*

Please note the following information regarding the security updates:

- *A list of the latest servicing stack updates for each operating system can be found in [ADV990001](#). This list will be updated whenever a new servicing stack update is released. It is important to install the latest servicing stack update.*
- *Windows 10 updates are cumulative. The monthly security release includes all security fixes for vulnerabilities that affect Windows 10, in addition to non-security updates. The updates are available via the [Microsoft Update Catalog](#).*
- *Updates for Windows RT 8.1 and Microsoft Office RT software are only available via [Windows Update](#).*
- *For information on lifecycle and support dates for Windows 10 operating systems, please see [Windows Lifecycle Facts Sheet](#).*
- *In addition to security changes for the vulnerabilities, updates include defense-in-depth updates to help improve security-related features.*

- *Starting in May 2019, Internet Explorer 11 is available on Windows Server 2012. This configuration is present only in the IE Cumulative package.*

Pricing for Software Maintenance and Customer Care - \$134,248.21

This price includes:

- *Upgrade Support (2 per year)*
- *Hyland Patches*
- *Support During Normal Business Hours*
- *Health Check*
- *Onsite Planning for future OnBase Projects*
- *Hyland Software Maintenance – **modules listed below estimated at 1 year maintenance:***

Description	Qty
Document Composition	1
Enterprise Application Enabler	1
Query API	1
Query API	1
Automated Redaction	1
Context Search Framework	1
COLD/ERM	1
Concurrent Client (1-100)	100
Named User Client	45
Production Document Imaging	1
Production Document Imaging	10
Document Knowledge Transfer & Compliance	1
Enterprise Web Access for Document Knowledge Transfer	1
Document Import Processor	1
Integration for DocuSign eSignature	1
Advanced Capture	1
Intelligent Capture for AP	1
Full-Text Indexing Concurrent Client for Autonomy IDOL	15
Full-Text Indexing Server for Autonomy IDOL	1
Office Business Application	1
Multi-User Server	1
Mobile Access for Android	1
Mobile Access for iPhone	1
Mobile Access for Windows	1
Mobile Access for iPad	1
Integration for Microsoft Outlook	1

PDF Framework	1
Virtual Print Driver	1
Signature Pad Interface	1
Records Management	1
Report Services	1
Unity Forms	1
Unity Integration Toolkit	1
Unity Client Server	1
WorkView Concurrent Client SL (1-20)	20
WorkView Concurrent Client SL (21-50)	30
Workflow Concurrent Client SL (1-20)	20
Workflow Concurrent Client SL (21-50)	30
Conversion From Microsoft Office to Image Framework	1
Web Server	1

New Installation Assistance

Advanced Architecture and Planning Assistance

Achieving additional ROI by expanding your solution is an important component of the systems that ImageSoft deploys. It is important that the expansion be undertaken with an overall architecture plan and disaster recovery in mind. Customer Care clients receive architecture assistance at no added cost.

New Installation

When purchasing a new module ImageSoft encourages the client to first get a pilot license for their test environment first. This ensures the software will fit the need and also provides some upfront assistance at no extra charge. Pre-sales support will assist in the installation provide a demo and up to 4 hours of configuration. If the software is purchased Fort Bend can decide based on the pilot if installation or configuration services are needed. If Professional Services are needed the rate is \$185.00 per hour.

Training

Certification Training

Certified Instructor Lead Training is offered online, onsite at Hyland or at a customer's location. Classes offered at Hyland are generally 5 days with a cost of **\$2,539.04 per student**. Customers are responsible for any travel expenses incurred. Many of these same classes are offered online for a cost of **\$2,720.40 per student**. Customer location classes are priced depending on length and topic. Quotes are available upon request.

Training Options

There are several options available for ongoing training:

- *Hyland Live Training Classes*
- *Hyland Web Based Training (WBT)*
- *Hyland OnBase Premium Subscription – **Annual Fee of \$7,200.00***

Live Training Classes

A full array of live training classes are available throughout the year. Solution certification may be completed through these live (remote) classes. Upon request, ImageSoft will provide a list of dates/times for the remote classes and their cost.

Web Based Training

Web enabled training classes are available to existing OnBase customers. There are no costs for these Web based training classes.

OnBase Premium Subscription

Premium Subscription is an annual subscription for valid OnBase organizations that provides 24/7 access to the Premium Subscription Courses and content. The Subscription is applied to the entire organization and will grant access to anyone in the organization with a valid Hyland.com/Community login.

*The price of OnBase Premium Subscription is **\$7,200.00**.*

ImageSoft Training

ImageSoft offers training a couple times a year onsite at ImageSoft in Southfield, Michigan. In the past year we have offered the following:

- *2 Classes – Intermediate OnBase - This full day of instructor-led, intermediate OnBase training will cover how to formulate keywords, create Unity forms, configure workflows and generate reporting dashboards.*
Price \$300.00

- *2 Classes - The advanced instructor-led class serves those who have been administering OnBase for some time and have a basic understanding of Users, Groups, Document Types and Workflow Configuration. Instructors will cover: security keywords and AD integration, external auto fills and cascading data sets, HTML Forms for enhanced custom queries, foldering, document redactions, document composition templates, Unity Forms, Image Forms, expanding workflows and creating reporting dashboards.*
Price \$300.00

Customized Training

*ImageSoft will offer customized training onsite in Fort Bend. **The rate is \$185.00 per hour plus expenses.***

*ImageSoft also offers an onsite OnBase Day to train and educate on different solutions and modules. The agenda is set by the customer. **This is free of charge.***

Summary of Costs

*ImageSoft has a blended rate of **\$185 per hour** on any chargeable services.*

*Annual Maintenance and Customer Care - **\$134,248.21***

- *Upgrade Support (2 per year)*
- *Hyland Patches*
- *Support During Normal Business Hours*
- *Health Check*
- *Onsite Planning for future OnBase Projects*

Note: All software maintenance is priced at the annual cost.

*Premium Subscription - **\$7,200.00 per year***

Certified Classes offered by Hyland

- *Online – **\$2,720.40 per student***
- *At Hyland - **\$2,539.04 per student***

*ImageSoft one day classes - **\$300.00 per student***

Master Agreement

DIR TSO-3734

This agreement ("Master") is made and entered into by and between Fort Bend County, TX having a place of business at 500 Liberty St., Richmond, Texas 77469 (hereinafter "Customer"), and ImageSoft, Inc., having a place of business at 25900 West 11 Mile Road, Suite 100, Southfield, Michigan 48034 (hereinafter "ImageSoft"). Customer and ImageSoft are each referred to as a Party or, collectively, as the "Parties."

1. Statements of Work, Order of Precedence; Construction.

1.1. ImageSoft and Customer may, from time to time, execute one or more Statements of Work ("SOW") Agreements. Each SOW: (1) shall define the Services to be performed and additional obligations of the Parties; (2) be executed by both Parties; (3) shall constitute a separate Agreement; and (4) shall be deemed to incorporate therein all of the terms and conditions of this Master. The provisions of a SOW shall control over inconsistent provisions in the Master, except that any provision herein relating to Intellectual Property, limitations of liability, warranties or indemnification may not be modified except through a properly executed amendment to this Master executed by a representative of ImageSoft having a rank of no less than Senior Vice President. The SOW's and incorporated Master shall constitute the entire agreement between the parties ("Agreement").

1.2. Capitalized terms are defined in Section 9

1.3. For purposes of the Agreement, the contacts are listed below. Contacts may be changed upon written notice to the following:

ImageSoft	Customer:
Contact Name: Scott D. Bade	Contact Name:
Title: President	Title:
Address: 25900 W. 11 Mile Road Suite 100, Southfield, MI 48034	Address:
Email: sbade@imagesoftinc.com	Email:
Telephone: 248-948-8100 x200	Telephone:
Fax: 248-948-8146	Fax:

2. Term and Termination.

2.1. Unless terminated in accordance with "Termination" section below, the term of this Master shall begin on the date hereof and shall continue until one (1) year after the expiration or termination of the last SOW to be executed while the Master was in effect. In the absence of a term being provided in a SOW, the term of the SOW shall be for the longer of (1) year commencing on its Effective Date or the date on which all Services are completed and paid for. The following Sections will survive termination of this Master: Sections 3, 6, 7, 8, 9 and all Sections which by their nature are intended to survive.

- 2.2. Other than by expiration, the Agreement may be terminated only (a) by mutual agreement of both parties; (b) in the event that either Party materially breaches the Agreement and fails to cure the breach within thirty (30) days after receiving written notice from the non-breaching Party; or (c) in the event either Party is declared insolvent or bankrupt, or if any assignment of its property shall be made for the benefit of creditors or otherwise, or if a petition is filed in any court to declare bankruptcy, or for reorganization under any bankruptcy or insolvency law or similar statute and is not dismissed in ten (10) days, or if a trustee in bankruptcy or similar offices or receiver is appointed to either Party.
- 2.3. Upon termination or completion of the Agreement, both parties shall return all confidential information and intellectual property to the other Party. Termination does not eliminate the responsibility of Customer to pay for products and Services rendered. Upon written notification by Customer of a desire to return unused and unopened hardware or software components purchased from ImageSoft ("New Third Party Products") ImageSoft will make a reasonable effort to return for credit New Third Party Products, pursuant to vendor requirements. Reasonable restocking and handling charges may apply. For New Third Party Products that were purchased by ImageSoft for Customer that cannot be returned for credit, Customer agrees to take ownership of and to pay ImageSoft for these components using established payment terms.
3. **Payment.** Customer shall pay for the Services in accordance with the SOW and subject to the following:
 - 3.1. ImageSoft is not obligated to begin providing Services until it has received the Initial Payment.
 - 3.2. Each invoice that Customer receives from ImageSoft is due and payable per the Payment Terms described in the Statement of Work.
 - 3.3. All past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts are paid in full.
 - 3.4. In the event that Customer in good faith believes that a portion of an invoice is incorrect and in excess of what is invoiced, the Customer may withhold payment of such portion, and such withholding shall not constitute a default, if and only if, and subject to the following:
 - 3.4.1. Customer notifies ImageSoft in writing of its intent to withhold payment and provides in such writing a specific and complete explanation and justification for such withholding;
 - 3.4.2. Such notification is provided within ten (10) days of the receipt of the applicable invoice;
 - 3.4.3. Customer immediately pays the portion not claimed to be incorrect;
 - 3.4.4. The withholding is in good faith and Customer cooperates with ImageSoft to resolve such withholding as soon as possible;

- 3.4.5. Customer, at ImageSoft's request, and in lieu of withholding the funds in its own account, deposits such disputed amount in a reputable bank escrow (determined by ImageSoft in its reasonable discretion) until such dispute is resolved by the Parties or by litigation.
- 3.5. In the event of any default by Customer in the payment of any amounts due hereunder, which default continues unremedied for at least ten (10) calendar days after the due date of such payment and written notice of the default, ImageSoft shall have the right to suspend the provision of Services unless and until such default, and any and all other defaults by Customer under the Agreement, shall have been cured.
- 3.6. County shall reimburse ImageSoft Team for any expenditures related to travel by ImageSoft Team arising out of ImageSoft Team's performance of Services under the Agreement in accordance with County's Travel policy. Receipts evidencing travel related expenditures made by ImageSoft Team shall be submitted to the County Auditor's Office: Fort Bend County Auditor Attn: Robert Ed Sturdivant, 301 Jackson Street, Suite 701, Richmond, TX The parties agree that payment schedules shall be established as part of a Statement of Work and are intended to reflect an equitable cash flow distribution commensurate with the amount of work being performed or product being delivered. The parties further agree to work in good faith to adjust payment schedules when project changes or scheduling delays cause the payments to be inequitably distributed.
- 3.7. All payments are to be made in US dollars.

4. Acceptance; Disclaimers

- 4.1. Upon reasonable belief that it has substantially discharged its performance obligations in this Agreement, ImageSoft will deliver to Customer a Certification of Testing Readiness. Such Certification means Deliverables and Services are completed materially in accordance with Specifications and that they are ready for User Acceptance Testing by Customer in a non-productive test mode ("Test System").
- 4.2. User Acceptance Testing ("UAT") shall begin within twenty-one (21) days of delivery of the Certification of Testing Readiness. During that period, if not done already, Customer shall work to establish test cases and protocols ("Test Plan") for testing the Test System. The Test Plan shall be subject to approval by ImageSoft, which shall not be unreasonably withheld or delayed. ImageSoft shall provide reasonable assistance in establishing and implementing the Test Plan. If the Parties are unable to agree upon a Test Plan within such twenty-one (21) day period, either Party may terminate the Agreement owing payment to ImageSoft only for work performed up to termination, or continue to work on establishing the Test Plan. Upon completion of the Test Plan, Customer shall test the Test System in accordance with Section 4.3.
- 4.3. During a period of thirty (30) days (the "Test Period"), Customer shall test whether the Test System meets the Specifications.
- 4.3.1. The Test System shall be deemed accepted if:

- 4.3.1.1. the Test System performs materially in accordance with Specifications; or
 - 4.3.1.2. Customer has not given ImageSoft a written deficiency statement specifying in detail how the Initial Test System fails to meet the Specifications ("Deficiency Statement") within the Test Period; or
 - 4.3.1.3. Customer accepts the Services and Deliverables or uses the Deliverables and Services in a Productive Environment.
 - 4.3.2. Upon Acceptance, Customer shall complete the Certificate of Acceptance. Failure by Customer to complete the Certificate of Acceptance after Customer begins to use the Deliverables in a Production Environment shall not mean that Acceptance has not occurred.
 - 4.3.3. If Customer provides a Deficiency Statement within the Test Period and ImageSoft is able to verify that the System exhibits the identified material deficiency, ImageSoft shall have twenty-one (21) days to correct the deficiency, and Customer shall have thirty (30) days after receiving written notice that the deficiency has been corrected to evaluate the Test System. If the Test System still exhibits the identified material deficiency or any other material deficiency demonstrably caused by corrective action at the end of this thirty (30) day period, ImageSoft shall have twenty-one (21) days to correct the deficiency or deficiencies, and Customer shall have thirty (30) days after receiving written notice that the deficiency has been corrected to evaluate the Test System. If the Test System continues to exhibit the identified deficiency or deficiencies demonstrably caused by corrective action at the end of this thirty (30) day period, either Party may, at such Party's option, terminate this Agreement, effective upon written notice to the other Party or by mutual agreement continue the Agreement for additional correction and review periods. Upon any such termination, Customer shall return the Test System to ImageSoft, and ImageSoft shall refund any monies paid by Customer to ImageSoft. Neither Party shall then have any further liability to the other for the products that were the subject of the acceptance test.
- 4.4. PLEASE NOTE THAT ANY POST-ACCEPTANCE WARRANTY IS SET FORTH AND SUBJECT TO A FULLY EXECUTED "IMAGESOFT SYSTEM MAINTENANCE AGREEMENT," A SEPARATE AGREEMENT THAT IS NOT INCORPORATED HEREIN. WITHOUT DEROGATING THE IMAGESOFT SYSTEM MAINTENANCE AGREEMENT (TO THE EXTENT THAT THE PARTIES ENTER INTO SUCH AGREEMENT), IMAGESOFT EXPRESSLY DISCLAIMS ALL WARRANTIES EXCEPT AS EXPRESSLY RECITED IN THIS AGREEMENT INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES FOR NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER ACKNOWLEDGES THAT PERFORMANCE MAY BE PREVENTED OR DELAYED BY FAILURE OF CUSTOMER TO PERFORM ITS OBLIGATIONS, INCLUDING BUT NOT LIMITED TO PROVIDING TIMELY FEEDBACK TO QUESTIONS AND TIMELY ACCESS TO REQUIRED RESOURCES.
- 4.4.1. Without limiting the generality of the foregoing disclaimer, it should be noted that during the implementation of any computer system there is the possibility of inadvertent or accidental loss of data. Also, computer hardware and software systems will occasionally stop working or fail to operate as designed, which may cause loss of data. Customer at

all times is responsible for maintaining accurate and timely data backups to protect against loss of data.

4.4.2. Additionally, computer systems are vulnerable to intrusion and/or theft of information from outside parties. Customer is responsible for data security and computer infrastructure at Customer facilities to prevent unauthorized access to the system and data.

4.4.3. THEREFORE CUSTOMER IS RESPONSIBLE FOR DATA PROTECTION AT CUSTOMER FACILITIES, AND ImageSoft CANNOT BE HELD LIABLE FOR ANY LOSS OR THEFT OF DATA, OR SYSTEM INTRUSION AT CUSTOMER FACILITIES.

5. Third-Party Software

5.1. All of the commercial third-party software that ImageSoft provides to Customer has an associated license agreement. Certain software products implement their license agreements as “click-through” agreements, meaning the license is displayed on a computer screen to either a user or installer of the system and the user or installer acknowledges the agreement on screen. Customer agrees that for software products provided and installed by ImageSoft, where ImageSoft may have installed the software and ImageSoft clicks-through a license agreement, ImageSoft is in this instance only acting as an agent of the Customer for purposes of acknowledging the agreement on screen and therefore the click-through agreements remain in full effect for the Customer.

6. Limitations of Liability/Damages; Indemnification

6.1. IMAGESOFT SHALL NOT BE LIABLE FOR ANY: (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO: (1) A BREACH OF THIS AGREEMENT OR STATEMENT OF WORK OR OTHER ORDER/ADDENDUM OR (2) THE OPERATION OR USE OF ANY DELIVERABLE OR (3) ANY SERVICES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY IMAGESOFT TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO FORCE MAJEURE CIRCUMSTANCES; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST ImageSoft MORE THAN TWO (2) YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

6.2. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT IMAGESOFT'S LIABILITY UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO CLIENT UNDER THE APPLICABLE STATEMENT OF WORK OVER THE TWELVE MONTHS PRECEDING THE ACTION GIVING RISE TO THE CLAIM.

6.3. SOME JURISDICTIONS MAY HAVE RESTRICTIONS ON CONTRACTUAL LIMITATIONS OF LIABILITY AND DAMAGES AND, IF THAT IS THE CASE, THE ABOVE LIMITATIONS ON DAMAGES AND LIABILITY SHALL BE EFFECTIVE TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW.

- 6.4. ImageSoft agrees to defend, indemnify and hold harmless Customer from and against any Claims that the Deliverables or Services infringe the Intellectual Property Rights of any third party, provided that Customer promptly notifies ImageSoft as soon as practicable, but in any event within thirty (30) days of the Claim's assertion and provided that ImageSoft retains full control over defense and settlement, Customer provides to ImageSoft all reasonable assistance, and Customer has not made any admissions which adversely affect ImageSoft's defense of the claim and has not settled the claim against ImageSoft's consent. ImageSoft may modify or replace any allegedly infringing Deliverable or terminate Customer's rights to such Deliverable and, as to such Deliverable, offer a pro-rated refund depreciated on a straight line basis over a four (4) year period.

7. Proprietary Rights

- 7.1. Subject to payment of all amounts owed and otherwise complying with the terms of the Agreement, Deliverables, exclusive of ImageSoft IP and Third Party IP, shall be the property of Customer.
- 7.2. Customer IP, if any, shall be owned exclusively by Customer and ImageSoft releases and assigns all rights to Customer IP to Customer.
- 7.3. ImageSoft IP, if any, shall be owned exclusively by ImageSoft and Customer releases and assigns all rights to ImageSoft IP to ImageSoft.
- 7.4. The Parties agree to execute any and all documents necessary to effect the purposes of this Section so as to effect the applicable assignments and otherwise perfect the applicable IP interests of the appropriate Party.
- 7.5. ImageSoft hereby acknowledges that in performing the Services, it may be furnished or otherwise be provided access to Customer's confidential information, including trade secrets and other proprietary information, all of which is clearly marked as confidential by Customer. ImageSoft hereby agrees and covenants to hold in trust and confidence all such information during and following the term of the Agreement; provided, however, that ImageSoft may disclose such confidential information if required by any judicial or government request, requirement or order. ImageSoft shall be liable to Customer only in the event of a willful and material disclosure of Customer's confidential information or data, provided, that ImageSoft's liability shall be limited to an amount not exceeding the purchase price of the Services provided hereunder.

8. General/Miscellaneous

- 8.1. Waiver. No assent or waiver, expressed or implied, or any breach of any one or more of the terms of this Agreement shall be deemed to be taken to be a waiver of any other term or condition or assent to continuation of such breach.
- 8.2. Marketing. Either Party may communicate to the public, through a website, press release or other marketing vehicle, the fact that a business relationship exists and in general that work is being

performed, so long as no specific information is disclosed which could reasonably be considered confidential.

8.3. Disputes.

8.3.1. Any dispute, controversy or claim arising out of or relating to the Agreement shall be settled by arbitration in Oakland County, Michigan, in accordance with the rules of the American Arbitration Association (“AAA”) Commercial Arbitration Rules in effect as of the date of the events giving rise to the dispute. The arbitrator(s) (and any court pursuant to Section 8.4 shall apply the substantive laws of the United States of America and the State of Michigan to decide the dispute. The Parties shall choose, by mutual agreement, one (1) neutral arbitrator to hear the dispute. If the Parties cannot agree on the selection of the arbitrator within thirty (30) days after a demand for arbitration has been served, the arbitrator(s) shall be selected by the American Arbitration Association. The arbitrator shall be authorized to award only those damages which are permitted in this Agreement, subject to any disclaimers of damages and liability limits set forth in this Agreement, but the arbitrator shall not have the authority to reform, modify or materially change this Agreement. The award rendered by the arbitrator shall include costs of the arbitration, reasonable attorneys’ fees and reasonable costs for experts and other witnesses. Judgment on the award may be entered in any court having jurisdiction. The award of the arbitrator(s) shall be final and binding upon the Parties without appeal or review except as permitted by Michigan law. In connection with any application to confirm, correct or vacate the arbitration award, any appeal of any order rendered pursuant to any such application, or any other action required to enforce the arbitration award, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees, disbursements and cost incurred in any post-arbitration award activities.

8.4. Injunctive Relief. The Parties agree that notwithstanding the provision for arbitration, each Party will have the right to seek interim orders for equitable relief in a federal or state court having jurisdiction in Oakland County Michigan, as necessary to protect such Party’s Intellectual Property Rights or Confidential Information.

8.5. Force Majeure. Other than with respect to failure to make payments due hereunder, neither Party shall be liable under the Agreement for delays, failure to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, utility curtailments, power failures, explosions, civil disturbances, governmental actions, or any other cause beyond their reasonable control, provided that the Party affected by such event shall immediately begin or resume performance as soon as practicable after the event has been abated.

8.6. Notice. Unless otherwise agreed to by the Parties in a writing signed by both Parties, all notices, requests, demands and other communications under the Agreement shall be in writing and shall be effective and deemed to have been received: (a) when delivered in person, (b) five (5) business days after having been mailed by certified or registered United States mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent by a nationally recognized overnight mail or courier service, return receipt requested. Unless otherwise provided, notices shall be sent to the parties appearing on the signature page, at the address listed in Section 1.3 of the Master.

- 8.7. Assignment. Neither Party may assign this Agreement or the rights and obligations therein without the consent of the other Party. Notwithstanding the foregoing, ImageSoft may assign this Agreement and the rights and obligations therein to any entity that purchase all or substantially all of its assets or stock or to any entity that succeeds to it in a consolidation, merger or other reorganization. The Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties to the Agreement and their respective successors and permitted assigns.
- 8.8. Entire Agreement. This is the entire Agreement of the Parties on the subject matter contained herein. It supersedes all prior and contemporaneous Oral and Written Agreements with respect hereto. The terms and conditions contained herein shall control over conflicting terms and conditions found in Customer shipping documents, purchase order documents, or other transactional documents. No waiver or modification of any of the terms, provisions or conditions hereof shall be effective unless said waiver or modification is in writing and signed by a duly authorized representative of both Parties. No acceptance or acknowledgment by either Party of any acknowledgment, receipt, order, invoice, or delivery document shall be effective to waive, modify or delete any term, provision, or condition hereof, or to add any different or conflicting terms, provision, or condition hereto.
- 8.9. No Hire Clause. Each Party agrees that, without the prior consent of the other Party, it will not offer employment to or discuss employment with any employees of the other Party until one (1) year after termination of the Agreement.
9. **Definitions**. As used in the Agreement, the following definitions shall apply:
- 9.1. "Agreement" means the SOW and incorporated Master.
- 9.2. "Certification of Testing Readiness" means the certification provided by ImageSoft pursuant to Section 4 of the Master.
- 9.3. "Claim" and "Losses." "Claim" means any third party claim contained in any demand or any civil, criminal, administrative, or investigative action, suit or proceeding (including arbitration) asserted, commenced or threatened. "Losses" means all losses, liabilities, damages, liens, and claims, and all related costs, expenses, and other charges suffered or incurred as a result of or in connection with a Claim, including reasonable attorneys' fees and disbursements, costs of investigation, litigation, settlement, and judgment, and any taxes, interest, penalties, and fines with respect to any of the foregoing.
- 9.4. "Customer IP" means only that IP which meets all of the following conditions relative to a particular Statement of Work: it is (i) previously owned by Customer, (ii) existing in materials provided by Customer to ImageSoft for purposes of the Statement of Work, (iii) included within a Deliverable provided pursuant to the Statement of Work, and (iv) identified with specificity in the Statement of Work, with such identifying provision expressly referencing this Master and such identifying provision being initialed by the CEO of ImageSoft. For the avoidance of doubt, Customer will have no rights to claim such content as Customer IP unless such IP satisfies each of the conditions of this Section.
- 9.5. "Effective Date" means, for the Master or any Statement of Work, the date of the signature of the last Party to execute such document.

- 9.6. "Deliverable" means, as specified in the SOW, materials to be delivered physically and/or transmitted electronically by ImageSoft to Customer, including without limitation documents, images or data files, software, software configuration, drawings, data compilations and reports.
- 9.7. "Functional Specification Document" means an ImageSoft created document intended to describe the functioning characteristics of a computer system for the purpose of clarifying the scope and capabilities of the system.
- 9.8. "Initial Payment" means the first payment as set forth in the SOW.
- 9.9. "ImageSoft IP" means all Intellectual Property in and to Deliverables and Services, including without limitation, all software licensed to Customer by ImageSoft, whether developed by ImageSoft or by or with another party, except for Customer IP and Third Party IP.
- 9.10. "Intellectual Property" or "IP" means copyrights, trademarks, patents, moral rights, know-how, trade secrets, computer software and other intangible proprietary rights.
- 9.11. "Master" means this Master Professional Services Agreement.
- 9.12. "Party" means ImageSoft and/or the Customer as set forth in Section 1.3 of the Master
- 9.13. "Productive Environment" means an environment in which Deliverables and Services are used for Customer's business purposes and not for test purposes.
- 9.14. "Services" means the services to be performed by ImageSoft as described in a subsequent Statement of Work, which may include development, customization, integration, installation or other professional services and/or the provision of hardware and/or software and/or other technology.
- 9.15. "Specifications" means any written specifications contained in the Functional Specification Document for Services or Deliverables created pursuant to a Statement of Work.
- 9.16. "Statement of Work" or "SOW" shall mean the document that describes the Services, fees for the Services and other relevant terms and conditions.
- 9.17. "Test Plan" means the testing roadmap as described in Section 4.2.
- 9.18. "Test System" means the Services and Deliverables to be tested in a non-productive environment as described in Section 4.

9.19. Third Party IP means Intellectual Property owned by entities other than the Parties, such as Intellectual Property in and to software provided by such other entities.

9.20. "User Acceptance Testing" or "UAT" means the testing process described in Section 4.

IN WITNESS WHEREOF, the Parties have caused the Master to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of the Master duly authorized by all necessary and appropriate corporate action to execute the Master.

Fort Bend County, TX
("Customer")

ImageSoft, Inc.
("ImageSoft")

Signed: _____

Signed: _____

Name: _____

Name: Scott D. Bade

Title: _____

Title: President

Date: _____

Date: _____

SYSTEM MAINTENANCE AGREEMENT

DIR TSO-3734

This System Maintenance Agreement (“SMA”) is made and entered into by and between ImageSoft, Inc., a Michigan Corporation with its principal offices at 25900 W. 11 Mile Road, Suite 100, Southfield, MI 48034 (“ImageSoft”), and Fort Bend County, TX with its principal offices at 500 Liberty St. Richmond, Texas 77469 (“Customer”), ImageSoft and Customer each individually referred to as a “Party” or collectively as the “Parties”:

RECITALS:

WHEREAS, ImageSoft is in the business of providing system maintenance and related support services (“Maintenance”); and

WHEREAS, Customer desires to purchase from ImageSoft such Maintenance as described herein; and

WHEREAS, ImageSoft desires to provide Customer with such Maintenance as described herein.

NOW, THEREFORE, the parties mutually agree as follows:

DEFINED TERMS: The following terms shall have the meanings set forth below for all purposes of this SMA:

“SMA” shall mean this System Maintenance Agreement.

“Customer Care” shall mean an enhanced package of support services provided by ImageSoft and defined within this SMA. Customer Care services are to be provided only if they are specifically identified in this SMA.

“Statement of Work” or “SOW” shall mean an agreement between Customer and ImageSoft that describes specific products and services to be provided by ImageSoft to another party. A SOW may be related by reference to this SMA.

“Supported Software” or “Supported Software Products” shall mean the computer software licensed from either a third-party vendor or ImageSoft to be supported by ImageSoft under this SMA, all of which is either; a) listed in a related SOW and completely paid for; or b) preexisting and identified in Appendix A; or c) purchased at a future date and specifically identified as being supported under this SMA.

“Supported Hardware” shall mean the computer hardware manufactured by a third-party vendor to be supported by ImageSoft under this SMA, all of which is either; a) listed in a related SOW and completely paid for; or b) preexisting and identified in Appendix A; or c) purchased at a future date and specifically identified as being supported under this SMA.

“Supported Services” shall mean the system configuration and custom software development provided by ImageSoft and to be supported by ImageSoft under this SMA, all of which is either; a) listed in a related SOW and completely paid for; or b) preexisting and identified in Appendix A; or c) purchased at a future date and specifically identified as being supported under this SMA.

“Supported Products” shall mean the Supported Hardware and Supported Software components to be supported by ImageSoft under this SMA.

“Supported System” shall mean the aggregate of the Supported Products and Supported Services.

“Product Vendor” shall mean a third-party vendor or ImageSoft whose products ImageSoft is authorized to resell and whose products are identified as Supported Products.

“Maintenance and Support Services” shall mean the maintenance and support services to be performed by ImageSoft under this SMA.

“Documentation” shall mean the officially released material, either in electronic or paper form, including user manuals, provided by Product Vendors related to the functional, operational or performance characteristics of Supported Products.

“Error Tracking Number” or “ETN” means a unique number assigned by ImageSoft to an Error.

“Error” shall mean any defect or condition inherent and discovered in the Supported Product that causes the Supported Product to fail to perform in accordance with the current Documentation published by Product Vendor. A defect or condition is not an Error until ImageSoft assigns an Error Tracking Number (ETN).

“Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to Supported Software that a Product Vendor or ImageSoft has commercially released to its end users generally during the term of this SMA to correct deficiencies or enhance the capabilities of the Supported Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate software product offerings, new software modules, or a re-platformed software product.

1. IDENTIFICATION OF SUPPORTED PRODUCTS AND SERVICES

ImageSoft provides professional services and sells and supports several different Software and Hardware products, each of which may have both common and distinct support terms. The following products and services are supported under this agreement:

- a) New Purchases. This SMA covers all products and services that are purchased through a fully executed ImageSoft Statement of Work (SOW) which specifically references this agreement and where the products and services are explicitly identified as covered under this agreement.
- b) Existing Supported Components. Appendix A provides a list of known existing system products and services that are to be covered by this agreement. Any existing component that is not explicitly identified shall not be covered by this agreement.

2. SUPPORTED SOFTWARE MAINTENANCE

This section describes the terms and conditions related to all the Supported Software. Additional terms and conditions that are specific to a Product Vendor may be included in Section 17.

- a) Upgrades and Enhancements. ImageSoft shall provide, upon Customer request, all Upgrades and Enhancements to the Supported Software commercially released by the Product Vendor during the term of this SMA. Customer acknowledges and agrees that Product Vendors have the right, at any time, to change the specifications and operating characteristics of the Supported Software. Any Upgrades and Enhancements to the Supported Software and Documentation shall remain proprietary to and the sole and exclusive property of the Product Vendor and shall be subject to all the restrictions, limitations and protections of the Product Vendor’s license agreement. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing and trade secrets in the Supported Software and

Documentation and any Upgrades and Enhancements are and shall remain the exclusive property of the Product Vendor.

- b) Errors in Supported Software. All Error(s) discovered by Customer within Supported Software must be properly reported to ImageSoft in accordance with Section 6 b) of this SMA. ImageSoft shall use its commercially reasonable efforts to correct any properly reported Error(s) in the Supported Software that are mutually confirmed by ImageSoft and Product Vendor, in the exercise of their commercially reasonable judgment.
- c) General Assistance and Advice. ImageSoft shall upon the request of Customer, provide technical support, including remote assistance and advice, related to the operation, best practices, and use of the Supported Software by Customer. Remote assistance and advice is provided over the telephone or through e-mail correspondence. Remote assistance and advice is intended to provide general assistance and guidance related to the everyday usage and maintenance of the system. Remote assistance and advice is not intended to be a replacement for a properly trained system administrator, or a properly trained software developer. ImageSoft will notify Customer if this service is being used in a manner that is outside of its intended purpose and reserves the right to charge a fee in such an instance.
- d) Reporting Errors to Product Vendors. For Errors that require Product Vendor assistance to correct, ImageSoft shall work directly with the Product Vendor and use its commercially reasonable efforts to correct the Error.
- e) Remote Access to Customer system. Customer acknowledges and agrees that ImageSoft and Product Vendor may require on-line access to the Customer's system for ImageSoft to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a connection to the Internet to facilitate ImageSoft's remote access to Customer's system. ImageSoft shall provide remote connection software, which may require installation of a software component on a workstation or server computer. NO REMOTE ACCESS WILL BE INITIATED BY IMAGESOFT OR PRODUCT VENDOR WITHOUT A CUSTOMER SUPPORT REPRESENTATIVE PRESENT.
- f) Exclusions. ImageSoft is not responsible for providing, or obligated to provide, maintenance and support services or upgrades and enhancements under this SMA: (a) in connection with any Error if ImageSoft (directly or through Product Vendor) has previously provided corrections for such Error, which correction Customer chose not to implement after being advised to implement the same; (b) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than Supported Software or third party software bundled with the Supported Software.), hardware (other than Supported Hardware) or any system or networking utilized by Customer; (c) if the Supported System or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; (d) if any party other than ImageSoft or a Product Vendor working with ImageSoft has provided any services in the nature of Maintenance and Support Services to Customer with respect to the Supported System; or (e) in connection with custom developed software not developed or provided by ImageSoft

3. SUPPORTED SERVICES MAINTENANCE

This section describes the terms and conditions related to all the Supported Services. All services provided by ImageSoft to Customer are provided with a 30-day limited warranty, which is further defined in section 12 (see section 4 for Customer Care extended warranty on Supported Services). During this limited warranty period Service Provider will use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to design or functional specifications mutually confirmed and agreed upon by Service Provider and Customer) in any configurations or custom software development provided by Service Provider.

4. CUSTOMER CARE SUPPORT

This section is only applicable if Customer Care is identified as being provided herein or in an accepted SOW. Customer Care Support is an optional support package that is offered to select Customers. If applicable, Customer Care provides more extensive protection to the Customer in several key areas, as follows:

- a) Extended Services Support. ImageSoft will use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to design or functional specifications mutually confirmed and agreed upon by ImageSoft and Customer) in any configurations or custom software development provided by ImageSoft, and fully paid for by Customer.
- b) Development Team Access. ImageSoft will use its commercially reasonable efforts to maintain an enhanced level of knowledge regarding the Customer's System and provide Customer access to ImageSoft's implementation staff that maintains this knowledge. All support calls will first go through the standard help-desk process, however Customer Care Customers will have enhanced access to implementation staff personnel.
- c) System Upgrade Assistance to on-premise Software. ImageSoft will annually assist Customer in the installation of up to two (2) new versions for any of the Supported Software Products provided by ImageSoft that are installed at Customer premises. Assistance shall include: 1) Providing remote technical advice for planning or execution; and 2) Providing remote technical services to run the upgrade procedure. ON-SITE ASSISTANCE IS NOT INCLUDED AND IS BILLABLE AS PER SECTION 7. TESTING AND BACKUP ARE THE RESPONSIBILITY OF THE CUSTOMER. IMAGESOFT RESERVES THE RIGHT TO REFUSE TO PERFORM AN UPGRADE IF IN IMAGESOFT'S REASONABLE COMMERCIAL JUDGMENT PROPER TESTING OR BACKUP HAVE NOT BEEN PERFORMED.
- d) Upgrade Assurance. ImageSoft will use its commercially reasonable efforts to ensure that any configurations or custom software development provided by ImageSoft, and fully paid for by Customer will continue to operate and provide same or similar functionality in subsequent new versions of Supported Products. UPGRADE ASSURANCE DOES NOT INCLUDE MIGRATING TO A DIFFERENT OPERATING ENVIRONMENT.
- e) Web Support Portal. A feature of the Customer Care Support program includes ImageSoft providing Customer with access to support through the Web. The Web Support Portal provides Customer with access to support history, and the ability to submit a notification through the Web.
- f) Customer Care Pricing. The price for Customer Care is based on the size and complexity of the system being supported and an estimate of the amount of effort required to perform the support for the period being covered. In subsequent years ImageSoft reserves the right to adjust the price for Customer Care to better reflect the actual cost of the service being provided.

5. SUPPORTED HARDWARE MAINTENANCE

This section describes the terms and conditions related to all the Supported Hardware. Additional terms and conditions that are specific to a Product Vendor may be included in Section 17.

- a) Errors in Supported Hardware. All Error(s) discovered by Customer within Supported Hardware must be properly reported to ImageSoft in accordance with Section 6 of this SMA. ImageSoft shall use its commercially reasonable efforts to correct any properly reported Error(s) in the Supported Hardware that are mutually confirmed by ImageSoft and Product Vendor, in the exercise of their commercially reasonable judgment.

- b) Third-party On-site Maintenance. For most Supported Hardware ImageSoft will propose to Customer and purchase on behalf of Customer a third-party on-site maintenance contract. If an on-site maintenance contract is in effect, it will be identified in a related SOW, or through a renewal invoice for subsequent terms. If an on-site maintenance contract is in effect and an Error is confirmed by ImageSoft to be covered by the on-site maintenance contract, then, ImageSoft will either contact the third-party on behalf of the Customer, or direct Customer to do so.

6. SUPPORT PROCEDURES

- a) Support Hours. Unless extended support coverage is defined within and purchased through a related SOW, Maintenance and Support Services shall be available during the hours of 9 a.m. to 5 p.m., Eastern Standard Time, Monday through Friday, excluding the following US holidays, as defined by the US Federal Government (www.opm.gov/fedhol)), including: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve and Christmas day.
- b) Error Reporting. Proper notice shall include prompt telephonic and written (either via e-mail or postal mail) notice to ImageSoft of any alleged Error. If requested by ImageSoft, Customer agrees to provide written documentation of Errors to substantiate the Errors and to otherwise assist ImageSoft in the detection, verification and correction of said Errors. ImageSoft will use its commercial reasonable judgment to determine if an Error exists. If ImageSoft determines that a new Error exists, ImageSoft will assign an Error Tracking Number (“ETN”) to the Error and provide this to the Customer. A NOTIFICATION OF ANY KIND DOES NOT BECOME AN “ERROR”, AS DEFINED WITHIN THIS AGREEMENT, UNTIL AN ERROR TRACKING NUMBER IS ASSIGNED BY IMAGESOFT.
- c) Call Tracking and Response. ImageSoft’s help desk shall track all Customer notifications and categorize them as follows:

Type	Description	Response Time
Critical	An issue has been identified and is either causing a significant portion of the system to be unusable, or is significantly affecting Customer productivity and no workaround is available. These calls are addressed before all others.	1 business hour
High	An issue has been identified and is either causing a significant portion of the system to be unusable, or is significantly affecting Customer productivity, however, a workaround is available.	4 business hours
Medium	An issue has been identified but is not significantly affecting Customer productivity.	8 business hours
Low	System is operating as documented; however, Customer has requested a change to the system or Customer has requested General Assistance or Advice.	24 business hours

ImageSoft will record information in a concise manner in an internal issue tracking database. A summary report will be provided to Customer upon request of the notifications that have been received.

Once an ETN is assigned then ImageSoft will respond to Customer notifications within the timeframes shown above. Response will include attempting to make direct contact with the Party that submitted the notification. Direct contact will first be attempted via telephone or pager. Secondly, an e-mail may be sent or another Customer party may be contacted. The course of action will vary depending upon the nature and severity of the notification.

7. TIME AND MATERIALS SERVICES

- a) On-Site Services. This agreement provides for Errors to be resolved remotely, however the parties may determine that on-site services are required. Upon the reasonable request of Customer, and agreeing to pay for such services on a time and materials basis, ImageSoft may provide on-site Services at Customer's facilities in connection with the correction of Error(s). All on-site service requests must be made in writing. ImageSoft may require that Customer provide either a signed Purchase Order, or a signed Statement of Work agreement prior to providing on-site services.
- b) Incidental Expenses. County shall reimburse ImageSoft Team for any expenditures related to travel by ImageSoft Team arising out of ImageSoft Team's performance of Services under the Agreement in accordance with County's Travel policy. Receipts evidencing travel related expenditures made by ImageSoft Team shall be submitted to the County Auditor's Office: Fort Bend County Auditor Attn: Robert Ed Sturdivant, 301 Jackson Street, Suite 701, Richmond, TX. The parties agree that payment schedules shall be established as part of a Statement of Work and are intended to reflect an equitable cash flow distribution commensurate with the amount of work being performed or product being delivered. The parties further agree to work in good faith to adjust payment schedules when project changes or scheduling delays cause the payments to be inequitably distributed.

8. CUSTOMER RESPONSIBILITIES

- a) Operation of the System at Customer Premises. Customer acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the components of the System which are installed at Customer premises, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Customer is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss regardless of the cause of said loss. ImageSoft and Product Vendors shall have no responsibility or liability for data loss regardless of the reasons for said loss. ImageSoft and Product Vendors shall have no responsibility or liability for Customer's selection or use of any software (including Supported Software), hardware (including Supported Hardware), or systems.
- b) Customer's Implementation of Error Corrections and Upgrades and Enhancements at Customer Premises. To maintain the integrity and proper operation of the System, Customer agrees to implement, in the manner instructed by ImageSoft, all reasonable Error corrections and Upgrades and Enhancements for components installed at Customer premises. Customer's failure to implement any Error corrections or Upgrades and Enhancements may limit or restrict the ability of ImageSoft to implement future Error corrections or Upgrades and Enhancements to the system.
- c) Notice of Errors; Documentation of Errors. Customer shall provide prompt notice of any Errors in the System discovered by Customer, or otherwise brought to the attention of Customer. Procedures for proper ImageSoft notification are defined in section 6.
- d) Assistance in Error Correction. ImageSoft may request, and Customer is responsible for providing reasonable assistance during Error isolation and correction. Assistance may include, but is not limited to, collecting error logs, sending data and screen images to ImageSoft, running all or part of the system in a test mode, or otherwise assisting in the creation of an environment similar to

that in which the Error was detected. If an Error cannot be successfully reproduced, it may be impossible to determine a root cause and provide a correction.

- e) Level-1 Support. Customer is responsible for providing first-level support to the end users of the System and other related systems. First-level support is to be performed by a trained Customer system administrator and is to cover the overall computing and business environment.

9. DISPUTE RESOLUTION

- a. Arbitration. The parties hereto shall endeavor to settle all disputes, controversies and claims arising in connection with this SMA in an amicable way. If the parties are unsuccessful in this regard, any such dispute, controversy or claim arising out of or relating to this SMA shall be settled by arbitration in Oakland County, Michigan, in accordance with the rules of the American Arbitration Association ("AAA") Commercial Arbitration Rules in effect as of the date of the events giving rise to the dispute. The arbitrator(s) (and any court pursuant to Section 9(b) shall apply the substantive laws of the United States of America and the State of Michigan to decide the dispute). The Parties shall choose, by mutual agreement, one (1) neutral arbitrator to hear the dispute. If the Parties cannot agree on the selection of the arbitrator within thirty (30) days after a demand for arbitration has been served, the arbitrator(s) shall be selected by the American Arbitration Association. The arbitrator shall be authorized to award only those damages which are permitted in this Agreement, subject to any disclaimers of damages and liability limits set forth in this Agreement, but the arbitrator shall not have the authority to reform, modify or materially change this Agreement. The award rendered by the arbitrator shall include costs of the arbitration, reasonable attorneys' fees and reasonable costs for experts and other witnesses. Judgment on the award may be entered in any court having jurisdiction. The award of the arbitrator(s) shall be final and binding upon the Parties without appeal or review except as permitted by Michigan law. In connection with any application to confirm, correct or vacate the arbitration award, any appeal of any order rendered pursuant to any such application, or any other action required to enforce the arbitration award, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, disbursements and cost incurred in any post-arbitration award activities.
- b. Injunctive Relief. The Parties agree that notwithstanding the provision for arbitration, each Party will have the right to seek interim orders for equitable relief in a federal or state court having jurisdiction in Oakland County Michigan, as necessary to protect such Party's Intellectual Property Rights or Confidential Information.

10. PAYMENTS AND REMEDIES

- a) Payment Effect on Coverage. UNLESS OTHERWISE AGREED TO IN WRITING; 1) ALL PAYMENTS FOR SUPPORT SERVICES ARE DUE PRIOR TO SERVICES BEING PROVIDED; AND 2) IMAGESOFT IS NOT OBLIGATED TO PERFORM ANY SERVICES DEFINED WITHIN THIS AGREEMENT UNTIL PAYMENT FOR BOTH THE SUPPORT SERVICES AND PAYMENT FOR THE SUPPORTED PRODUCT OR SUPPORTED SERVICES IS MADE IN FULL AND IS RECEIVED BY IMAGESOFT.
- b) Payment Terms. Customer shall pay all other invoices hereunder in full net thirty (30) days from the date of invoice.
- c) Past Due Amounts. All past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Customer in the payment of any amounts due hereunder, which default continues unremedied for at least ten (10) calendar days after the due date of such payment, ImageSoft shall have the right to cease to provide any Maintenance and Support Services and Upgrades and Enhancements to Customer unless and until such default, and any and all other defaults by Customer under this SMA, shall have been cured.

- d) Taxes and Governmental Charges. In addition to all other payments required to be made by Customer hereunder, Customer shall pay all taxes and governmental charges, foreign, federal, state, local or otherwise (other than income or franchise taxes of ImageSoft), however designated, which are levied or imposed by reason of the transactions contemplated by this SMA, including but not limited to sales and use taxes, excise taxes and customs duties or charges.
- e) U.S. Dollars. All payments by Customer to ImageSoft shall be made in U.S. dollars.

11. TERM

- a) Initial Term. Subject to the early termination provisions of Section 11, the initial term of this SMA (the "Initial Term") shall commence when one of the following conditions are met: 1) on the day that ImageSoft issues to Customer license codes for Supported Software; or 2) when any part of Supported System is first used by Customer in a production mode; or 3) when Supported Services (configuration or custom software development) are accepted by Customer through a defined acceptance procedure; or 4) if Supported Software or a Supported Service are being used in a production mode prior to the signing of this agreement, then the date this agreement is signed.

The Initial Term of this SMA shall expire on the first annual anniversary of the commencement of the Initial Term unless an alternate term is specified in writing and agreed to by the parties.

- b) Renewal Periods. Except as otherwise provided below, the term of this SMA shall be renewed: (1) at the end of the Initial Term, for a period from the first day after the end of the Initial Term through December 31 of the calendar year in which the Initial Term ends; and (2) thereafter, annually on a calendar year by calendar year basis, unless either Party elects not to renew by written notice to the other Party with sixty (60) days written notice prior to the end of such Initial Term or renewal term, as the case may be. ImageSoft shall not exercise its right of non-renewal unless Customer is then in default, ImageSoft reasonably anticipates a Customer default, or ImageSoft is generally no longer in the business of providing such support or otherwise winding down its business. ImageSoft shall invoice Customer for annual maintenance fees for renewal terms at least forty-five (45) days prior to the end of the then-current term of this SMA. If any term of this SMA for which annual maintenance fees are payable is a period of less than twelve (12) calendar months, the annual maintenance fees for such term will be prorated based upon the number of calendar months in such period (including the calendar month in which such term of this SMA commences).
- c) Early Termination.
 - i) Automatic. Should any license agreement related to a Supported Products be terminated, then support for that Supported Product under this SMA shall be automatically terminated.
 - ii) By ImageSoft For Cause. ImageSoft shall be entitled to give written notice to Customer of any material breach by Customer of a Supported Product license agreement or this SMA, specifying the nature of such breach and requiring Customer to cure the breach. If Customer has not cured the breach within twenty (20) business days after receipt of such written notice, ImageSoft shall be entitled, in addition to any other rights it may have under this SMA, or otherwise at law or in equity, either (a) to immediately terminate this SMA, or (b) suspend the performance of services until the breach is cured. For the avoidance of doubt, failure to pay any sum due and owing is a material breach.
 - iii) By Customer.
 - (1) For Convenience. Customer may terminate this SMA at any time, for any reason or for no reason, upon not less than sixty (60) days advance written notice to ImageSoft.
 - (2) For Cause. Customer shall be entitled to give written notice to ImageSoft of any material breach by ImageSoft of this SMA, specifying the nature of such material breach or non-

compliance and requiring ImageSoft to cure the breach. If ImageSoft has not cured the breach within twenty (20) business days after receipt of written notice, Customer shall be entitled, in addition to any other rights it may have under this SMA, or otherwise at law or in equity, to immediately terminate this SMA; and thereafter, so long as Customer has complied in all material respects with its obligations under this SMA and is current on all payment obligations to ImageSoft, Customer shall be entitled to a refund from ImageSoft of the "unused portion of the annual maintenance fees" for the then-current term of this SMA. For these purposes, the "unused portion of the annual maintenance fees" shall mean that portion of the annual maintenance remaining from the end of the month when the termination is effective to the end of the remaining term.

d) Effect of Termination.

- i) Payments. Notwithstanding any termination of this SMA, subject to 11(b)(2), Customer shall be obligated to pay ImageSoft for (A) all Maintenance and Support Services provided on a time and materials basis in accordance with this SMA at any time on or prior to the effective date of termination; (B) all annual maintenance fees due with respect to any period commencing prior to the effective date of termination; and (C) all travel and incidental costs and expenses incurred by ImageSoft at any time on or prior to the effective date of termination.
- ii) Survival of Obligations. Provisions of this SMA which by their nature extend beyond termination of this SMA shall survive termination of this SMA. Additionally, the termination of this SMA will not discharge or otherwise affect any pre-termination obligations of either Party existing under this SMA at the time of termination. No action arising out of this SMA, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
- iii) Reinstatement of SMA. In the event of non-renewal of this SMA by Customer, Customer may at any time elect to reinstate this SMA. To obtain reinstatement, Customer shall deliver written notice to such effect to ImageSoft. ImageSoft shall calculate and provide a proposal for reinstatement where the total cost will not be greater than 110% of the aggregate total cost of the entire period of lapsed coverage and the renewal term. Reinstatement will not be complete until payment in full is received. EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION, CUSTOMER SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

12. LIMITED WARRANTY

- a) Limited Warranty of Services. ImageSoft warrants that the Maintenance and Support Services required under this SMA shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Maintenance and Support Services fail to conform to this limited warranty, Customer must notify ImageSoft in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are completed. Upon receiving such timely written notice, ImageSoft's sole obligation for any actual breach of this Limited Warranty, and Customer's sole remedy, shall be for ImageSoft to use commercially reasonable efforts to re-perform the nonconforming Services as required by this SMA and the Limited Warranty. If ImageSoft thereafter fails to perform the Maintenance and Support Services in accordance with this Limited Warranty after a reasonable period of time (and at least thirty (30) days), Customer's sole and exclusive remedy shall be termination of this SMA in accordance with Section 11 of this SMA. For the avoidance of doubt and without limiting any other obligations excluded by operation of this SMA or by law, This warranty specifically excludes non-performance issues caused as a result of incorrect procedures used or provided by Customer or a third party or failure of Customer to perform and fulfill its obligations under this SMA or a related Supported Product license agreement.
- b) No Warranty of Product Upgrades and Enhancements. The Limited Warranty of Services above is not intended to modify any product warranty or disclaimer of product warranty that may be

contained in the license Agreements for Supported Products relating to Upgrades and Enhancements of the Supported Products which may be provided to Customer under this SMA; for the avoidance of doubt, no product warranty is given under this SMA with respect to Upgrades and Enhancements.

- c) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN A SOW, OR ANOTHER WRITTEN AGREEMENT THAT EXPRESSLY SUPERSEDES THIS AGREEMENT, IMAGESOFT MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT SERVICES, ANY SOFTWARE OR ANY UPGRADES AND ENHANCEMENTS PROVIDED UNDER THIS AGREEMENT. IMAGESOFT DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. IMAGESOFT DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES, SOFTWARE OR UPGRADES AND ENHANCEMENTS PROVIDED WILL SATISFY CUSTOMER'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR UPGRADES AND ENHANCEMENTS WILL BE UNINTERRUPTED. IMAGESOFT DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

13. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL IMAGESOFT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO IMAGESOFT UNDER THIS AGREEMENT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL IMAGESOFT OR PRODUCT VENDORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF IMAGESOFT OR PRODUCT VENDOR HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

14. FORCE MAJEURE

No failure, delay or default in performance of any obligation of a Party to this SMA (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other Party) and without negligence or willful misconduct of the Party otherwise chargeable with failure, delay or default. Either Party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other Party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other Party. This Section shall in no way limit the right of either Party to make any claim against third parties for any damages suffered due to said causes.

15. NOTICES

Unless otherwise agreed to by the parties in a writing signed by both parties, all notices, requests, demands and other communications under this SMA shall be in writing and shall be effective and deemed to have been received (a) when delivered in person, (b) Five (5) business days after having been mailed by certified or registered United States mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent by a nationally recognized overnight mail or courier service, return

receipt requested. Unless otherwise provided, notices shall be sent to the parties appearing on the signature page, at the address listed on the opening page of this SMA.

16. GENERAL PROVISIONS

- a) Jurisdiction. This SMA and any claim, action, suit, proceeding or dispute arising out of this SMA shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Michigan, without regard to the conflicts of laws provisions thereof. Venue and jurisdiction for any action, suit or proceeding arising out of this SMA shall vest exclusively in the federal or state courts of general jurisdiction located in Oakland County, Michigan.
- b) Interpretation. The headings used in this SMA are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this SMA shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby" and similar terms refer to this SMA.
- c) Waiver. No waiver of any right or remedy on one occasion by either Party shall be deemed a waiver of such right or remedy on any other occasion.
- d) Integration. This SMA, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this SMA. This SMA may only be modified by a written document signed by duly authorized representatives of the parties. This SMA shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this SMA in any purchase order or other written notification or documentation, from Customer or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This SMA will prevail over any conflicting stipulations contained or referenced in any other document.
- e) Binding Agreement and Assignment. This SMA shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither Party may assign this SMA or its rights or obligations under this SMA, in whole or in part, to any other person or entity without the prior written consent of the other Party. Any change in control of Customer resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this section shall be null and void and of no force or effect.
- f) Severability. In the event that any term or provision of this SMA is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this SMA is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this SMA.
- g) Independent Contractor. The parties acknowledge that ImageSoft is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support Services.
- h) Export Regulation. The Software, Upgrades and Enhancements are subject to export control laws applicable to ImageSoft's and Customer's respective jurisdictions, including without limitation, the United States. Customer acknowledges that the Software, Upgrades and

Enhancements are subject to all United States laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States and which prohibit export or diversion of certain products and technology to certain countries or individuals, including the Export Administration Act of 1979, as amended and/or any successor legislation, and the Export Administration Regulations (“EAR”) issued by the Department of Commerce, Bureau of Industry and Security. Customer further acknowledges that the release of the Software, Upgrades and Enhancements to foreign nationals in the United States is a “deemed export” as that term is defined in the EAR and that such release may be a violation of the EAR. Customer represents and warrants that Customer will comply in all respects with the export and re-export restrictions applicable to the Software and will otherwise comply with the EAR or other United States laws and regulations in effect from time to time. Furthermore, Customer represents and warrants that Customer will not export (directly or indirectly), re-export, divert or transfer any Software, or Documentation, materials, items, technology, or technical data related to the Software to any destination, company, or person restricted or prohibited by foregoing export laws and regulations. Customer undertakes, among other obligations, to determine any export licensing requirements, to obtain any export license or other official authorization, and to carry out any Customs or other governmental formalities for the export of the Software

- i) *Government Restricted Rights.* The Software, Upgrades and Enhancements are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 “Commercial Computer Software-Restricted Rights” and DFARS 227.7202, “Rights in Commercial Computer Software or Commercial Computer Software Documentation”, as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Software, Upgrades and Enhancements by the U.S. Government shall be solely in accordance with the terms of this Agreement.

17. PRODUCT VENDOR PROVISIONS

This section contains terms and conditions that are specific to particular Product Vendors. These terms are only applicable if the particular product vendor’s products are supported.

- a) Product Vendor: Hyland Software (OnBase Software) – Definition of “Software”. With respect to the OnBase product of Hyland Software, Inc. “Software” shall mean: (1) the current released version of the computer software licensed under the Hyland Software, Inc. EULA and, (2) at any time after ImageSoft has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this SMA, the released version of such computer software last released prior to the current released version; provided, that the Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Hyland Software, Inc. first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.
- b) Product Vendor: Hyland Software (OnBase Software) – System Administrator Requirement for Support. If the OnBase Software product is being supported under this SMA, then Customer is required to have an OnBase Certified System Administrator on staff to support the OnBase system within ninety (90) days of the start of production usage of the OnBase software. If the Customer does not have an OnBase Certified System Administrator on staff, then ImageSoft may submit a Statement of Work (SOW) to provide this service remotely. The requirements for OnBase Certified System Administrator are defined by Hyland Software and can be found on the Web at <http://training.onbase.com>
- c) Product Vendor: Hyland Software (OnBase Software) – Start of OnBase Maintenance. If the OnBase Software product is being supported under this SMA and unless otherwise agreed to in

writing, 1st year maintenance will begin ninety (90) days after the software is ordered from Hyland Software by ImageSoft.

IN WITNESS WHEREOF, the parties have executed this System Maintenance Agreement by their duly authorized representatives:

Fort Bend County, TX
Customer

ImageSoft, Inc.
ImageSoft

By: _____

By: _____

Print Name: _____

Print Name: Scott D. Bade

Title: _____

Title: President

Date: _____

Date: _____

Appendix A – Existing System Configuration

Product Vendor / Component	Part #	Qty	Notes / Limitations
Advanced Capture	IAMPW1	1	
Automated Redaction	ARMPW1	1	
COLD/ERM	CLMPW1	1	
Concurrent Client (1-100)	CTMPC1	100	
Context Search Framework	CFMPI1	1	
Conversion From Microsoft Office To Image Framework (Aspose)	WTMPI1-AS	1	
Document Composition	ADMPI1	1	
Document Import Processor	DPMPW1	1	
Document Knowledge Transfer & Compliance	DKTMPI1	1	
Enterprise Application Enabler	AEMPI2	1	
Enterprise Web Access for Document Knowledge Transfer & Compliance	DKTMPI2	1	
Full-Text Indexing Concurrent Client for Autonomy IDOL	IDMPC1	15	
Full-Text Indexing Server for Autonomy IDOL	IDMPI1	1	
Integration for DocuSign eSignature	DXMPI1	1	
Integration for Microsoft Outlook	OUTMPI1	1	
Intelligent Capture for AP	ICAPMPI1	1	
Mobile Access for Android	OMMPI1-ANDPH	1	
Mobile Access for iPad	OMMPW1-IPAD	1	
Mobile Access for iPhone	OMMPI1-IPHN	1	
Mobile Access for Windows	OMMPI1-WINDO	1	
Multi-User Server	OBMPW1	1	
Named User Client (1-100)	CTMPN1	45	
Office Business Application	OBAMPI2	1	
PDF Framework	PDFMPI1	1	
Production Document Imaging (Kofax or Twain) (1)	DIMPW1	1	
Production Document Imaging (Kofax or Twain) (2+)	DIMPW2	10	
Query API (Additional block of 500 queries/hour) (OnBase Unity/Core)	APMPQ4	1	
Query API (Initial 500 queries/hour) (OnBase Unity/Core)	APMPQ3	1	
Records Management	RIMPI1	1	
Report Services	RPMPI1	1	
Signature Pad Interface (TWAIN)	PWMPI1	1	
Unity Client Server	UNMPI1	1	
Unity Forms	UFMPI1	1	
Unity Integration Toolkit	UIMPI1	1	
Virtual Print Driver	PTMPC1	1	
Web Server	WTMPW1	1	
Workflow Concurrent Client SL (1-20)	WLMPC1	20	
Workflow Concurrent Client SL (21-50)	WLMPC2	30	
WorkView Concurrent Client SL (1-20)	VLMP1	20	
WorkView Concurrent Client SL (21-50)	VLMP2	30	

EXHIBIT B

Exhibit B

Menu

Texas Department of Information Resources

Can't find what you're looking for?

Call DIR

Home / All Contracts & Services / Contract Detail

Hyland Software, Inc.

Vendor ID 13416992470	DIR Contract Number DIR-TSO-3734
URL Vendor Website	Contract Term End Date 8/15/2020
HUB Type Non HUB	Contract Exp Date 8/15/2021
<hr/>	
Contact Hyland Software, Inc.	Contact DIR
Contact Lisa McNeeley	Contact Mario Gutierrez
Phone (440) 788-5468	Phone (512) 463-8989
Fax (440) 788-5100	Fax (512) 475-4759

Contract Overview

Hyland Software offers software products and related services through this contract. Available brands, products, and services include: Hyland. Customers can purchase directly through this DIR contract. Contracts may be used by state and local government, public education, other public entities in Texas, as well as public entities outside the state. There are resellers on this contract, one of which is a HUB

Contract Documents

- [DIR-TSO-3734 Contract PDF \(240.41KB\)](#)

Exhibit 1

Exhibit B

- [DIR-TSO-3734 Appendix A Standard Terms and Conditions \(per Amendment 1\) PDF \(1.02MB\)](#)
- [DIR-TSO-3734 Appendix B HUB Subcontracting Plan PDF \(1013.31KB\)](#)
- [DIR-TSO-3734 Appendix C Pricing Index PDF \(156.63KB\)](#)
- [DIR-TSO-3734 Appendix D End User License Agreement PDF \(241.15KB\)](#)
- [DIR-TSO-3734 Appendix E Subscription and Hosting Licenses PDF \(522.3KB\)](#)
- [DIR-TSO-3734 Appendix F Hosting Agreement PDF \(358.32KB\)](#)
- [DIR-TSO-3734 Appendix G Software Maintenance Agreement PDF \(279.46KB\)](#)
- [DIR-TSO-3734 Appendix H Work Agreement PDF \(322.66KB\)](#)
- [DIR-TSO-3734 RFO DIR-TSO-TMP-225 PDF \(6.98MB\)](#)
- [DIR-TSO-3734 Amendment 1 PDF \(105.86KB\)](#)

Electronic and Information Resources (EIR) Accessibility

Information regarding Electronic and Information Resources (EIR) accessibility of this vendor's offerings is included in the contract. Agencies purchasing products or services are responsible for complying with Texas EIR Accessibility statute and rules, as defined in TGC 2054 Subchapter M, 1TAC 206, and 1 TAC 213. For additional information, visit the Vendor Website or contact the vendor directly.

Please note that some of the documents on this page are in the PDF format. Please [download the Adobe Reader](#) in order to view these documents.

Reseller Vendor Contacts



Vendor Name	Contact Name	Phone/Fax	
Databank IMX LLC dba DB IMX LLC	Non HUB	Jason Engen	Phone: (651) 965-5466 Fax:
ImageSoft, Inc.	Non HUB	Vince Hanson	Phone: (248) 948-8100 ext 213 Fax:
Keymark, Inc.	Non HUB	Michael Grunden	Phone: (717) 364-3708 Fax:
Konica Minolta Business Solutions U.S.A., Inc.	Non HUB	Jeff Tinkle	Phone: (972) 979-4033 Fax: (703) 506-1257
Qnet, Inc. dba: Qnet Information Services	Black/Male	Larry Hall	Phone: 214-341-7638 Fax: (214) 348-5900
Requordit, Inc.	Non HUB	Mark Buckley	Phone: (312) 332-9200 ext 201 Fax:
Xerox Corporation	Non HUB	Marlon Miller	

Exhibit 1

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
HYLAND SOFTWARE, INC.

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 Hyland Software, Inc. (hereinafter “Vendor”), with its principal place of business at 28500 Clemens Road, Westlake, Ohio 44145.

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-225, on February 27, 2015, for Software, including Software as a Service, Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-225 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, End User License Agreement; Appendix E, Subscription and Hosting Licenses; Appendix F, Hosting Agreement; Appendix G, Software Maintenance Agreement; Appendix H, Work Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-225, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-225, 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 Appendix D, then Appendix E, then Appendix F, then Appendix G, then Appendix H, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. 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 Software, including Software as a Service, 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 Software, including Software as a Service, 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-quarter 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 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:

General Counsel
Hyland Software, Inc.
28500 Clemens Road
Westlake, Ohio 44145
Phone: (440) 788-5000
Facsimile: (440) 788-5100
Email: hylandcontracts@onbase.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the End User License Agreement set forth in Appendix D, Appendix E, Subscription and Hosting Licenses, or Appendix F, Hosting Agreement, whichever is applicable, of this Contract. No changes to these 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, Appendix E or Appendix F; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in these Agreements, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make these terms and conditions available to all Customers at all times.

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

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If**

the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Software Maintenance Agreement as set forth in Appendix G, and/or Appendix H, Work Agreement, whichever is applicable of this Contract. No changes to these terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

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

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.

A. Appendix A, Section 5, Intellectual Property is hereby deleted and replaced in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

THIS SPACE LEFT INTENTIONALLY BLANK

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

HYLAND SOFTWARE, INC.

Authorized By: Signature on File

Name: Noreen B. Kilbane

Title: SVP, Administration

Date: 8/9/17

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: 8/15/17

Office of General Counsel: db 8/14/17

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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's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

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

L. Overcharges

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'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.

Amendment Number 1
to
Contract Number DIR-TSO-3734
between
State of Texas, acting by and through the Department of Information Resources
and
Hyland Software, Inc.

This Amendment Number One (1) to **Contract** Number **DIR-TSO-3734** ("**Contract**") is between the Department of Information Resources ("DIR") and Hyland Software, Inc. ("**Contractor**"). DIR and Contractor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through August 15, 2019, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for two (2) 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. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Appendix A, Standard Terms and Conditions for Products and Related Services Contracts** is hereby restated in its entirety and replaced with the attached **Appendix A, Standard Terms and Conditions dated 09/29/2017**.

All other terms and conditions of the **Contract as amended**, not specifically modified 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, but in all events, no later than 8/15/2018.

Hyland Software, Inc.

Authorized By: Signature on File

Name: Noreen B. Kilbane

Title: Chief Administrative Officer

Date: 8/16/2018

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: 8/20/2018

Office of General Counsel: Signature on File Date: 8/17/2018

EXHIBIT 2

Fort Bend County

OnBase Solution

Quote
December 20, 2019

Sales Contact:

Toni Smith
Senior Account Manager
O: (517) 663-4584
C: (517) 256-2520
tsmith@imagesoftinc.com

Technical Contact:

Terry Chaudhuri
Sales Engineer
O: (248) 948-8100 x235
tchaudhuri@imagesoftinc.com

ImageSoft, Inc.
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Purpose and Overview

The purpose of this document is to provide a budgetary estimate/quote to Fort Bend County for OnBase services, maintenance and training for the existing AP and contract management solution. ImageSoft welcomes the opportunity to prepare the proposal.

As requested, we have included pricing and additional details on for the following items:

- *Professional services*
- *Software Maintenance*
- *Custom coding - rates for PM, BA, developers etc.*
- *Yearly Upgrades – two (2) per year*
- *Yearly health check*
- *Patches and fixes*
- *New installation assistance*
- *Training - onsite and offsite options*

ImageSoft leverages 22 years of experience delivering productivity enhancing solutions to government and private sector entities at all levels. We focus on providing enterprise-wide solutions, which include business process management, document management, automated workflow, advanced capture, line-of-business application integration, and records management.

ImageSoft is ideally suited to be your strategic partner for OnBase. We are one of the leading Hyland OnBase integrators worldwide with numerous government and private sector customers throughout Texas, the U.S. and North America. ImageSoft has proven capabilities in the delivery of systems involving advanced enterprise content management, case management, and workflow. ImageSoft's knowledge and expertise, coupled with our Diamond Rated Support Department and a proven solution implementation "best practices" approach, will be an asset to the partnership.

ImageSoft is a value added reseller (VAR) and integrator of OnBase® by Hyland Software. After meeting with Fort Bend to provide demos, answer questions and support, we are confident we will make a great partner on your journey with OnBase Enterprise Content Management (ECM) system. We are convinced we will provide the best support for not only your current system but for the future initiatives as well.

This document includes the understood scope, approach and supporting assumptions along with a quote. Should Fort Bend County wish to proceed with ImageSoft as a partner, a Statement of Work (SOW) for the project will be created.

ImageSoft has support staff available to your OnBase team immediately.

We appreciate your confidence in our firm and look forward to the opportunity to work together in advancing your solution.

ImageSoft Way Project Implementation

With this hybrid Agile/Waterfall approach, the “ImageSoft Way” provides customers inclusive insight into their solutions as they are being developed on time and within scope by using an iterative mode of development, demonstration, and feedback cycles. The ImageSoft Way relies on traditional project phases but uses an iterative feedback cycle during the build phase which allows ImageSoft to demonstrate the solution to the customer, receive immediate feedback, and make adjustments to the solution. In turn, the customer doesn’t wait until the start of their testing period to see their solution for the first time; they can collaborate through the entire build process. This results in business requirements being clarified, missed requirements being identified, and ensures the best solution for the customer is delivered.

The first phase is our Planning and Initiation phase. This phase allows the team to learn about the project and the solution, first by meeting with the Sales team and then with the customer. Any documentation provided to the Sales team is shared with the Project team to ensure an efficient transfer of knowledge. During this phase, the Project Manager builds an initial draft of the project schedule so the customer will know what to expect. The project kickoff meeting is scheduled and conducted and discovery is scheduled.

Our second phase, Business Analysis and Design, is often called discovery. We send two experienced team members, usually the Solution Architect and a Systems Engineer, to your location to sit with the users and walk through their business process. We listen, document, and ask questions. We do not build out the solution during this time; we ensure we understand your business, your pain points, and have the right information to build you a solution that will work. When we return to our office, we design your solution. In order to ensure we understand your business rules, we draft a document called the Solutions Requirement Document (SRD). In this document, we write Use Cases to identify the steps required to complete your business process within the new solution. Once internally vetted and reviewed, we send you this draft and schedule a review with you and your business Subject Matter Experts. We review the document live with you, making corrections to the process to ensure all parties agree on what the solution will include. The Business Analysis and Design phase completes once the Solution Requirements Document is signed.

With the design agreed to, the Build phase begin. While we collaborate consistently through the entire project, the Build phase is the most iterative in terms of solution reviews and feedback loops. We will establish a regular cadence with you to demonstrate the solution as it is being built. Your feedback is critical in this phase. If we can catch a misunderstanding early in the project, we can update the design and estimate early to avoid overages later in the project. Seeing the solution often also helps your users and IT team understand the solution well before it is released to test and support.

Before we release a solution for user testing, we perform system testing within ImageSoft to ensure everything works as designed within the Solution Requirements Document. After this is complete, we train your users to test the solution. We provide and consult on a sample training plan that you can customize for your team, as well as provide training manuals for your solution. We follow a checklist of steps that include other templates and documents that we share with your team to make sure training is successful. Trained users are happy users.

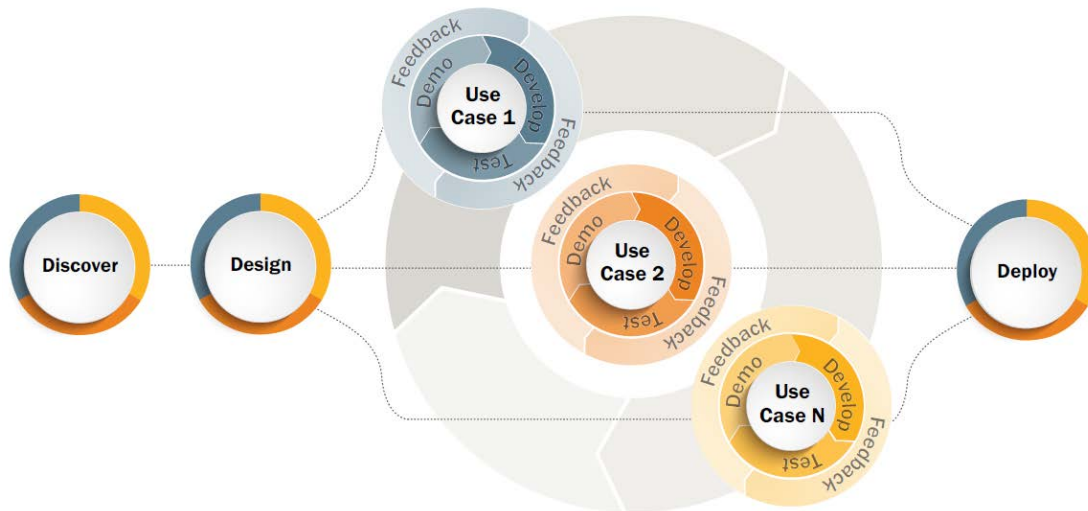
During the User Acceptance Testing (UAT) phase, we setup an issue tracking software, Jira, just for you to log your issues or enhancements. We meet with your team multiple times a week

to review the issues, work with you to prioritize, resolve, and release for retest. At the end of UAT, we send you a signoff form to permit the solution to be promoted to Production.

The last phase is the Production Migration and Go Live. While it seems like we are at the end of the project lifecycle, this is a critical phase and we treat it as such. Our team will collaborate with your IT staff well in advance of migration day to review the infrastructure, apply all licenses, and prep the environment. We build a migration checklist with your IT team with tasks, assignees, and dates to make sure nothing gets missed. We are available outside of business hours so that there can be as little impact as possible to your end users. The project team is allocated post go live to provide the continued support of your solution in Production for up to 30 days. After that 30 days is up, the project team completes a checklist for our Customer Care team that evaluates whether the solution is ready to be transitioned. The Customer Care team has product and development experts available for quick issue resolution and will escalate back to the project team to expedite the resolution of issues for you.

Through all phases, you will have a dedicated Project Manager working to ensure your project stays on track. Whether tracking budget, challenging design decisions that compromise scope, removing roadblocks to allow the project team to meet dates, the Project Manager is your project advocate. They also provide you status reports, identify and mitigate risks, and maintain the project plan.

Regardless of which team is working on your solution, the ImageSoft Way is to be collaborative, open to feedback, and quick to respond.



Professional Services Rate – ImageSoft uses a blended rate for all roles on the project of **\$185.00 per hour**.

Software Maintenance and Customer Care

This covers troubleshooting issues, general assistance and advice. Download information is provided for upgrades and enhancements.

Maintenance and support from ImageSoft for your software solutions is a vital part of every customer relationship, representing both a high level of enterprise support services value and a comprehensive commitment to your future success with OnBase and Hyland technologies.

Maintenance

To help you maximize your technology investment, ImageSoft provides the following software maintenance benefits to keep your implemented solution operating at peak performance:

- *Notification of new software release versions, software patches, technical alerts and updates*
- *Access to software utilities and documentation for new version releases and software patches*
- *Error correction for confirmed errors with the supported software*

Software Maintenance Support

Customers with active software maintenance and support have access to a full range of technical support services:

- *Support for Hyland product functionality provided with exceptional customer service*
- *A comprehensive Technical Support team to handle all aspects of the support process*
- *Optimized access to Technical Support analysts, who respond to all technical support requests*
- *Access to the subject matter experts needed to drive issues to resolution*
- *Advice related to the operation of the implemented software*
- *Defined escalation process to ensure resolution*
- *Response to software errors based on confirmed severity level*
- *A Technical Support advisor who serves as your advocate throughout the support process*
- *A comprehensive product and solution testing lab to reproduce your environment for acute issue troubleshooting*
- *Secure, personalized 24/7 access to the online support portal*

Custom Coding

ImageSoft will correct issues arising from code developed by ImageSoft.

Annual Software Upgrades

This includes planning and remote technical assistance for two upgrades per year. (Customers are responsible for testing and backup prior to an upgrade.) If pre-scheduled, production upgrade assistance is also available after hours, 24x7 at no additional cost.

ImageSoft will ensure that any supported configuration, integration or custom development will continue to work in future versions of software products that are covered by software maintenance.

Yearly Health Checks

ImageSoft will perform, upon request, a Solution Health Check to ensure your solution is being optimized. Our dedicated Solution Health Specialist reviews your solution in accordance with established procedures and standards and provides you a report which summarizes the results and any action items identified.

Patches and Fixes

ImageSoft will provide support for bug fixes and error in the provided software in accordance with the ImageSoft/Hyland System Maintenance Agreement. ImageSoft will liaise with Hyland Software support personnel to coordinate the resolution of the bug or software product error.

Software Patches

Hyland, the creators of OnBase is dedicated to ensuring the monthly cumulative updates released by Microsoft® are compatible with OnBase®. On the second Tuesday of each month, the Quality Assurance department of Hyland evaluates the cumulative fixes released and labeled as Critical or Important by Microsoft®. The details of the update provided by Microsoft are reviewed for interaction with OnBase® and installed when appropriate for testing its compatibility with OnBase®.

Patches are applied within 90 days of release, but only after they have been tested in a non-production environment. Hyland evaluates each patch released for the Microsoft Windows operating system in order to ensure compatibility. Hyland's partnership with Microsoft enhances Hyland's ability to identify and resolve compatibility issues more effectively.

A summary of Microsoft's Security Bulletin Guide can be found on the Hyland Community Third-Party Compatibility Technical page that can be accessed [Microsoft Path Bulletin](#) with an active Hyland Community account.

For example; The following is a summary of Microsoft's Security Bulletin Guide for November 2019. Hyland has downloaded these patches and applied them to our R&D Infrastructure. We will be performing SCR, automated, and regression testing in environments containing these

patches over the next month. If no issues have been found or reported, we will deem testing to be complete.

The testing is not all-inclusive; issues may still be found upon implementation. Follow best practices for testing and installing software updates/patches in a development environment before implementing the updates in a production environment. Where applicable, the updates are tested on all supported Windows platforms with the latest OnBase® version.

- *Release Notes*
- *November 2019 Security Updates*

Release Date: November 12, 2019

The November security release consists of security updates for the following software:

- *Microsoft Windows*
- *Internet Explorer*
- *Microsoft Edge (EdgeHTML-based)*
- *ChakraCore*
- *Microsoft Office and Microsoft Office Services and Web Apps*
- *Open Source Software*
- *Microsoft Exchange Server*
- *Visual Studio*
- *Azure Stack*

Please note the following information regarding the security updates:

- *A list of the latest servicing stack updates for each operating system can be found in [ADV990001](#). This list will be updated whenever a new servicing stack update is released. It is important to install the latest servicing stack update.*
- *Windows 10 updates are cumulative. The monthly security release includes all security fixes for vulnerabilities that affect Windows 10, in addition to non-security updates. The updates are available via the [Microsoft Update Catalog](#).*
- *Updates for Windows RT 8.1 and Microsoft Office RT software are only available via [Windows Update](#).*
- *For information on lifecycle and support dates for Windows 10 operating systems, please see [Windows Lifecycle Facts Sheet](#).*
- *In addition to security changes for the vulnerabilities, updates include defense-in-depth updates to help improve security-related features.*

- Starting in May 2019, Internet Explorer 11 is available on Windows Server 2012. This configuration is present only in the IE Cumulative package.

Pricing for Software Maintenance and Customer Care - \$134,248.21

This price includes:

- Upgrade Support (2 per year)
- Hyland Patches
- Support During Normal Business Hours
- Health Check
- Onsite Planning for future OnBase Projects
- Hyland Software Maintenance – **modules listed below estimated at 1 year maintenance:**

Description	Qty
Document Composition	1
Enterprise Application Enabler	1
Query API	1
Query API	1
Automated Redaction	1
Context Search Framework	1
COLD/ERM	1
Concurrent Client (1-100)	100
Named User Client	45
Production Document Imaging	1
Production Document Imaging	10
Document Knowledge Transfer & Compliance	1
Enterprise Web Access for Document Knowledge Transfer	1
Document Import Processor	1
Integration for DocuSign eSignature	1
Advanced Capture	1
Intelligent Capture for AP	1
Full-Text Indexing Concurrent Client for Autonomy IDOL	15
Full-Text Indexing Server for Autonomy IDOL	1
Office Business Application	1
Multi-User Server	1
Mobile Access for Android	1
Mobile Access for iPhone	1
Mobile Access for Windows	1
Mobile Access for iPad	1
Integration for Microsoft Outlook	1

PDF Framework	1
Virtual Print Driver	1
Signature Pad Interface	1
Records Management	1
Report Services	1
Unity Forms	1
Unity Integration Toolkit	1
Unity Client Server	1
WorkView Concurrent Client SL (1-20)	20
WorkView Concurrent Client SL (21-50)	30
Workflow Concurrent Client SL (1-20)	20
Workflow Concurrent Client SL (21-50)	30
Conversion From Microsoft Office to Image Framework	1
Web Server	1

New Installation Assistance

Advanced Architecture and Planning Assistance

Achieving additional ROI by expanding your solution is an important component of the systems that ImageSoft deploys. It is important that the expansion be undertaken with an overall architecture plan and disaster recovery in mind. Customer Care clients receive architecture assistance at no added cost.

New Installation

When purchasing a new module ImageSoft encourages the client to first get a pilot license for their test environment first. This ensures the software will fit the need and also provides some upfront assistance at no extra charge. Pre-sales support will assist in the installation provide a demo and up to 4 hours of configuration. If the software is purchased Fort Bend can decide based on the pilot if installation or configuration services are needed. If Professional Services are needed the rate is \$185.00 per hour.

Training

Certification Training

Certified Instructor Lead Training is offered online, onsite at Hyland or at a customer's location. Classes offered at Hyland are generally 5 days with a cost of **\$2,539.04 per student**. Customers are responsible for any travel expenses incurred. Many of these same classes are offered online for a cost of **\$2,720.40 per student**. Customer location classes are priced depending on length and topic. Quotes are available upon request.

Training Options

There are several options available for ongoing training:

- *Hyland Live Training Classes*
- *Hyland Web Based Training (WBT)*
- *Hyland OnBase Premium Subscription – **Annual Fee of \$7,200.00***

Live Training Classes

A full array of live training classes are available throughout the year. Solution certification may be completed through these live (remote) classes. Upon request, ImageSoft will provide a list of dates/times for the remote classes and their cost.

Web Based Training

Web enabled training classes are available to existing OnBase customers. There are no costs for these Web based training classes.

OnBase Premium Subscription

Premium Subscription is an annual subscription for valid OnBase organizations that provides 24/7 access to the Premium Subscription Courses and content. The Subscription is applied to the entire organization and will grant access to anyone in the organization with a valid Hyland.com/Community login.

*The price of OnBase Premium Subscription is **\$7,200.00**.*

ImageSoft Training

ImageSoft offers training a couple times a year onsite at ImageSoft in Southfield, Michigan. In the past year we have offered the following:

- *2 Classes – Intermediate OnBase - This full day of instructor-led, intermediate OnBase training will cover how to formulate keywords, create Unity forms, configure workflows and generate reporting dashboards.*

Price \$300.00

- *2 Classes - The advanced instructor-led class serves those who have been administering OnBase for some time and have a basic understanding of Users, Groups, Document Types and Workflow Configuration. Instructors will cover: security keywords and AD integration, external auto fills and cascading data sets, HTML Forms for enhanced custom queries, foldering, document redactions, document composition templates, Unity Forms, Image Forms, expanding workflows and creating reporting dashboards.*
Price \$300.00

Customized Training

*ImageSoft will offer customized training onsite in Fort Bend. **The rate is \$185.00 per hour plus expenses.***

*ImageSoft also offers an onsite OnBase Day to train and educate on different solutions and modules. The agenda is set by the customer. **This is free of charge.***

Summary of Costs

*ImageSoft has a blended rate of **\$185 per hour** on any chargeable services.*

*Annual Maintenance and Customer Care - **\$134,248.21***

- *Upgrade Support (2 per year)*
- *Hyland Patches*
- *Support During Normal Business Hours*
- *Health Check*
- *Onsite Planning for future OnBase Projects*

Note: All software maintenance is priced at the annual cost.

*Premium Subscription - **\$7,200.00 per year***

Certified Classes offered by Hyland

- *Online – **\$2,720.40 per student***
- *At Hyland - **\$2,539.04 per student***

*ImageSoft one day classes - **\$300.00 per student***

EXHIBIT 3

Menu

Texas Department of Information Resources

Can't find what
you're looking for?

[Home](#) / [All Contracts & Services](#) / [Contract Detail](#)

Hyland Software, Inc.

Vendor ID

13416992470

URL

[Vendor Website](#)

HUB Type

Non HUB

DIR Contract Number

DIR-TSO-3734

Contract Term End Date

8/15/2020

Contract Exp Date

8/15/2021

Contact Hyland Software, Inc.

Contact

[Lisa McNeeley](#)

Phone

(440) 788-5468

Fax

(440) 788-5100

Contact DIR

Contact

[Mario Gutierrez](#)

Phone

(512) 463-8989

Fax

(512) 475-4759

Contract Overview

Hyland Software offers software products and related services through this contract. Available brands, products, and services include: Hyland. Customers can purchase directly through this DIR contract. Contracts may be used by state and local government, public education, other public entities in Texas, as well as public entities outside the state. There are resellers on this contract, one of which is a HUB

Contract Documents

- [DIR-TSO-3734 Contract PDF \(240.41KB\)](#)

[Exhibit 3](#)

- [DIR-TSO-3734 Appendix A Standard Terms and Conditions \(per Amendment 1\) PDF \(1.02MB\)](#)
- [DIR-TSO-3734 Appendix B HUB Subcontracting Plan PDF \(1013.31KB\)](#)
- [DIR-TSO-3734 Appendix C Pricing Index PDF \(156.63KB\)](#)
- [DIR-TSO-3734 Appendix D End User License Agreement PDF \(241.15KB\)](#)
- [DIR-TSO-3734 Appendix E Subscription and Hosting Licenses PDF \(522.3KB\)](#)
- [DIR-TSO-3734 Appendix F Hosting Agreement PDF \(358.32KB\)](#)
- [DIR-TSO-3734 Appendix G Software Maintenance Agreement PDF \(279.46KB\)](#)
- [DIR-TSO-3734 Appendix H Work Agreement PDF \(322.66KB\)](#)
- [DIR-TSO-3734 RFO DIR-TSO-TMP-225 PDF \(6.98MB\)](#)
- [DIR-TSO-3734 Amendment 1 PDF \(105.86KB\)](#)

Electronic and Information Resources (EIR) Accessibility

Information regarding Electronic and Information Resources (EIR) accessibility of this vendor's offerings is included in the contract. Agencies purchasing products or services are responsible for complying with Texas EIR Accessibility statute and rules, as defined in TGC 2054 Subchapter M, 1TAC 206, and 1 TAC 213. For additional information, visit the Vendor Website or contact the vendor directly.

Please note that some of the documents on this page are in the PDF format. Please [download the Adobe Reader](#) in order to view these documents.

Reseller Vendor Contacts



Vendor Name	Contact Name	Phone/Fax	
Databank IMX LLC dba DB IMX LLC	Non HUB	Jason Engen	Phone: (651) 965-5466 Fax:
ImageSoft, Inc.	Non HUB	Vince Hanson	Phone: (248) 948-8100 ext 213 Fax:
Keymark, Inc.	Non HUB	Michael Grunden	Phone: (717) 364-3708 Fax:
Konica Minolta Business Solutions U.S.A., Inc.	Non HUB	Jeff Tinkle	Phone: (972) 979-4033 Fax: (703) 506-1257
Qnet, Inc. dba: Qnet Information Services	Black/Male	Larry Hall	Phone: 214-341-7638 Fax: (214) 348-5900
Requordit, Inc.	Non HUB	Mark Buckley	Phone: (312) 332-9200 ext 201 Fax:
Xerox Corporation	Non HUB	Marlon Miller	

Exhibit 3

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
HYLAND SOFTWARE, INC.

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 Hyland Software, Inc. (hereinafter “Vendor”), with its principal place of business at 28500 Clemens Road, Westlake, Ohio 44145.

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-225, on February 27, 2015, for Software, including Software as a Service, Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-225 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, End User License Agreement; Appendix E, Subscription and Hosting Licenses; Appendix F, Hosting Agreement; Appendix G, Software Maintenance Agreement; Appendix H, Work Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-225, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-225, 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 Appendix D, then Appendix E, then Appendix F, then Appendix G, then Appendix H, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. 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 Software, including Software as a Service, 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 Software, including Software as a Service, 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-quarter 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 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:

General Counsel
Hyland Software, Inc.
28500 Clemens Road
Westlake, Ohio 44145
Phone: (440) 788-5000
Facsimile: (440) 788-5100
Email: hylandcontracts@onbase.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the End User License Agreement set forth in Appendix D, Appendix E, Subscription and Hosting Licenses, or Appendix F, Hosting Agreement, whichever is applicable, of this Contract. No changes to these 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, Appendix E or Appendix F; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in these Agreements, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make these terms and conditions available to all Customers at all times.

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

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If**

the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Software Maintenance Agreement as set forth in Appendix G, and/or Appendix H, Work Agreement, whichever is applicable of this Contract. No changes to these terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

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

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.

A. Appendix A, Section 5, Intellectual Property is hereby deleted and replaced in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

THIS SPACE LEFT INTENTIONALLY BLANK

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

HYLAND SOFTWARE, INC.

Authorized By: Signature on File

Name: Noreen B. Kilbane

Title: SVP, Administration

Date: 8/9/17

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: 8/15/17

Office of General Counsel: db 8/14/17

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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's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

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

L. Overcharges

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'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.

Amendment Number 1
to
Contract Number DIR-TSO-3734
between
State of Texas, acting by and through the Department of Information Resources
and
Hyland Software, Inc.

This Amendment Number One (1) to **Contract** Number **DIR-TSO-3734** ("**Contract**") is between the Department of Information Resources ("**DIR**") and Hyland Software, Inc. ("**Contractor**"). **DIR** and **Contractor** agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through August 15, 2019, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for two (2) 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. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Appendix A, Standard Terms and Conditions for Products and Related Services Contracts** is hereby restated in its entirety and replaced with the attached **Appendix A, Standard Terms and Conditions dated 09/29/2017**.

All other terms and conditions of the **Contract as amended**, not specifically modified 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, but in all events, no later than 8/15/2018.

Hyland Software, Inc.

Authorized By: Signature on File

Name: Noreen B. Kilbane

Title: Chief Administrative Officer

Date: 8/16/2018

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: 8/20/2018

Office of General Counsel: Signature on File Date: 8/17/2018

EXHIBIT 4

Menu

Texas Department of Information Resources

Can't find what
you're looking for?

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ImageSoft, Inc.

Vendor ID

1383314929

URL

N/A

HUB Type

Non HUB

DIR Contract Number

DIR-TSO-4392

Contract Term End Date

4/1/2022

Contract Exp Date

4/1/2026

Contact ImageSoft, Inc.
Contact
[Toni Smith](#)
Phone

(517) 663-4584

Fax

N/A

Contact DIR
Contact
[Mario Gutierrez](#)
Phone

(512) 463-8989

Fax

(512) 475-4759

Contract Overview

ImageSoft, Inc. offers its own brand of Software and Services for Document Management, Electronic, content management, Electronic document management system, ECM, ECMS, Records management, Electronic records management, EDMS, DMS, records information management, Case management, Paperless, Document migration, Document conversion, Automated workflow, Business process management, Business Process Automation, Electronic forms, Eforms, Document imaging, Electronic signature, eSignature, eSign, electronic filing, e-filing. ImageSoft, Inc. Contracts may be used by state and Local government, public education, other public entities in Texas, as well as public entities outside the state. This contract has no resellers.

[Exhibit 4](#)

Appendix A
Standard Terms and Conditions for Product and 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 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 Fulfillers and/or Reseller 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 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, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, 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. **Reseller** – any third party approved by Vendor to sell to eligible Customers under this Contract. Vendor will flow this Contract’s terms and conditions to its Resellers under his Contract, except that pricing shall be as follows: Vendor offers pricing to its Reseller(s) and such Resellers shall resell to the eligible Customers products under this Contract at or below the price(s) in Appendix C, Pricing Index, of this Contract. Resellers may receive Purchase Orders and fulfill them in their own name. All terms and conditions of this Contract shall apply to both Vendor and Reseller.
- H. **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).
- I. **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) DIR may amend the contract upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.

3) 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 and Reseller 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.

4) 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, price (subject to the maximum prices set forth in Appendix C), 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

1) DIR may assign the Contract to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

2) Vendor may assign the Contract with prior written approval to a subsidiary, parent company, affiliate, or successor. Assignment of the Contract by vendor under the above terms shall require written notification by Vendor 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 or Reseller 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.

I. Data Location

Regardless of any other provision of this Contract or its incorporated or referenced documents, all of the data for State of Texas Customers identified by the State as requiring their data to remain in the continental United States shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise. For all local governments and education customers within the State of Texas, as well as Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. NOTE: CLIENTS SHOULD CONSIDER WHETHER THEY REQUIRE CONTINENTAL US-ONLY DATA LOCATION AND HANDLING AND MAKE VENDOR AWARE OF THEIR REQUIREMENTS.

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. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes [1 TAC 206](#), [1 TAC 213](#), and in the [Worldwide Web Consortium WCAG 2.0 AA](#) technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations.

1) Upon request, and prior to a DIR customer purchase, Vendors must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such competed ACRs already exist, and there have been no changes to the product / service since the time of the original document completion.

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.

2) Upon request, and prior to a DIR customer purchase for IT development services, Vendors must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request(VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Vendor's capability or ability to produce accessible electronic and information resources.

Additionally, vendors must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

3) Upon request, and prior to a DIR customer purchase for COTS products, or IT development services Vendors must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.

Also upon request, vendors must provide additional documentation that supports the information contained in the formentioned completed forms in #1,2,3. Examples may include but are not limited to executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

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 and Resellers

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

1) Designation of Order Fulfillers and Resellers

a) Vendor may designate Order Fulfillers and Resellers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers and Resellers, 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 and Reseller information: Order Fulfiller or Reseller name, Order Fulfiller or Reseller business address, Order Fulfiller or Reseller CPA Identification Number, Order Fulfiller or Reseller contact person email address and phone number.

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

c) Vendor shall be fully liable for its Order Fulfillers' and Resellers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and Resellers 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 Resellers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers and Resellers 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 or Reseller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller and Reseller List

Vendor may add or delete Order Fulfillers and Resellers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers and Resellers, 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 Fulfillers and Reseller information listed in Section 7.B.1.a above.

3) Order Fulfiller and Reseller Pricing to Customer

Order Fulfiller and Reseller 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 and Resellers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller and Reseller 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 or Reseller 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. Vendor must use a web hosting service that provides a dedicated internet protocol (IP) address. Vendor's website must have a Secure Sockets Layer (SSL) certificate and customers must access Vendor's website using Hyper Text Transfer Protocol **Secure** (HTTPS) and it will encrypt all communication between customer browser and 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;
- e) MSRP or DIR Customer price;
- f) designated Order Fulfillers and Resellers;
- g) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers and Resellers;
- h) instructions for obtaining quotes and placing Purchase Orders;
- i) warranty policies;
- j) return policies;
- k) links to manufacturer Voluntary Product Accessibility Template (VPAT) for applicable products awarded;
- l) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- m) a link to the DIR "Cooperative Contracts" webpage; and
- n) 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 and Reseller 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 or Reseller 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 and Reseller Logo

If DIR receives Vendor's or Order Fulfiller's or Reseller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's and Reseller'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 or Reseller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's or Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller and Reseller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers and Resellers 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 and Reseller'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 and Resellers 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 and Reseller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers and Resellers 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 or by webinar, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers and Resellers 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 (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). 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 or Reseller. Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfillers or Reseller when accepted by Vendor or Order Fulfiller or Reseller. 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 or Reseller 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 or Reseller. 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 or Reseller. 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 or Reseller and a Customer, and iii) advising DIR of Order Fulfillers or Resellers 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 and Resellers 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).

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

C. Records and Audit

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 and/or Reseller 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 or Resellers and the requirement to cooperate is included in any subcontract or Order Fulfillers or Reseller 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 and Resellers 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 or Reseller'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 and/or Resellers 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 Fulfiller and/or Resellers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers and/or Resellers 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 and/or Reseller personnel familiar with the Vendor's and/or Order Fulfiller's and/or Reseller'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 and/or Reseller shall provide adequate office space to DIR staff during the performance of Compliance Check. 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 or Resellers 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 Director contact 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 Resellers, 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 or Resellers 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 any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- (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.
- (xx) represent and warrant with Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this 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

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers and Resellers, 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. Education Department General Administrative Regulations (EDGAR)

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014. EDGAR encourages the use of cooperative agreements for procurement or use of common or share goods and services in order to foster greater economy and efficiency. DIR uses an open market competitive procurement process to award contracts as required by Texas Government Code 2054 and 2157. If Vendor provides evidence of its EDGAR compliance that DIR to the best of information and belief, finds to be satisfactory, then DIR may identify Vendor as certifying that all or a portion of Vendor's listings are EDGAR eligible, and DIR may then permit Vendor to so identify all or part of its offerings on Vendor's DIR website. In such cases, upon request from eligible DIR customer, Vendor must complete EDGAR certification affirmation forms to satisfy customer requirement.

E. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiller and Reseller 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

K. 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 and/or Reseller'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 and/or Reseller 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.

L. Limitation of Liability

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

M. 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.

N. 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 nor Reseller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, Reseller, 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.

O. 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.

If Vendor's services contracted under this Contract will not require Vendor to perform work on Customer's premises, or to use employer vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Vendor may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing a *Certification of Off-Premise Customer Services*, which shall serve to meet the insurance requirements.

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.

P. 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.

Q. 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 Chapter 673 of Texas Government Code, Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

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

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

R. 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.

S. 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.

T. 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.

U. 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.

V. 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.

W. 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.

X. 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.

Y. Cybersecurity Training

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Vendor, or a subcontractor, officer, or employee of Vendor, will have access to a state computer system or database, then Vendor shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Vendor shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

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

In all instances of termination or expiration, Vendor shall be required to provide a list of all Purchase Orders, and Purchase Order detail that are open as of the date of termination or expiration. Further, Vendor shall continue to report sales and pay administrative fees for the duration of all such Purchase Orders.

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 and/or Reseller 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 and/or Reseller 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 or Reseller 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 or Reseller (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 or Reseller 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 or Reseller 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 or Reseller 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 or Reseller 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.