

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 Statement of Work Nos. 20823 and 20824 (the "Agreement"), and attached hereto as Exhibit "A" and incorporated by reference, for professional services associated with OnBase; 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-4392, incorporated by reference as if set forth herein verbatim and attached as Exhibit "B."
2. **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.
3. **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 Million, Forty-Eight Thousand, Five Hundred Forty-Five and 00/100 (\$1,048,545.00), 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 Million, Forty-Eight Thousand, Five Hundred Forty-Five and 00/100 (\$1,048,545.00).

4. **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.

5. **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.

6. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by ImageSoft in any way associated with the Agreement.
7. **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.

8. **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.
9. **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.
10. **Travel and Expenses.** All travel expenses incurred by ImageSoft or ImageSoft's subcontractors arising from the performance of services under the Agreement shall be paid by County, only in accordance with County's Travel Policy. Receipts evidencing travel related expenditures made by ImageSoft or ImageSoft's subcontractors shall be submitted to the County Auditor's Office. A copy of the County's Travel Policy is attached as Exhibit C.
11. **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.

- 12. **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.
- 13. **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.
- 14. **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.
- 15. **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.

16. **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.

17. **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.

18. **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 2251.152 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 2253.153

19. **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.

20. **Professional Services Agreement.** Any references to the “Professional Services Agreement” (PSA) will refer to the terms (except for the reference to DIR TSO-3734) in the Master Agreement in Exhibit A in the agreement between ImageSoft and the County, which was approved on March 24, 2020, by the Fort Bend County Commissioners Court; a copy of the terms of the aforementioned Master Agreement is attached as Exhibit “D” and incorporated by reference.
21. **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.
22. **Conflict.** If there is a conflict between this Addendum and the Agreement, the provisions of this Addendum shall prevail.
23. **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.
24. **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.
25. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

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

FORT BEND COUNTY

IMAGESOFT, INC.

KP George
County Judge

Authorized Agent- Signature

Date

Scott D. Bade
Authorized Agent- Printed Name

ATTEST:

President
Title

Laura Richard, County Clerk

5/19/2020
Date

Reviewed:

Information Technology Department

EXHIBIT A: ImageSoft's Statement of Work Nos. 20823 and 20824

EXHIBIT B: DIR Contract Number DIR-TSO-4392

EXHIBIT C: County Travel Policy

EXHIBIT D: Master Agreement Terms

AUDITOR'S CERTIFICATE

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

Robert E. Sturdivant, County Auditor

EXHIBIT A

Professional Services Engagement Statement of Work

Statement of Work No.	20823
Revision No.	0
Customer Name:	Fort Bend County, TX
Project Name:	Professional Services Engagement 1
ImageSoft Contact:	Toni Smith
Submitted Date:	5/5/2020

This Statement of Work is made and entered into by and between ImageSoft, Inc., a Michigan Corporation with its principal offices at 25900 West 11 Mile Rd, Suite 100, Southfield, MI 48034 ("ImageSoft"), and Fort Bend County, TX with its principal offices at 500 Liberty Street, Richmond, TX 77469 ("Customer"):

This Statement of Work ("SOW") is to be attached to and is hereby made a part of the Professional Services Agreement ("PSA") entered into by and between Customer and ImageSoft dated _____.

Unless otherwise specified, the products and services provided within this SOW are hereby added to and covered for the duration and under the terms of the System Maintenance Agreement (SMA) entered into by and between Customer and ImageSoft dated _____.

To the extent that any terms and conditions contained in the related PSA or SMA are in conflict with, or in addition to the terms and conditions of this Statement of Work, the terms and conditions of this Statement of Work shall control.

Introduction

Customer has requested a Statement of Work for ImageSoft professional service to enhance their OnBase solution. ImageSoft will work directly with the Customer to determine the priorities and tasks associated with the services throughout the project(s). A project manager will be assigned by ImageSoft to support the activities and assist in the scheduling of resources and customer meetings.

Description of Services

Under this *Professional Services Engagement SOW*, ImageSoft will provide a professional services resource(s) to work directly with the customer. Exact resourcing needs, scope, system goals, requirements, and other activities will be defined mutually during regular Project Status Meetings. As part of the effort, ImageSoft may require access to Customer Resources that are familiar with the existing solution installation.

ImageSoft will provide assistance up to the number of hours listed in *Consulting Fees* below. Work performed beyond the hours specified in the *Consulting Fees* must be authorized by signing an additional SOW.

Consulting Fees

This engagement will be conducted on a Time & Materials basis. The funding requirement for performing the professional services defined in this SOW are estimated at \$887,805.00. This figure is based on 4932.25 hours of professional services at a rate of \$180.00 per hour.

A purchase order or signed agreement is required to be in place to cover all ImageSoft hours and expenses.

Pricing valid for 30 days

Payment Schedule

Customer will be invoiced bi-weekly for the consulting services and expenses.

All payments will be due on a Net-30 day basis.

Key Assumptions

- The ImageSoft professional services team often requires six to eight (6-8) weeks lead time to start a new Hourly Assist Engagement. Please check with your ImageSoft Account Representative for details on current project lead time.
- ImageSoft will provide the hourly services in this contract according to a mutually defined schedule.
- Hours are tracked in fifteen (15) minute increments and the minimum billing amount per week where services are performed is two (2) hours.
- Customer will designate a central point of contact for the engagement.
- ImageSoft will provide a Project Manager to assist in the planning, resource allocation, and scheduling of work and will work collaboratively with the Customer Project Manager.
- Customer Project Manager is responsible for notifying the ImageSoft Project Manager in a timely fashion about schedule and/or priority changes and/or quality issues.
- Services will be provided remotely.
- Customer will provide VPN access to implementation team to facilitate remote development. Additional security requests prior to providing access may be requested by customer.
- Customer is responsible for maintaining adequate data backups, at all times, to protect against loss of data.
- It is the responsibility of the Customer to prioritize the needed services and system enhancements during the engagement to maximize the assistance provided in the hours defined.
- ImageSoft and Customer will work collaboratively after SOW Signature to define the activities and schedule associated with the hours to be utilized within the SOW.

Approval

Signature is required to accept this SOW. By signing below each party agrees to the proposed project scope and authorizes work to begin.

<i>Agreed to:</i> Fort Bend County, TX 500 Liberty Street, Richmond, TX 77469	<i>Agreed to:</i> ImageSoft, Inc. 25900 West 11 Mile Road, Suite 100, Southfield, MI 48034
By: _____ Authorized Signature	By: _____ Authorized Signature
Date: _____	Date: _____
Name (Type or Print): _____	Name (Type or Print): <u>Scott Bade</u>
Title (Type or Print): _____	Title (Type or Print): <u>President</u>
Project Name: Professional Services Engagement 1	

<i>Internal Use:</i>	Opportunity #: <u>20823</u>
	Sales Order #: _____
	Doc Control #: <u>20200407</u>

Professional Services Engagement Statement of Work

Statement of Work No.	20824
Revision No.	0
Customer Name:	Fort Bend County, TX
Project Name:	Professional Services Engagement 2
ImageSoft Contact:	Toni Smith
Submitted Date:	5/5/2020

This Statement of Work is made and entered into by and between ImageSoft, Inc., a Michigan Corporation with its principal offices at 25900 West 11 Mile Rd, Suite 100, Southfield, MI 48034 ("ImageSoft"), and Fort Bend County, TX with its principal offices at 500 Liberty Street, Richmond, TX 77469 ("Customer"):

This Statement of Work ("SOW") is to be attached to and is hereby made a part of the Professional Services Agreement ("PSA") entered into by and between Customer and ImageSoft dated _____.

Unless otherwise specified, the products and services provided within this SOW are hereby added to and covered for the duration and under the terms of the System Maintenance Agreement (SMA) entered into by and between Customer and ImageSoft dated _____.

To the extent that any terms and conditions contained in the related PSA or SMA are in conflict with, or in addition to the terms and conditions of this Statement of Work, the terms and conditions of this Statement of Work shall control.

Introduction

Customer has requested a Statement of Work for ImageSoft professional service to enhance their OnBase solution. ImageSoft will work directly with the Customer to determine the priorities and tasks associated with the services throughout the project(s). A project manager will be assigned by ImageSoft to support the activities and assist in the scheduling of resources and customer meetings.

Description of Services

Under this *Professional Services Engagement SOW*, ImageSoft will provide a professional services resource(s) to work directly with the customer. Exact resourcing needs, scope, system goals, requirements, and other activities will be defined mutually during regular Project Status Meetings. As part of the effort, ImageSoft may require access to Customer Resources that are familiar with the existing solution installation.

ImageSoft will provide assistance up to the number of hours listed in *Consulting Fees* below. Work performed beyond the hours specified in the *Consulting Fees* must be authorized by signing an additional SOW.

Consulting Fees

This engagement will be conducted on a Time & Materials basis. The funding requirement for performing the professional services defined in this SOW are estimated at \$160,740.00. This figure is based on 893 hours of professional services at a rate of \$180.00 per hour.

A purchase order or signed agreement is required to be in place to cover all ImageSoft hours and expenses.

Pricing valid for 30 days

Payment Schedule

Customer will be invoiced bi-weekly for the consulting services and expenses.

All payments will be due on a Net-30 day basis.

Key Assumptions

- The ImageSoft professional services team often requires six to eight (6-8) weeks lead time to start a new Hourly Assist Engagement. Please check with your ImageSoft Account Representative for details on current project lead time.
- ImageSoft will provide the hourly services in this contract according to a mutually defined schedule.
- Hours are tracked in fifteen (15) minute increments and the minimum billing amount per week where services are performed is two (2) hours.
- Customer will designate a central point of contact for the engagement.
- ImageSoft will provide a Project Manager to assist in the planning, resource allocation, and scheduling of work and will work collaboratively with the Customer Project Manager.
- Customer Project Manager is responsible for notifying the ImageSoft Project Manager in a timely fashion about schedule and/or priority changes and/or quality issues.
- Services will be provided remotely.
- Customer will provide VPN access to implementation team to facilitate remote development. Additional security requests prior to providing access may be requested by customer.
- Customer is responsible for maintaining adequate data backups, at all times, to protect against loss of data.
- It is the responsibility of the Customer to prioritize the needed services and system enhancements during the engagement to maximize the assistance provided in the hours defined.
- ImageSoft and Customer will work collaboratively after SOW Signature to define the activities and schedule associated with the hours to be utilized within the SOW.

Approval

Signature is required to accept this SOW. By signing below each party agrees to the proposed project scope and authorizes work to begin.

<i>Agreed to:</i> Fort Bend County, TX 500 Liberty Street, Richmond, TX 77469	<i>Agreed to:</i> ImageSoft, Inc. 25900 West 11 Mile Road, Suite 100, Southfield, MI 48034
By: _____ Authorized Signature	By: _____ Authorized Signature
Date: _____	Date: _____
Name (Type or Print): _____	Name (Type or Print): <u>Scott Bade</u>
Title (Type or Print): _____	Title (Type or Print): <u>President</u>
Project Name: Professional Services Engagement 2	

<i>Internal Use:</i>	Opportunity #: <u>20824</u>
	Sales Order #: _____
	Doc Control #: <u>20200407</u>

EXHIBIT B

Texas Department of Information Resources

Can't find what
you're looking for?

[Call DIR](#)

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

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.

Table of Contents

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

3) Order Fulfller and Reseller Pricing to Customer	10
C. Product Warranty and Return Policies.....	11
D. Customer Site Preparation	11
E. Internet Access to Contract and Pricing Information.....	11
1) Vendor Webpage	11
2) Accurate and Timely Contract Information	12
3) Webpage Compliance Checks.....	12
4) Webpage Changes	12
5) Use of Access Data Prohibited	12
6) Responsibility for Content	12
F. DIR Logo.....	12
G. Vendor and Order Fulfller and Reseller Logo	12
H. Trade Show Participation	13
I. Orientation Meeting.....	13
J. Performance Review Meetings	13
K. DIR Cost Avoidance	13
8. Pricing, Purchase Orders, Invoices, and Payments	13
A. Manufacturer's Suggested Retail Price (MSRP) or List Price.....	13
B. Customer Discount	14
C. Customer Price	14
D. Shipping and Handling Fees	14
E. Tax-Exempt.....	14
F. Travel Expense Reimbursement.....	14
G. Changes to Prices	15
H. Purchase Orders	15
I. Invoices.....	15
J. Payments.....	16
9. Contract Administration.....	16
A. Contract Managers.....	16
1) State Contract Manager.....	16
2) Vendor Contract Manager	16
B. Reporting and Administrative Fees	16
1) Reporting Responsibility	16
2) Detailed Monthly Report	16
3) Historically Underutilized Businesses Subcontract Reports	17
4) DIR Administrative Fee	17
5) Accurate and Timely Submission of Reports	17
C. Records and Audit	18
D. Contract Administration Notification	19
10. Vendor Responsibilities.....	19
A. Indemnification	19
1) INDEPENDENT CONTRACTOR	19
2) ACTS OR OMISSIONS.....	19
3) INFRINGEMENTS	20
4) PROPERTY DAMAGE.....	20

B.	Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE	20
C.	Vendor Certifications.....	21
D.	Education Department General Administrative Regulations (EDGAR)	23
E.	Ability to Conduct Business in Texas	23
F.	Equal Opportunity Compliance	23
G.	Use of Subcontractors	24
H.	Responsibility for Actions	24
I.	Confidentiality	24
J.	Security of Premises, Equipment, Data and Personnel.....	24
K.	Background and/or Criminal History Investigation	25
L.	Limitation of Liability	25
M.	Overcharges.....	25
N.	Prohibited Conduct	25
O.	Required Insurance Coverage	26
P.	Use of State Property	27
Q.	Immigration	27
R.	Public Disclosure.....	28
S.	Product and/or Services Substitutions	28
T.	Secure Erasure of Hard Disk Products and/or Services.....	28
U.	Deceptive Trade Practices; Unfair Business Practices.....	28
V.	Drug Free Workplace Policy	28
W.	Accessibility of Public Information	28
X.	Vendor Reporting Requirements	29
Y.	Cybersecurity Training.....	29
11.	Contract Enforcement.....	29
A.	Enforcement of Contract and Dispute Resolution	29
B.	Termination	29
1)	Termination for Non-Appropriation	30
2)	Absolute Right.....	30
3)	Termination for Convenience	30
4)	Termination for Cause	31
5)	Immediate Termination or Suspension	31
6)	Customer Rights Under Termination	31
7)	Vendor or Order Fulfiller or Reseller Rights Under Termination.....	32
C.	Force Majeure	32
12.	Notification.....	32
A.	Notices.....	32
B.	Handling of Written Complaints.....	32
13.	Captions	33

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

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

2) Changes in Order Filler 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 Filler and Reseller Pricing to Customer

Order Filler 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.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

ImageSoft, Inc
Southfield, MI United States

Certificate Number:
2020-609918

Date Filed:
04/21/2020

Date Acknowledged:
04/28/2020

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

20-IT-100666-A1
Consulting Services, DIR TSO 4392

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Hawkins, Dave	Southfield, MI United States	X	
	Glisky, Steve	Southfield, MI United States	X	
	Leneschmidt, James	Southfield, MI United States	X	
	Bade, Scott	Southfield, MI United States	X	

5 Check only if there is NO Interested Party.

☐
6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

EXHIBIT C

Annex B

Fort Bend County Travel Policy

Approved in Commissioners' Court on November 3, 2009

Effective November 4, 2009

Revised September 7, 2010

Revised June 2, 2015, Effective August 1, 2015

Revised July 28, 2015, Effective August 1, 2015

Revised July 26, 2016, Effective August 1, 2016

Revised December 12, 2017, Effective January 1, 2018

The Commissioners' Court allocates funds annually for the payment of travel expenditures for county employees and officials within the individual departmental budgets. Travel expenditures paid from these budgets must serve a public purpose for Fort Bend County. These expenditures may be paid directly to the vendor or provided as a reimbursement to the employee/official upon completion of their travel. Advance payments to vendors may be accommodated by issuance of a check or use of a County procurement card. Eligible expenditure categories under this policy include: Lodging, meals, transportation, registration fees, and other fees (with justification). Each category is further defined below.

CONTRACT RATES:

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This program is also known as TPASS (Texas Procurement and Support Services) State Travel Management Program (STMP). This gives County employees and officials access to the contract rates negotiated by the State for hotels and rental cars. Procurement procedures for these contract services are explained within the categories below.

OUT OF STATE TRAVEL:

Authorization: The traveler must obtain Commissioners' Court approval for out-of-state travel before departure. The duration must include travel days along with the event scheduled days. To prevent delays in processing travel reimbursement, ensure that the travel duration is accurately defined when submitting the agenda request.

Documentation: The traveler must provide an excerpt from the Commissioners' Court minutes (<http://www.fortbendcountytexas.gov/index.aspx?page=55>) with the travel reimbursement form.

LODGING (In and Out of State):

Hotel:

Hotel reimbursements are limited to the Federal Travel Regulations set forth by US General Services Administration (GSA) by location not including taxes. The rates are set annually and vary by month and location. The maximum rates for lodging per day can be found at:

http://www.gsa.gov/portal/content/104877?utm_source=OGP&utm_medium=print-radio&utm_term=perdiem&utm_campaign=shortcuts based on travelers destination.

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This gives County employees and officials access to the contract rates negotiated by the State for hotels. Participating hotels can be found at: https://portal.cpa.state.tx.us/hotel/hotel_directory/index.cfm (be sure to check the correct fiscal year). **When making a reservation the traveler must ask for the State of Texas Contract rate (not the government rate) and be prepared to provide the County's**

agency #: C0790. Traveler must verify confirmed rate matches the negotiated contract rates found on the State's website listed above and does not exceed the GSA daily allowance.

If the organizer of a conference/seminar has negotiated discount rates with a hotel(s), the traveler may choose these lodging services without penalty but the traveler must reserve the room at the group rate and provide documentation of the group rate with reimbursement request.

The traveler will be responsible for the excess charge over the GSA per diem rate for the city/county even if using the State rate. The Auditor's Office will deduct from the travelers' reimbursement any excess charges over the GSA per diem rate. Travel websites including but not limited to Expedia and Travelocity should not be used to book lodging.

Travel Days: If the traveler must leave before 7:00AM to arrive at the start of the event and/or return to the County after 6:00PM after the event concludes, an additional night's lodging is allowable before and/or after the event.

Additional fees allowable: Self-parking

Additional fees allowable with justification: Valet parking is allowable if an extreme hardship exists due to physical disability of the traveler or if no self-parking is available.

Fees not allowable: Internet, phone charges, laundry, safe fees

Gratuities: Gratuities are not reimbursable for any lodging services.

Overpayments by County: Any lodging overpayment by the County must be reimbursed by the hotel before processing a reimbursement to the traveler for any of the categories addressed in this policy. Prepaid lodging services should be accurately calculated or underestimated by excluding the taxes to prevent delays in processing travel reimbursements.

Procurement Card: The traveler may use the procurement card to make lodging reservations. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: **A final settled hotel bill with a zero balance from the front desk is required even if lodging is paid by the procurement card. The hotel bill left under the door is not acceptable.** The hotel bill should be scrutinized before traveler departs to make sure all charges are valid and notify hotel of any invalid charges and resolve issues before departing. Make sure all parking has been added to your bill and all personal incidentals have been paid by traveler. Any invalid charges will be the responsibility of the traveler. A copy of the itemized hotel statement must be submitted with the travel reimbursement claim if the traveler used a County procurement card to purchase lodging services or prepaid by County check. Event agenda/documentation or a letter from the traveler describing the event/meeting is required. If utilizing conference negotiated hotel rates, documentation of rates is required.

Changes/Modifications to Reservation – Any modifications including cancellation of reservation, the traveler must obtain a confirmation number and note the name of the person they spoke with in case the hotel charges the traveler. If the traveler does not obtain a confirmation number then any expenses incurred will be the responsibility of the traveler. Expenses resulting from changes or modifications to travel reservations will be paid by the County if the traveler produces documentation that a family emergency exists.

County Exemption Status – Fort Bend County Employees traveling on County Business are not exempt from State and local hotel taxes, state taxes, etc. with the exception of District Judges and the District Attorney.

MEALS:

Texas: Meals including gratuities will be reimbursed to the traveler at a flat rate of \$36/day. The travelers per diem on the departure day and final day of travel will be at 75% of the per diem which is \$27/day.

Out-of-state: Meals including gratuities will be reimbursed to the traveler at a flat rate of \$48/day. The travelers per diem on the departure day and final day of travel will be at 75% of the per diem which is \$36/day.

Late Night Arrival – If a traveler arrives in Fort Bend County between midnight and 6am the traveler will receive a full day per diem for the previous day.

Day trips: Meals will not be reimbursed for trips that do not require an overnight stay.

Procurement Card: No meal purchases are allowed on any County procurement card.

Documentation: No meal receipts are required for reimbursement. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

TRANSPORTATION:

Personal Vehicle: Use of personal vehicle will be reimbursed at the current rate/mile set by Commissioners' Court. Mileage should be calculated using the County office location of the traveler and the event location. Mileage may not be calculated using the traveler's home. Mileage should be calculated using an employee's vehicle odometer reading or by a readily available online mapping service for travel out of Fort Bend County. If using the mileage of an online mapping service, state which mapping service was used or provide a printout of your route detailing the mileage. For local travel, odometer readings or mapping service details are not required. Departments should develop a mileage guide for employees for local travel points, if a department does not have a mileage guide, the Auditor's Office will determine if the mileage listed is reasonable.

Allowable expenses: Parking and tolls with documentation.

County Vehicle: Fuel purchases when using a County vehicle should be made with the County Procurement card if available. Original receipts will accompany the Procurement Card statement but a copy must be provided with the travel reimbursement request.

Allowable expenses: Parking and tolls with documentation required.

Airfare: Airfare is reimbursable at the lowest available rate based on 14 day advance purchase of a discounted coach/economy full-service seat based on the required arrival time for the event. The payment confirmation and itinerary must be presented with the travel reimbursement form. The traveler will be responsible for the excess charges of an airline ticket purchase other than a coach/economy seat. When using Southwest Airlines a traveler should choose the "wanna get away" flight category.

Allowable Expenses: Bag fees. Fare changes are allowable if business related or due to family emergency.

Unallowable Expenses/Fees: Trip insurance, Early Bird Check In, Front of the line, Leg Room, Fare changes for personal reasons.

Rental Car: Rental cars are limited to the negotiated TPASS rates listed at: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/vendor-comparison/>. The contact information for Avis is listed here: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Avis/>. The contact information for Enterprise is listed here: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Enterprise/>. When making a reservation traveler should provide the County's agency # C0790. The traveler will not be reimbursed for any amount over the negotiated contract rates if a non-contract company is used at a higher rate. The traveler should

select a vehicle size comparable to the number of County travelers. The traveler may use a non-contract vendor at an overall rate lower than the contract rates with no penalty. The original contract/receipt must be presented with the travel reimbursement form or a copy if a County procurement card is used. . The traveler will be responsible for any excess charges not included in the TPASS rates or for choosing a vehicle size not comparable with the number of travelers on the trip. Insurance is included in the negotiated TPASS rates, if a traveler chooses to take out additional insurance the cost is on the traveler.

Enterprise:

- Optional Customer, Coupon or Corporate number is **TXC0790**
- Please enter the first 3 characters of your company's name or PIN number **FOR**
- Enterprise will automatically bill FBC when you reserve your vehicle so you need to have a purchase order before your departure.

Avis:

- Avis Worldwide Discount (AWD) Number or Rate Code **F930790**
- You cannot use the wizard option if you have an account with Avis, the wizard will override the state rate and normally the State rates are less.

Unallowable Fees/Charges: GPS, prepaid fuel, premium radio, child safety seats, additional insurance, one way rentals.

Allowable expenses: Parking and tolls allowed with documentation.

Other Transportation: Other forms of transit (bus, taxi, train) are reimbursable with an original receipt.

Gratuities: Gratuities are permitted if original receipt includes gratuity (20% maximum allowed) for any transportation services.

Procurement Card: The traveler may use a County procurement card to make transportation reservations for air travel and rental car services. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: Original receipts are required for all transportation reimbursements paid by the traveler. Transportation services obtained with a County procurement card require a copy of the receipt. Additional requirements are noted within each category above. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

REGISTRATION:

Registration fees: Registration fees are reimbursable for events that serve a Fort Bend County purpose. Registration fees for golf tournaments, tours, guest fees and other recreational events are not reimbursable.

Procurement Card: The traveler may use a County procurement card to register for an event. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: An original receipt must be obtained upon registration and submitted with the reimbursement request if paid by the traveler. A copy of the receipt must be provided if registration is paid on a County procurement card. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

GRANTS:

Travel expenditures from Federal and State grants must also conform to the granting agency's funding requirements.

TRAVEL REIMBURSEMENT FORM:

The traveler must use the current travel reimbursement form (<http://econnect/index.aspx?page=55>) for all travel related services addressed in this policy. No other expenditures may be submitted for reimbursement on the travel reimbursement form. After completing all required information, the travel form must be signed/dated by the traveler and the department head/elected official. Travel reimbursement request should be submitted within 30 days from when traveler returns from trip. Mileage reimbursement request should be submitted no less frequently than quarterly. Mileage reimbursement request for the fourth quarter should be submitted no later than October 30th for yearend processing.

EXCLUSIONS:

If the traveler has custody of a person pursuant to statute or court order or if the traveler is required by court or legal entity to appear at a particular time and place the traveler will not be penalized for accommodations that require a 14 day advance purchase ticket if travel is required with less than 14 days' notice.

If the traveler has custody of a person pursuant to statute to court order the traveler will not be held to the 75% per diem on the departure and final day of travel.

EXHIBIT D

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: _____